

**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**PACIFIC PHARMACY GROUP, INC.
DBA VALENCIA PHARMACY
23550 Lyons Ave, Ste. 111
Newhall, CA 91321
Permit No. PHY 48891**

**JAN BRUCE BALTHASAR
239 Via Lido Soud
Newport Beach, CA 92663
Original Pharmacist License No. RPH 28351**

**CHRIS CHOI
28868 Silversmith Drive
Valencia, CA 91354
Original Pharmacist License No. RPH 57620**

Respondents.

Case No. 5869

OAH No. 2017020550

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO
PACIFIC PHARMACY GROUP, INC.
DBA VALENCIA PHARMACY ONLY**

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on June 7, 2018.

It is so ORDERED on May 8, 2018.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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28868 Silversmith Drive
18 Valencia, CA 91354
19 Original Pharmacist License No. RPH 57620

20 Respondents.
21

22 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
23 entitled proceedings that the following matters are true:

24 **PARTIES**

25 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy
26 (Board). She brought this action solely in her official capacity and is represented in this matter by
27 Xavier Becerra, Attorney General of the State of California, by Cristina Felix, Deputy Attorney
28 General.

2. Respondent Pacific Pharmacy Group, Inc. dba Valencia Pharmacy (Respondent) is represented in this proceeding by attorney Noah Jussim, Esq., whose address is: Hinshaw & Culbertson, LLP, 633 West 5th Street, 47th Floor, Los Angeles, CA 90071.

3. On or about May 22, 2008, the Board issued Permit No. PHY 48891 to Respondent. The Permit was in full force and effect at all times relevant to the charges brought in Accusation No. 5869, and will expire on May 1, 2018, unless renewed. Jan Bruce Balthasar has been the Pharmacist-in-Charge of Respondent since September 25, 2014. Jan Bruce Balthasar is, and has been, the Chief Executive Officer, a shareholder, and Director since December 22, 2011.

JURISDICTION

4. Accusation No. 5869 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on August 22, 2017. Respondent timely filed its Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 5869 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent, through its authorized representative, has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 5869. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent, through its authorized representative, is fully aware of its legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against them; the right to present evidence and to testify on its own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent, through its authorized representative, voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent, through its authorized representative, admits the truth of each and every charge and allegation in Accusation No. 5869.

10. Respondent, through its authorized representative, agrees that its Permit is subject to discipline and they agree to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

11. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent, through its authorized representative, understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or its counsel. By signing the stipulation, Respondent understands and agrees that they may not withdraw its agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

1 14. In consideration of the foregoing admissions and stipulations, the parties agree that
2 the Board may, without further notice or formal proceeding, issue and enter the following
3 Disciplinary Order:

4 **DISCIPLINARY ORDER**

5 IT IS HEREBY ORDERED that Permit No. PHY 48891 issued to Respondent Pacific
6 Pharmacy Group, Inc. dba Valencia Pharmacy is revoked. However, the revocation is stayed and
7 Respondent is placed on probation for five (5) years on the following terms and conditions.

8 1. **Obey All Laws**

9 Respondent owner shall obey all state and federal laws and regulations.

10 Respondent owner shall report any of the following occurrences to the board, in writing,
11 within seventy-two (72) hours of such occurrence:

- 12 ☐ an arrest or issuance of a criminal complaint for violation of any provision of the
13 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
14 substances laws
15 ☐ a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
16 criminal complaint, information or indictment
17 ☐ a conviction of any crime
18 ☐ discipline, citation, or other administrative action filed by any state or federal agency
19 which involves respondent's Permit or which is related to the practice of pharmacy or
20 the manufacturing, obtaining, handling or distributing, billing, or charging for any
21 drug, device or controlled substance.

22 Failure to timely report any such occurrence shall be considered a violation of probation.

23 2. **Report to the Board**

24 Respondent owner shall report to the board quarterly, on a schedule as directed by the board
25 or its designee. The report shall be made either in person or in writing, as directed. Among other
26 requirements, respondent owner shall state in each report under penalty of perjury whether there
27 has been compliance with all the terms and conditions of probation. Failure to submit timely
28 reports in a form as directed shall be considered a violation of probation. Any period(s) of

delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the board.

3. Interview with the Board

Upon receipt of reasonable prior notice, respondent owner shall appear in person for interviews with the board or its designee, at such intervals and locations as are determined by the board or its designee. Failure to appear for any scheduled interview without prior notification to board staff, or failure to appear for two (2) or more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

4. Cooperate with Board Staff

Respondent owner shall cooperate with the board's inspection program and with the board's monitoring and investigation of respondent's compliance with the terms and conditions of their probation. Failure to cooperate shall be considered a violation of probation.

5. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, respondent owner shall pay to the board its costs of investigation and prosecution in the amount of \$19,701.50. Respondent is jointly and severally responsible with Jan Bruce Balthasar for payment in full of this total amount. Effective the date of the Decision, Respondent and Jan Bruce Balthasar shall make fifty-eight (58) monthly payments in the amount of \$339.00 and one final payment of \$39.50.

There shall be no deviation from this schedule absent prior written approval by the board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

The filing of bankruptcy by respondent owner shall not relieve respondent of their responsibility to reimburse the board its costs of investigation and prosecution.

6. Probation Monitoring Costs

Respondent owner shall pay any costs associated with probation monitoring as determined by the board each and every year of probation. Such costs shall be payable to the board on a schedule as directed by the board or its designee. Failure to pay such costs by the deadline(s) as

1 directed shall be considered a violation of probation.

2 **7. Status of License**

3 Respondent owner shall, at all times while on probation, maintain current licensure with the
4 board. If respondent owner submits an application to the board, and the application is approved,
5 for a change of location, change of permit or change of ownership, the board shall retain
6 continuing jurisdiction over the license, and the respondent shall remain on probation as
7 determined by the board. Failure to maintain current licensure shall be considered a violation of
8 probation.

9 If respondent owner's license expires or is cancelled by operation of law or otherwise at any
10 time during the period of probation, including any extensions thereof or otherwise, upon renewal
11 or reapplication respondent owner's license shall be subject to all terms and conditions of this
12 probation not previously satisfied.

13 **8. License Surrender While on Probation/Suspension**

14 Following the effective date of this decision, should respondent owner discontinue
15 business, respondent owner may tender the premises license to the board for surrender. The
16 board or its designee shall have the discretion whether to grant the request for surrender or take
17 any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of
18 the license, respondent will no longer be subject to the terms and conditions of probation.

