

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

In the Matter of the Accusation
Against:

NADA VICIJAN dba WEST MODESTO
PHARMACY,
Modesto, CA 95351

Original Permit No. PHY 52073

and

NADA VICIJAN
Stockton, CA 95205

Original Pharmacist License No. RPH 41607

Respondents.

Case No. 5901

OAH No. 2016101102

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge 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, 2017.

It is so ORDERED on May 8, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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PROPOSED DECISION

This matter was heard before the Administrative Law Judge Danette C. Brown, Office of Administrative Hearings, on March 6 and 7, 2017, in Sacramento, California.

Phillip L. Arthur, Deputy Attorney General, appeared on behalf of complainant Virginia Herold, Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

Attorney Gregory P. Matzen represented Nada Vicijan (respondent).

Evidence and testimony were received. The record was closed, and the matter was submitted for decision on March 7, 2017.

FACTUAL FINDINGS

1. On September 27, 2016, complainant issued an Accusation against respondent seeking to revoke or suspend Original Permit No. PHY 52073, issued to respondent doing

business as West Modesto Pharmacy. Complainant also sought to revoke or suspend respondent's Original Pharmacist License No. RPH 41607. Complainant alleges that respondent has engaged in unprofessional conduct by: (1) knowingly signing a document that falsely represented a set of facts, by signing and backdating a contract for sale of a pharmacy, and by providing false information on a pharmacy permit application; (2) failing to notify the Board of her purchase of a pharmacy prior to transferring inventory; (3) engaging in conduct that subverted or attempted to subvert a Board investigation, by providing the backdated contract for sale and pharmacy permit application with false information to the Board, and failing to provide requested bank documents to the Board.

2. On April 23, 1988, the Board issued Original Pharmacist License No. RPH 41607 to respondent. The license expires on December 31, 2017, unless renewed or revoked.

3. On June 1, 2015, the Board issued Original Permit No. PHY 52073 to respondent, doing business as West Modesto Pharmacy, located at 314 I Street, Modesto, California 95351. Respondent became the Individual Licensed Owner and Pharmacist-in-Charge (PIC) on that date. The license expires on June 1, 2017, unless renewed or revoked.

Background

4. On October 2, 2001, the Board issued Pharmacy Permit No. PHY 45161 to Westside Plaza Pharmacy, located at 314 I Street, Modesto, California 95351. On January 8, 2016, the Board cancelled this pharmacy permit due to disciplinary action by the Board against the pharmacy and its sole owner, PIC Suwonnee Pongnorsing. That disciplinary action is described below.

5. In October 2012, the United States Drug Enforcement Administration (DEA) requested the Board's assistance in inspecting and investigating various pharmacies, including Westside Plaza Pharmacy, with regard to the purchase and furnishing of controlled substances. Westside Plaza Pharmacy had allegedly purchased medications containing hydrocodone and oxycodone from several different wholesalers and filled numerous prescriptions for the drugs based upon prescriptions issued by two local doctors.

6. On December 11, 2012, two Board inspectors, along with several DEA agents, inspected Westside Plaza Pharmacy. After the inspection was completed, Ms. Pongnorsing surrendered Westside Plaza Pharmacy's DEA registration, which allowed the pharmacy to possess and dispense controlled substances. During the inspection, respondent was working at Westside Plaza Pharmacy as a pharmacist.

7. Following the inspection, the Board conducted an investigation into Westside Plaza Pharmacy, and found the following:

- a. From February to November 2012, Ms. Pongnorsing failed to reverse the claims on at least 29 prescriptions or adjust the billings on the claims even though Ms. Pongnorsing had not dispensed the medications to the patients, or

had dispensed only a portion of the medications, and had received payment for the drugs from the patients' insurance companies;

- b. On at least six occasions, Westside Plaza Pharmacy failed to deliver controlled substance prescriptions, each of which were filled by another pharmacy, to the patients. It kept the prescriptions within the pharmacy's inventory and failed to notify the other pharmacy that the insurance billings/claims on the prescriptions needed to be reversed;
- c. Ms. Pongnorsing failed to keep proper invoices, inventory and dispensing records for controlled substances; and,
- d. The pharmacy dispensed numerous prescriptions for controlled substances to over 63 of one local doctor's patients, when Ms. Pongnorsing knew or had reason to know of the doctor's repetitive prescribing pattern of highly abused controlled substances, the doctor's practice location relative to the pharmacy, and that the prescriptions were not issued for a legitimate medical purpose.