19 Upon acceptance of the surrender, respondent owner shall relinquish the premises wall and
20 renewal license to the board within ten (10) days of notification by the board that the surrender is
21 accepted. Respondent owner shall further submit a completed Discontinuance of Business form
22 according to board guidelines and shall notify the board of the records inventory transfer.

23 Respondent owner shall also, by the effective date of this decision, arrange for the
24 continuation of care for ongoing patients of the pharmacy by, at minimum, providing a written
25 notice to ongoing patients that specifies the anticipated closing date of the pharmacy and that
26 identifies one or more area pharmacies capable of taking up the patients' care, and by cooperating
27 as may be necessary in the transfer of records or prescriptions for ongoing patients. Within five
28 days of its provision to the pharmacy's ongoing patients, Respondent owner shall provide a copy

1 of the written notice to the board. For the purposes of this provision, "ongoing patients" means
2 those patients for whom the pharmacy has on file a prescription with one or more refills
3 outstanding, or for whom the pharmacy has filled a prescription within the preceding sixty (60)
4 days.

5 Respondent owner may not apply for any new licensure from the board for three (3) years
6 from the effective date of the surrender. Respondent owner shall meet all requirements applicable
7 to the license sought as of the date the application for that license is submitted to the board.

8 Respondent owner further stipulates that he or she shall reimburse the board for its costs of
9 investigation and prosecution prior to the acceptance of the surrender.

10 9. Notice to Employees

11 Respondent owner shall, upon or before the effective date of this decision, ensure that all
12 employees involved in permit operations are made aware of all the terms and conditions of
13 probation, either by posting a notice of the terms and conditions, circulating such notice, or both.
14 If the notice required by this provision is posted, it shall be posted in a prominent place and shall
15 remain posted throughout the probation period. Respondent owner shall ensure that any
16 employees hired or used after the effective date of this decision are made aware of the terms and
17 conditions of probation by posting a notice, circulating a notice, or both. Additionally,
18 respondent owner shall submit written notification to the board, within fifteen (15) days of the
19 effective date of this decision, that this term has been satisfied. Failure to submit such
20 notification to the board shall be considered a violation of probation.

21 "Employees" as used in this provision includes all full-time, part-time,
22 volunteer, temporary and relief employees and independent contractors employed or
23 hired at any time during probation.

24 10. Owners and Officers: Knowledge of the Law

25 Respondent shall provide, within thirty (30) days after the effective date of this decision,
26 signed and dated statements from its owners, including any owner or holder of ten percent (10%)
27 or more of the interest in respondent or respondent's stock, and any officer, stating under penalty
28 of perjury that said individuals have read and are familiar with state and federal laws and

1 regulations governing the practice of pharmacy. The failure to timely provide said statements
2 under penalty of perjury shall be considered a violation of probation.

3 **11. Posted Notice of Probation**

4 Respondent owner shall prominently post a probation notice provided by the board in a
5 place conspicuous and readable to the public. The probation notice shall remain posted during
6 the entire period of probation.

7 Respondent owner shall not, directly or indirectly, engage in any conduct or make any
8 statement which is intended to mislead or is likely to have the effect of misleading any patient,
9 customer, member of the public, or other person(s) as to the nature of and reason for the probation
10 of the licensed entity.

11 Failure to post such notice shall be considered a violation of probation.

12 **12. Violation of Probation**

13 If a respondent owner has not complied with any term or condition of probation, the board
14 shall have continuing jurisdiction over respondent license, and probation shall be automatically
15 extended until all terms and conditions have been satisfied or the board has taken other action as
16 deemed appropriate to treat the failure to comply as a violation of probation, to terminate
17 probation, and to impose the penalty that was stayed.

18 If respondent owner violates probation in any respect, the board, after giving respondent
19 owner notice and an opportunity to be heard, may revoke probation and carry out the disciplinary
20 order that was stayed. Notice and opportunity to be heard are not required for those provisions
21 stating that a violation thereof may lead to automatic termination of the stay and/or revocation of
22 the license. If a petition to revoke probation or an accusation is filed against respondent during
23 probation, the board shall have continuing jurisdiction and the period of probation shall be
24 automatically extended until the petition to revoke probation or accusation is heard and decided.

25 **13. Completion of Probation**

26 Upon written notice by the board or its designee indicating successful completion of
27 probation, respondent license will be fully restored.

28 ///

1 **14. Administrative Penalty**

2 Respondent shall pay to the Board an administrative penalty of \$10,000 within ninety (90)
3 days of the effective date of the decision.

4 Respondent understands and agrees that this civil penalty is an administrative fine as
5 defined in 11 U.S.C. § 523, subdivision (a)(7), and is non-dischargeable in bankruptcy. The filing
6 of bankruptcy by respondent shall not relieve respondent of the obligation to pay the civil penalty.

7 Failure to timely pay this civil penalty shall be considered a violation of probation. Further,
8 absent prior written approval by the board or its designee, respondent may not successfully
9 complete probation until this amount is paid in full.

10 **15. Independent Consultant**

11 During the period of probation, Respondent owner shall retain an independent consultant at
12 its own expense, who shall be responsible for reviewing pharmacy operations on a monthly basis
13 for compliance by Respondent owner with state and federal laws and regulations and for
14 compliance by Respondent owner with the obligations of a pharmacist-in-charge. A physical
15 inspection shall be completed by the consultant on a monthly basis. The consultant shall be a
16 pharmacist licensed by and not on probation with any board of pharmacy and whose name shall
17 be submitted to the Board or its designee for prior approval within (30) days of the effective date
18 of this decision. Respondent may submit the names and obtain approval of two consultants. Any
19 consultant who is not licensed in California may not participate in or supervise any activity
20 constituting the practice of pharmacy in California, and shall, within 30 days of the effective date
21 of this decision, sign and return to the Board an acknowledgement stating that the consultant has
22 reviewed and is familiar with all California statutes and regulations governing practices being
23 overseen by the consultant, including compounding practices. During the period of probation, the
24 Board or its designee retains the discretion to reduce the frequency of the pharmacist consultant's
25 review of Respondent's operations. Failure to timely retain, seek approval of, or ensure timely
26 reporting by the consultant shall be considered a violation of probation.

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1 16. **United States Drug Enforcement Administration (DEA) Continuing Education**
2 **Course**

3 Within six (6) months of the effective date of this decision, and at respondent owner's
4 expense, all licensed staff shall complete the continuing education course offered jointly by the
5 Board and the DEA, entitled "CURES, Prescription Drug Abuse and Preventing Drug Diversion-
6 What a Pharmacist Needs to Know." This course shall be in addition to, and shall not be credited
7 toward, continuing education (CE) courses used for license renewal purposes.

8 Failure to timely submit or complete the approved continuing education shall be considered
9 a violation of probation. The period of probation will be automatically extended until such
10 training is successfully completed and written proof, in a form acceptable to the board, is
11 provided to the board or its designee.

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DATED: 1/18/18

Gerard Rivera
Print Name of Representative for Pacific Pharmacy
Group, Inc. dba Valencia Pharmacy

DATED: 11/9/18

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Dated: 01/19/18

XAVIER BECERRA
Attorney General of California
THOMAS L. RINALDI
Supervising Deputy Attorney General

CRISTINA FELIX
Deputy Attorney General
Attorneys for Complainant

12

Exhibit A

Accusation No. 5869

1 KAMALA D. HARRIS
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2 THOMAS L. RINALDI
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16 **Permit No. PHY 48891**

SECOND AMENDED ACCUSATION

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18 **Original Pharmacist License No. RPH 28351**

18 **CHRIS CHOI**
19 **28868 Silversmith Drive**
20 **Valencia, CA 91354**
21 **Original Pharmacist License No. RPH 57620**

Respondent.

22
23 Complainant alleges:

24 **PARTIES**

25 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
26 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

27 ///

1 2. On or about May 22, 2008, the Board of Pharmacy issued Permit Number PHY
2 48891 to Pacific Pharmacy Group, Inc. dba Valencia Pharmacy (Respondent Valencia
3 Pharmacy). The Permit was in full force and effect at all times relevant to the charges brought
4 herein and will expire on May 1, 2017, unless renewed.

5 3. On or about July 31, 1973, the Board of Pharmacy issued Original Pharmacist
6 License Number RPH 28351 to Jan Bruce Balthasar (Respondent Balthasar). The Permit was in
7 full force and effect at all times relevant to the charges brought herein and will expire on
8 February 28, 2018, unless renewed. Respondent Balthasar has been the Pharmacist-in-Charge of
9 Respondent Valencia Pharmacy since September 25, 2014. Respondent Balthasar is, and has
10 been, the Chief Executive Officer, a shareholder, and Director since December 22, 2011.

11 4. On or about December 13, 2005, the Board of Pharmacy issued Original Pharmacist
12 License Number RPH 57620 to Chris Choi (Respondent Choi). The Permit was in full force and
13 effect at all times relevant to the charges brought herein and will expire on February 28, 2017,
14 unless renewed. Respondent Choi was the Pharmacist-in-Charge of Respondent Valencia
15 Pharmacy from June 1, 2013 to September 24, 2014.

16 **JURISDICTION**

17 5. This Accusation is brought before the Board of Pharmacy (Board), Department of
18 Consumer Affairs, under the authority of the following laws. All section references are to the
19 Business and Professions Code unless otherwise indicated.

20 6. Section 4300.1 of the Code states:

21 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by
22 operation of law or by order or decision of the board or a court of law, the placement of a license
23 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
24 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
25 proceeding against, the licensee or to render a decision suspending or revoking the license."

26 **STATUTORY PROVISIONS**

27 7. Section 4300, subdivision (a), states: "Every license issued may be suspended or
28 revoked."

1 8. Section 4301 of the Code states:

2 “The board shall take action against any holder of a license who is guilty of unprofessional
3 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

4 Unprofessional conduct shall include, but is not limited to, any of the following:

5 ...

6 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
7 violation of or conspiring to violate any provision or term of this chapter or of the applicable
8 federal and state laws and regulations governing pharmacy, including regulations established by
9 the board or by any other state or federal regulatory agency.

10 ...”

11 9. Section 4307 of the Code states:

12 (a) Any person who has been denied a license or whose license has been revoked or is
13 under suspension, or who has failed to renew his or her license while it was under suspension, or
14 who has been a manager, administrator, owner, member, officer, director, associate, partner, or
15 any other person with management or control of any partnership, corporation, trust, firm, or
16 association whose application for a license has been denied or revoked, is under suspension or
17 has been placed on probation, and while acting as the manager, administrator, owner, member,
18 officer, director, associate, partner, or any other person with management or control had
19 knowledge of or knowingly participated in any conduct for which the license was denied,
20 revoked, suspended, or placed on probation, shall be prohibited from serving as a manager,
21 administrator, owner, member, officer, director, associate, partner, or in any other position with
22 management or control of a licensee as follows:

23 (1) Where a probationary license is issued or where an existing license is placed on
24 probation, this prohibition shall remain in effect for a period not to exceed five years.

25 (2) Where the license is denied or revoked, the prohibition shall continue until the license is
26 issued or reinstated.

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28 ///

1 (b) "Manager, administrator, owner, member, officer, director, associate, partner, or any
2 other person with management or control of a license" as used in this section and Section 4308,
3 may refer to a pharmacist or to any other person who serves in such capacity in or for a licensee.

4 (c) The provisions of subdivision (a) may be alleged in any pleading filed pursuant to
5 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code.
6 However, no order may be issued in that case except as to a person who is named in the caption,
7 as to whom the pleading alleges the applicability of this section, and where the person has been
8 given notice of the proceeding as required by Chapter 5 (commencing with Section 11500) of
9 Part 1 of Division 3 of the Government Code. The authority to proceed as provided by this
10 subdivision shall be in addition to the board's authority to proceed under Section 4339 or any
11 other provision of law."

12 10. Section 4081 of the Code states:

13 "(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs
14 or dangerous devices shall be at all times during business hours open to inspection by authorized
15 officers of the law, and shall be preserved for at least three years from the date of making. A
16 current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary
17 food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital,
18 institution, or establishment holding a currently valid and unrevoked certificate, license, permit,
19 registration, or exemption under Division 2 (commencing with Section 1200) of the Health and
20 Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and
21 Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

22 ..."

23 REGULATORY PROVISIONS

24 11. California Code of Regulations, title 16, section 1714, states:

25 "..."

26 (b) Each pharmacy licensed by the board shall maintain its facilities, space, fixtures, and
27 equipment so that drugs are safely and properly prepared, maintained, secured and distributed.
28

1 The pharmacy shall be of sufficient size and unobstructed area to accommodate the safe practice
2 of pharmacy.

3 ...

4 (d) Each pharmacist while on duty shall be responsible for the security of the prescription
5 department, including provisions for effective control against theft or diversion of dangerous
6 drugs and devices, and records for such drugs and devices. Possession of a key to the pharmacy
7 where dangerous drugs and controlled substances are stored shall be restricted to a pharmacist.”

8 12. California Code of Regulations, title 16, section 1718, states:

9 “ ‘Current Inventory’ as used in Sections 4081 and 4332 of the Business and Professions
10 Code shall be considered to include complete accountability for all dangerous drugs handled by
11 every licensee enumerated in Sections 4081 and 4332.

12 The controlled substances inventories required by Title 21, CFR, Section 1304 shall be
13 available for inspection upon request for at least 3 years after the date of the inventory.”

14 **CONTROLLED SUBSTANCES/DANGEROUS DRUGS**

15 13. Alprazolam (generic for Xanax) is a Schedule IV controlled substance as designated
16 by Health and Safety Code section 11057, subdivisions (a) and (d)(1), and is a dangerous drug as
17 defined in section 4022.

18 14. Carisoprodol is a Schedule IV controlled substance pursuant to 21 Code of Federal
19 Regulation section 1308.14, subdivision (c)(6) and is a dangerous drug according to Business and
20 Professions Code section 4022. Its indicated use is as an adjunct to rest, physical therapy and
21 other measures for acute painful musculoskeletal conditions.

22 15. Norco is the brand name for the combination narcotic, Hydrocodone and
23 Acetaminophen, and is a Schedule II¹ controlled substance pursuant to Health and Safety Code
24 section 11055, subdivision (b)(1) (I), and is categorized as a dangerous drug pursuant to Business
25 and Professions Code section 4022.

26 _____
27 ¹ Effective October 6, 2014, the Drug Enforcement Administration rescheduled
28 Hydrocodone combination products from schedule III to schedule II of the Controlled Substances
Act. (See 21 CFR Part 1308 § 1308.12; 21 U.S.C. 812 (c))

16. Oxycodone, trade name Percolone, is a synthetic opioid analgesic and a Schedule II controlled substance pursuant to Health and Safety Code section 11055(b)(1)(M) and a dangerous drug pursuant to Business and Professions Code section 4022(c).

17. Promethazine with Codeine syrup is a Schedule V controlled substance as designated by Health and Safety Code section 11058, subdivision (c)(1), and is categorized as a dangerous drug pursuant to section 4022 of the Code.

18. Section 4022 states, in pertinent part:

“‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self-use in humans or animals, and includes the following:

“(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without a prescription,’ ‘Rx only,’ or words of similar import.

• • • •

“(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.”

COST RECOVERY PROVISION

19. Section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Failure to Maintain A Current Inventory)

(Against Respondent Valencia Pharmacy, Respondent Balthasar, Respondent Choi)

20. Respondents are subject to disciplinary action under section 4301, subdivision (o), for violation of section 4081, subdivision (a), as related to California Code of Regulations, title 16, section 1718, for failure to maintain a current inventory of controlled substances in that they could not account for inventory shortages of certain drugs. The circumstances are that an audit of controlled substances at Valencia Pharmacy from June 11, 2013 to August 31, 2015 determined

1 that Valencia Pharmacy failed to maintain a current inventory of controlled substances in that it
2 could not account for inventory shortages of the following drugs:

- 3 (a) Oxycodone 30 mg tablets- 681 tablets;
- 4 (b) Alprazolam 2 mg tablets- 10,863 tablets;
- 5 (c) Carisoprodol 350 mg tablets – 8,720 tablets;
- 6 (d) Hydrocodone/Acetaminophen 10/325 mg tablets – 32,668 tablets;
- 7 (e) Promethazine/Codeine Syrup – 1,489 ml.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Operational Standards and Security)**

10 **(Against Respondent Valencia Pharmacy, Respondent Balthasar, Respondent Choi)**

11 21. Respondents are subject to disciplinary action under section 4301, subdivision (o), for
12 violation of California Code of Regulations, title 16, section 1714, subdivisions (b) and (d) for
13 failure to secure inventory of controlled substances in that they could not account for inventory
14 shortages of the following controlled substances:

- 15 (a) Oxycodone 30 mg tablets- 681 tablets;
- 16 (b) Alprazolam 2 mg tablets- 10,863 tablets;
- 17 (c) Carisoprodol 350 mg tablets – 8,720 tablets;
- 18 (d) Hydrocodone/Acetaminophen 10/325 mg tablets – 32,668 tablets;
- 19 (e) Promethazine/Codeine Syrup – 1,489 ml.

20 **DISCIPLINARY CONSIDERATIONS**

21 22. In order to determine the degree of discipline, if any, to be imposed on Respondent
22 Valencia Pharmacy, Complainant alleges that on or about March 27, 2013, the Board issued
23 Citation No. CI 2010 48098, against Respondent Valencia Pharmacy for violating section 4126.5,
24 subdivision (a)(4) (furnishing dangerous drugs) and section 4059, subdivision (a) (furnishing
25 dangerous drug without a prescription). That Citation is now final and is incorporated by
26 reference as if fully set forth. A copy is attached as Exhibit A.

27 ///

1 23. In order to determine the degree of discipline, if any, to be imposed on Respondent
2 Balthasar, Complainant alleges that on or about January 19, 2016, the Board issued Citation No.
3 CI 2015 68738, against Respondent Balthasar for violating section 4115, subdivision (f)(1)
4 (having more than one pharmacy technician performing the duties of a pharmacy technician when
5 only one pharmacist is present) and Code of Federal Regulations, title 21, section 1301.75,
6 subdivision (b)(failing to store controlled substances in a securely locked cabinet). That Citation
7 is now final and is incorporated by reference as if fully set forth. A copy is attached as Exhibit B.

8 **OWNERSHIP PROHIBITION**

9 24. As set forth above, Business and Professions Code section 4307, subdivision (a),
10 provides, in pertinent part, that any person whose license has been revoked or is under suspension
11 shall be prohibited from serving as a manager, administrator, owner, member, officer, director,
12 associate or partner of a licensee.

13 25. Pursuant to Code section 4307, if Jan Bruce Balthasar, while acting as manager,
14 administrator, owner, member, officer, director, associate, partner, or any other person with
15 management or control of, Pacific Pharmacy Group, Inc. dba Valencia Pharmacy, had knowledge
16 of, or knowingly participated in, any conduct for which Pharmacy Permit PHY 48891 was
17 revoked, suspended or placed on probation, Jan Bruce Balthasar shall be prohibited from serving
18 as manager, administrator, owner, member, officer, director, associate, or partner of a licensee for
19 five years if Pharmacy Permit Number PHY 48891 is placed on probation, or until Pharmacy
20 Permit Number PHY 48891 is reinstated if Pharmacy Permit Number PHY 48891 is revoked.

21 26. Pursuant to Code section 4307, if Chris Choi, while acting as manager, administrator,
22 owner, member, officer, director, associate, partner, or any other person with management or
23 control of, Pacific Pharmacy Group, Inc. dba Valencia Pharmacy, had knowledge of, or
24 knowingly participated in, any conduct for which Pharmacy Permit PHY 48891 was revoked,
25 suspended or placed on probation, Chris Choi shall be prohibited from serving as manager,
26 administrator, owner, member, officer, director, associate, or partner of a licensee for five years if
27 Pharmacy Permit Number PHY 48891 is placed on probation, or until Pharmacy Permit Number
28 PHY 48891 is reinstated if Pharmacy Permit Number PHY 48891 is revoked.

1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Board of Pharmacy issue a decision:

4 1. Revoking or suspending Permit Number PHY 48891, issued to Pacific Pharmacy
5 Group, Inc. dba Valencia Pharmacy, Original Pharmacist License Number RPH 28351, issued to
6 Jan Bruce Balthasar, and Original Pharmacist License Number RPH57620, issued to Chris Choi;

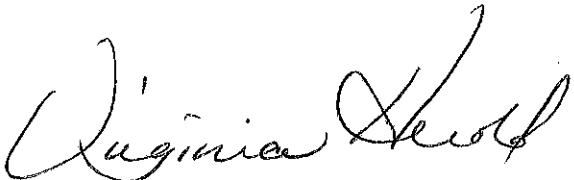
7 2. Prohibiting Jan Bruce Balthasar from serving as a manager, administrator, owner,
8 member, officer, director, associate, partner, or in any other position with management or control
9 of a licensee, for five years if Pharmacy Permit Number PHY 48891 is placed on probation, or
10 until Pharmacy Permit Number PHY 48891 is reinstated if Pharmacy Permit Number PHY 48891
11 is revoked;

12 3. Prohibiting Chris Choi from serving as a manager, administrator, owner, member,
13 officer, director, associate, partner, or in any other position with management or control of a
14 licensee, for five years if Pharmacy Permit Number PHY 48891 is placed on probation, or until
15 Pharmacy Permit Number PHY 48891 is reinstated if Pharmacy Permit Number PHY 48891 is
16 revoked;

17 4. Ordering Valencia Pharmacy, Jan Bruce Balthasar, and Chris Choi to pay the Board
18 of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to
19 Business and Professions Code section 125.3; and,

20 5. Taking such other and further action as deemed necessary and proper.

21
22
23 DATED: 8/11/17


VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 5869

12 **PACIFIC PHARMACY GROUP, INC.**
13 **DBA VALENCIA PHARMACY**
14 **23550 Lyons Ave, Ste. 111**
Newhall, CA 91321
Permit No. PHY 48891

FIRST AMENDED ACCUSATION

15 **JAN BRUCE BALTHASAR**
16 **239 Via Lido Soud**
Newport Beach, CA 92663
17 **Original Pharmacist License No. RPH 28351**

18 **CHRIS CHOI**
19 **28868 Silversmith Drive**
Valencia, CA 91354
Original Pharmacist License No. RPH 57620

20 Respondent.
21

22
23 Complainant alleges:

24 **PARTIES**

25 1. Virginia Herold (Complainant) brings this First Amended Accusation solely in her
26 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
27 Affairs.

28 ///

2. On or about May 22, 2008, the Board of Pharmacy issued Permit Number PHY 48891 to Pacific Pharmacy Group, Inc. dba Valencia Pharmacy (Respondent Valencia Pharmacy). The Permit was in full force and effect at all times relevant to the charges brought herein and will expire on May 1, 2018, unless renewed.

3. On or about July 31, 1973, the Board of Pharmacy issued Original Pharmacist License Number RPH 28351 to Jan Bruce Balthasar (Respondent Balthasar). The Permit was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2018, unless renewed. Respondent Balthasar has been the Pharmacist-in-Charge of Respondent Valencia Pharmacy since September 25, 2014. Respondent Balthasar is, and has been, the Chief Executive Officer, a shareholder, and Director since December 22, 2011.

4. On or about December 13, 2005, the Board of Pharmacy issued Original Pharmacist License Number RPH 57620 to Chris Choi (Respondent Choi). The Permit was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2019, unless renewed. Respondent Choi was the Pharmacist-in-Charge of Respondent Valencia Pharmacy from June 1, 2013 to September 24, 2014.

JURISDICTION

5. This First Amended Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

6. Section 4300.1 of the Code states:

"The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license."

STATUTORY PROVISIONS

7. Section 4300, subdivision (a), states: "Every license issued may be suspended or revoked."

1 8. Section 4301 of the Code states:

2 “The board shall take action against any holder of a license who is guilty of unprofessional
3 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
4 Unprofessional conduct shall include, but is not limited to, any of the following:

5 ...

6 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
7 violation of or conspiring to violate any provision or term of this chapter or of the applicable
8 federal and state laws and regulations governing pharmacy, including regulations established by
9 the board or by any other state or federal regulatory agency.

10 ...”

11 9. Section 4307 of the Code states:

12 (a) Any person who has been denied a license or whose license has been revoked or is
13 under suspension, or who has failed to renew his or her license while it was under suspension, or
14 who has been a manager, administrator, owner, member, officer, director, associate, partner, or
15 any other person with management or control of any partnership, corporation, trust, firm, or
16 association whose application for a license has been denied or revoked, is under suspension or has
17 been placed on probation, and while acting as the manager, administrator, owner, member,
18 officer, director, associate, partner, or any other person with management or control had
19 knowledge of or knowingly participated in any conduct for which the license was denied,
20 revoked, suspended, or placed on probation, shall be prohibited from serving as a manager,
21 administrator, owner, member, officer, director, associate, partner, or in any other position with
22 management or control of a licensee as follows:

23 (1) Where a probationary license is issued or where an existing license is placed on
24 probation, this prohibition shall remain in effect for a period not to exceed five years.

25 (2) Where the license is denied or revoked, the prohibition shall continue until the license is
26 issued or reinstated.

27 ///

28 ///

1 (b) "Manager, administrator, owner, member, officer, director, associate, partner, or any
2 other person with management or control of a license" as used in this section and Section 4308,
3 may refer to a pharmacist or to any other person who serves in such capacity in or for a licensee.

4 (c) The provisions of subdivision (a) may be alleged in any pleading filed pursuant to
5 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code.
6 However, no order may be issued in that case except as to a person who is named in the caption,
7 as to whom the pleading alleges the applicability of this section, and where the person has been
8 given notice of the proceeding as required by Chapter 5 (commencing with Section 11500) of Part
9 1 of Division 3 of the Government Code. The authority to proceed as provided by this subdivision
10 shall be in addition to the board's authority to proceed under Section 4339 or any other provision
11 of law."

12 10. Section 4081 of the Code states:

13 "(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs
14 or dangerous devices shall be at all times during business hours open to inspection by authorized
15 officers of the law, and shall be preserved for at least three years from the date of making. A
16 current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary
17 food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital,
18 institution, or establishment holding a currently valid and unrevoked certificate, license, permit,
19 registration, or exemption under Division 2 (commencing with Section 1200) of the Health and
20 Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and
21 Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

22 ..."

23 REGULATORY PROVISIONS

24 11. California Code of Regulations, title 16, section 1714, states:

25 "..."

26 (b) Each pharmacy licensed by the board shall maintain its facilities, space, fixtures, and
27 equipment so that drugs are safely and properly prepared, maintained, secured and distributed.
28

1 The pharmacy shall be of sufficient size and unobstructed area to accommodate the safe practice
2 of pharmacy.

3 . . .

4 (d) Each pharmacist while on duty shall be responsible for the security of the prescription
5 department, including provisions for effective control against theft or diversion of dangerous
6 drugs and devices, and records for such drugs and devices. Possession of a key to the pharmacy
7 where dangerous drugs and controlled substances are stored shall be restricted to a pharmacist.”

8 12. California Code of Regulations, title 16, section 1718, states:

9 “ ‘Current Inventory’ as used in Sections 4081 and 4332 of the Business and Professions
10 Code shall be considered to include complete accountability for all dangerous drugs handled by
11 every licensee enumerated in Sections 4081 and 4332.

12 The controlled substances inventories required by Title 21, CFR, Section 1304 shall be
13 available for inspection upon request for at least 3 years after the date of the inventory.”

14 **CONTROLLED SUBSTANCES/DANGEROUS DRUGS**

15 13. Alprazolam (generic for Xanax) is a Schedule IV controlled substance as designated
16 by Health and Safety Code section 11057, subdivisions (a) and (d)(1), and is a dangerous drug as
17 defined in section 4022.

18 14. Carisoprodol is a Schedule IV controlled substance pursuant to 21 Code of Federal
19 Regulation section 1308.14, subdivision (c)(6) and is a dangerous drug according to Business and
20 Professions Code section 4022. Its indicated use is as an adjunct to rest, physical therapy and
21 other measures for acute painful musculoskeletal conditions.

22 15. Norco is the brand name for the combination narcotic, Hydrocodone and
23 Acetaminophen, and is a Schedule II¹ controlled substance pursuant to Health and Safety Code
24 section 11055, subdivision (b)(1) (I), and is categorized as a dangerous drug pursuant to Business
25 and Professions Code section 4022.

26
27 ¹ Effective October 6, 2014, the Drug Enforcement Administration rescheduled
28 Hydrocodone combination products from schedule III to schedule II of the Controlled Substances
Act. (See 21 CFR Part 1308 § 1308.12; 21 U.S.C. 812 (c))

1 16. Oxycodone, trade name Percolone, is a synthetic opioid analgesic and a Schedule II
2 controlled substance pursuant to Health and Safety Code section 11055(b)(1)(M) and a dangerous
3 drug pursuant to Business and Professions Code section 4022(c).

4 17. Promethazine with Codeine syrup is a Schedule V controlled substance as designated
5 by Health and Safety Code section 11058, subdivision (c)(1), and is categorized as a dangerous
6 drug pursuant to section 4022 of the Code.

7 18. Section 4022 states, in pertinent part:

8 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self-use in
9 humans or animals, and includes the following:

10 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without a
11 prescription,’ ‘Rx only,’ or words of similar import.

12

13 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
14 prescription or furnished pursuant to Section 4006.”

15 **COST RECOVERY PROVISION**

16 19. Section 125.3 provides, in pertinent part, that the Board may request the
17 administrative law judge to direct a licentiate found to have committed a violation or violations of
18 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
19 enforcement of the case.

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Failure to Maintain A Current Inventory)**

22 **(Against Respondent Valencia Pharmacy, Respondent Balthasar, Respondent Choi)**

23 20. Respondents are subject to disciplinary action under section 4301, subdivision (o), for
24 violation of section 4081, subdivision (a), as related to California Code of Regulations, title 16,
25 section 1718, for failure to maintain a current inventory of controlled substances in that they
26 could not account for inventory shortages of certain drugs. The circumstances are that an audit of
27 controlled substances at Valencia Pharmacy from June 11, 2013 to August 31, 2015 determined
28

1 that Valencia Pharmacy failed to maintain a current inventory of controlled substances in that it
2 could not account for inventory shortages of the following drugs:

- 3 (a) Oxycodone 30 mg tablets- 681 tablets;
- 4 (b) Alprazolam 2 mg tablets- 10,863 tablets;
- 5 (c) Carisoprodol 350 mg tablets – 8,720 tablets;
- 6 (d) Hydrocodone/Acetaminophen 10/325 mg tablets – 32,668 tablets;
- 7 (e) Promethazine/Codeine Syrup – 1,489 ml.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Operational Standards and Security)**

10 **(Against Respondent Valencia Pharmacy, Respondent Balthasar, Respondent Choi)**

11 21. Respondents are subject to disciplinary action under section 4301, subdivision (o), for
12 violation of California Code of Regulations, title 16, section 1714, subdivisions (b) and (d) for
13 failure to secure inventory of controlled substances in that they could not account for inventory
14 shortages of the following controlled substances:

- 15 (a) Oxycodone 30 mg tablets- 681 tablets;
- 16 (b) Alprazolam 2 mg tablets- 10,863 tablets;
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- 19 (e) Promethazine/Codeine Syrup – 1,489 ml.

20 **DISCIPLINARY CONSIDERATIONS**

21 19. In order to determine the degree of discipline, if any, to be imposed on Respondent
22 Valencia Pharmacy, Complainant alleges that on or about March 27, 2013, the Board issued
23 Citation No. CI 2010 48098, against Respondent Valencia Pharmacy for violating section 4126.5,
24 subdivision (a)(4) (furnishing dangerous drugs) and section 4059, subdivision (a) (furnishing
25 dangerous drug without a prescription). That Citation is now final and is incorporated by
26 reference as if fully set forth. A copy is attached as Exhibit A.

27 ///

1 19. In order to determine the degree of discipline, if any, to be imposed on Respondent
2 Balthasar, Complainant alleges that on or about January 19, 2016, the Board issued Citation No.
3 CI 2015 68738, against Respondent Balthasar for violating section 4115, subdivision (f)(1)
4 (having more than one pharmacy technician performing the duties of a pharmacy technician when
5 only one pharmacist is present) and Code of Federal Regulations, title 21, section 1301.75,
6 subdivision (b)(failing to store controlled substances in a securely locked cabinet). That Citation
7 is now final and is incorporated by reference as if fully set forth. A copy is attached as Exhibit B.

8 **OWNERSHIP PROHIBITION**

9 As set forth above, Business and Professions Code section 4307, subdivision (a), provides,
10 in pertinent part, that any person whose license has been revoked or is under suspension shall be
11 prohibited from serving as a manager, administrator, owner, member, officer, director, associate
12 or partner of a licensee.

13 Pursuant to Code section 4307, if Jan Bruce Balthasar, while acting as the manager,
14 administrator, owner, member, officer, director, associate, or partner of Pacific Pharmacy Group,
15 Inc. dba Valencia Pharmacy, had knowledge of, or knowingly participated in, any conduct for
16 which Pharmacy Permit PHY 48891 was revoked, suspended or placed on probation, Jan Bruce
17 Balthasar shall be prohibited from serving as manager, administrator, owner, member, officer,
18 director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 48891
19 is placed on probation, or until Pharmacy Permit Number PHY 48891 is reinstated if Pharmacy
20 Permit Number PHY 48891 is revoked.

21 **PRAYER**

22 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
23 and that following the hearing, the Board of Pharmacy issue a decision:

24 1. Revoking or suspending Permit Number PHY 48891, issued to Pacific Pharmacy
25 Group, Inc. dba Valencia Pharmacy, Original Pharmacist License Number RPH 28351, issued to
26 Jan Bruce Balthasar, and Original Pharmacist License Number RPH57620, issued to Chris Choi;

2. Prohibiting Jan Bruce Balthasar from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee if her license is revoked or is under suspension;

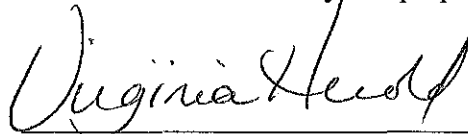
3. Prohibiting Jan Bruce Balthasar from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 48891 is placed on probation or until Pharmacy Permit Number PHY 48891 is reinstated if Pharmacy Permit Number PHY 48891 is revoked;

4. Ordering Valencia Pharmacy, Jan Bruce Balthasar, and Chris Choi to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

5. Taking such other and further action as deemed necessary and proper.

DATED: _____

7/7/17



VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 5869

13 **PACIFIC PHARMACY GROUP, INC.**
14 **DBA VALENCIA PHARMACY**
23550 Lyons Ave, Ste. 111
Newhall, CA 91321
Permit No. PHY 48891

ACCUSATION

15 **JAN BRUCE BALTHASAR**
239 Via Lido Soud
16 Newport Beach, CA 92663
Original Pharmacist License No. RPH 28351

17 **CHRIS CHOI**
18 28868 Silversmith Drive
Valencia, CA 91354
19 Original Pharmacist License No. RPH 57620

20 Respondent.
21

22 Complainant alleges:
23

24 **PARTIES**

25 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
26 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

27 ///

2. On or about May 22, 2008, the Board of Pharmacy issued Permit Number PHY 48891 to Pacific Pharmacy Group, Inc. dba Valencia Pharmacy (Respondent Valencia Pharmacy). The Permit was in full force and effect at all times relevant to the charges brought herein and will expire on May 1, 2017, unless renewed.

3. On or about July 31, 1973, the Board of Pharmacy issued Original Pharmacist License Number RPH 28351 to Jan Bruce Balthasar (Respondent Balthasar). The Permit was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2018, unless renewed. Respondent Balthasar has been the Pharmacist-in-Charge of Respondent Valencia Pharmacy since September 25, 2014.

4. On or about December 13, 2005, the Board of Pharmacy issued Original Pharmacist License Number RPH 57620 to Chris Choi (Respondent Choi). The Permit was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2017, unless renewed. Respondent Choi was the Pharmacist-in-Charge of Respondent Valencia Pharmacy from June 1, 2013 to September 24, 2014.

JURISDICTION

5. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

6. Section 4300.1 of the Code states:

"The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license."

STATUTORY PROVISIONS

7. Section 4300, subdivision (a), states: "Every license issued may be suspended or revoked."

///

8. Section 4301 of the Code states:

“The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

Unprofessional conduct shall include, but is not limited to, any of the following:

• • •

(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

”

• • •

9. Section 4081 of the Code states:

"(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

”

REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1714, states:

“ . . .

(b) Each pharmacy licensed by the board shall maintain its facilities, space, fixtures, and equipment so that drugs are safely and properly prepared, maintained, secured and distributed. The pharmacy shall be of sufficient size and unobstructed area to accommodate the safe practice of pharmacy.

1 ...

2 (d) Each pharmacist while on duty shall be responsible for the security of the prescription
3 department, including provisions for effective control against theft or diversion of dangerous
4 drugs and devices, and records for such drugs and devices. Possession of a key to the pharmacy
5 where dangerous drugs and controlled substances are stored shall be restricted to a pharmacist.”

6 11. California Code of Regulations, title 16, section 1718, states:

7 “ ‘Current Inventory’ as used in Sections 4081 and 4332 of the Business and Professions
8 Code shall be considered to include complete accountability for all dangerous drugs handled by
9 every licensee enumerated in Sections 4081 and 4332.

10 The controlled substances inventories required by Title 21, CFR, Section 1304 shall be
11 available for inspection upon request for at least 3 years after the date of the inventory.”

12 **CONTROLLED SUBSTANCES/DANGEROUS DRUGS**

13 12. Alprazolam (generic for Xanax) is a Schedule IV controlled substance as designated
14 by Health and Safety Code section 11057, subdivisions (a) and (d)(1), and is a dangerous drug as
15 defined in section 4022.

16 13. Carisoprodol is a Schedule IV controlled substance pursuant to 21 Code of Federal
17 Regulation section 1308.14, subdivision (c)(6) and is a dangerous drug according to Business and
18 Professions Code section 4022. Its indicated use is as an adjunct to rest, physical therapy and
19 other measures for acute painful musculoskeletal conditions.

20 14. Norco is the brand name for the combination narcotic, Hydrocodone and
21 Acetaminophen, and is a Schedule II¹ controlled substance pursuant to Health and Safety Code
22 section 11055, subdivision (b)(1) (I), and is categorized as a dangerous drug pursuant to Business
23 and Professions Code section 4022.

24 ///

25
26
27 ¹ Effective October 6, 2014, the Drug Enforcement Administration rescheduled
28 Hydrocodone combination products from schedule III to schedule II of the Controlled Substances
Act. (See 21 CFR Part 1308 § 1308.12; 21 U.S.C. 812 (c))

15. Oxycodone, trade name Percolone, is a synthetic opioid analgesic and a Schedule II controlled substance pursuant to Health and Safety Code section 11055(b)(1)(M) and a dangerous drug pursuant to Business and Professions Code section 4022(c).

16. Promethazine with Codeine syrup is a Schedule V controlled substance as designated by Health and Safety Code section 11058, subdivision (c)(1), and is categorized as a dangerous drug pursuant to section 4022 of the Code.

17. Section 4022 states, in pertinent part:

“‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self-use in humans or animals, and includes the following:

“(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without a prescription,’ ‘Rx only,’ or words of similar import.

• • • •

“(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.”

COST RECOVERY PROVISION

18. Section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Failure to Maintain A Current Inventory)

(Against Respondent Valencia Pharmacy, Respondent Balthasar, Respondent Choi)

19. Respondents are subject to disciplinary action under section 4301, subdivision (o), for violation of section 4081, subdivision (a), as related to California Code of Regulations, title 16, section 1718, for failure to maintain a current inventory of controlled substances in that they could not account for inventory shortages of certain drugs. The circumstances are that an audit of controlled substances at Valencia Pharmacy from June 11, 2013 to August 31, 2015 determined

1 that Valencia Pharmacy failed to maintain a current inventory of controlled substances in that it
2 could not account for inventory shortages of the following drugs:

- 3 (a) Oxycodone 30 mg tablets- 681 tablets;
- 4 (b) Alprazolam 2 mg tablets- 10,863 tablets;
- 5 (c) Carisoprodol 350 mg tablets – 8,720 tablets;
- 6 (d) Hydrocodone/Acetaminophen 10/325 mg tablets – 32,668 tablets;
- 7 (e) Promethazine/Codeine Syrup – 1,489 ml.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Operational Standards and Security)**

10 **(Against Respondent Valencia Pharmacy, Respondent Balthasar, Respondent Choi)**

11 20. Respondents are subject to disciplinary action under section 4301, subdivision (o), for
12 violation of California Code of Regulations, title 16, section 1714, subdivisions (b) and (d) for
13 failure to secure inventory of controlled substances in that they could not account for inventory
14 shortages of the following controlled substances:

- 15 (a) Oxycodone 30 mg tablets- 681 tablets;
- 16 (b) Alprazolam 2 mg tablets- 10,863 tablets;
- 17 (c) Carisoprodol 350 mg tablets – 8,720 tablets;
- 18 (d) Hydrocodone/Acetaminophen 10/325 mg tablets – 32,668 tablets;
- 19 (e) Promethazine/Codeine Syrup – 1,489 ml.

20 **DISCIPLINARY CONSIDERATIONS**

21 19. In order to determine the degree of discipline, if any, to be imposed on Respondent
22 Valencia Pharmacy, Complainant alleges that on or about March 27, 2013, the Board issued
23 Citation No. CI 2010 48098, against Respondent Valencia Pharmacy for violating section 4126.5,
24 subdivision (a)(4) (furnishing dangerous drugs) and section 4059, subdivision (a) (furnishing
25 dangerous drug without a prescription). That Citation is now final and is incorporated by
26 reference as if fully set forth. A copy is attached as Exhibit A.

27 ///

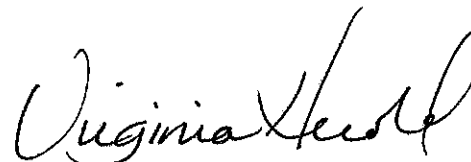
1 19. In order to determine the degree of discipline, if any, to be imposed on Respondent
2 Balthasar, Complainant alleges that on or about January 19, 2016, the Board issued Citation No.
3 CI 2015 68738, against Respondent Balthasar for violating section 4115, subdivision (f)(1)
4 (having more than one pharmacy technician performing the duties of a pharmacy technician when
5 only one pharmacist is present) and Code of Federal Regulations, title 21, section 1301.75,
6 subdivision (b)(failing to store controlled substances in a securely locked cabinet). That Citation
7 is now final and is incorporated by reference as if fully set forth. A copy is attached as Exhibit B.

8 **PRAYER**

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
10 and that following the hearing, the Board of Pharmacy issue a decision:

- 11 1. Revoking or suspending Permit Number PHY 48891, issued to Pacific Pharmacy
12 Group, Inc. dba Valencia Pharmacy, Original Pharmacist License Number RPH 28351, issued to
13 Jan Bruce Balthasar, and Original Pharmacist License Number RPH57620, issued to Chris Choi;
14 2. Ordering Valencia Pharmacy, Jan Bruce Balthasar, and Chris Choi to pay the Board
15 of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to
16 Business and Professions Code section 125.3; and,
17 3. Taking such other and further action as deemed necessary and proper.

18
19
20 DATED: 11/30/16



VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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