8. On May 28, 2015, the Board filed an Accusation against Westside Plaza Pharmacy and Ms. Pongnorsing, seeking to discipline Westside Plaza Pharmacy's pharmacy permit and Ms. Pongnorsing's pharmacist license. The matter went to hearing, and the administrative law judge issued his decision in OAH No. 2015090738, revoking Westside Plaza Pharmacy's Original Permit License No. PHY 45161, and revoking Ms. Pongnorsing's Original Pharmacist License No. RPH 35104. The decision of the administrative law judge was adopted by the Board as its final decision, effective September 26, 2016.

Sale of Pharmacy to Respondent and Change of Ownership

9. In December 2015, the Board learned that it issued a pharmacy permit to West Modesto Pharmacy, located at the same address as Westside Plaza Pharmacy. Under the Pharmacy Laws, when an existing pharmacy changes ownership, the new owner is required to submit to the Board a change of ownership form, to ensure that the existing pharmacy permit number remains with the pharmacy location, and that any pending disciplinary action against that pharmacy permit can continue, despite the change in ownership. It also ensures that any DEA registration associated with the pharmacy permit remains in effect.

10. Neither Ms. Pongnorsing nor respondent filed a change of ownership with the Board. Instead, respondent filed an application for a new permit with the Board, identifying herself as the owner and PIC for West Modesto Pharmacy, located at the same address as Westside Plaza Pharmacy.

11. A new pharmacy permit allowed respondent to obtain a new DEA registration, enabling West Modesto Pharmacy to resume possessing and dispensing controlled substances.

12. On January 6, 2016, Board Inspector Manisha Shafir went to West Modesto Pharmacy to conduct an inspection, and to determine why respondent submitted an application for a new pharmacy permit instead of a change of ownership. Inspector Shafir was met by respondent.

13. Inspector Shafir asked respondent when she purchased the pharmacy, and requested the sales agreement and a copy of the application submitted to the Board. Respondent referred Inspector Shafir to the pharmacy clerk, Sandra Delgado, who assisted respondent with completing the application. Ms. Delgado produced an application dated August 15, 2014, which was submitted to the Board. The application showed that Ms. Delgado checked the box "New Pharmacy," instead of "Change of Ownership of an Existing Pharmacy." Ms. Delgado explained that she completed the application as she was instructed to by respondent and Ms. Pongnorsing.

14. Respondent explained that she believed the name change from Westside Plaza Pharmacy to West Modesto Pharmacy was considered a "New Pharmacy," and did not select the "Change of Ownership of an Existing Pharmacy" box. Respondent stated that the name was changed because she wanted a fresh start without all of the issues associated with Westside Plaza Pharmacy. Respondent was aware that an Accusation was pending against Westside Plaza Pharmacy and Ms. Pongnorsing.

15. When Inspector Shafir asked respondent and Ms. Delgado when the change in ownership took place, neither could provide Inspector Shafir with a specific date. Ms. Delgado then provided Inspector Shafir with a large stack of documents related to the sale of Westside Plaza Pharmacy and the name change to West Modesto Pharmacy. Ms. Delgado provided the following documents:

- a. Seller's Permit dated September 15, 2014, issued to West Modesto Pharmacy from the California State Board of Equalization;
- b. Application for an Employer Identification Number, dated July 25, 2014;
- c. An email communication dated October 24, 2014, wherein the DEA wrote that a pharmacy permit was required to complete the application process for DEA registration;
- d. An email communication dated June 1, 2015, confirming the pharmacy permit issued to West Modesto Pharmacy;
- e. An online application for DEA registration dated June 3, 2015; and,
- f. Two copies of the store lease between Ms. Pongnorsing and respondent. One copy was undated, and the other copy had a date of October 1, 2015.

16. Ms. Delgado explained to Inspector Shafir that she completed most of the paperwork for respondent for the transition to West Modesto Pharmacy, under the direction of both respondent and Ms. Pongnorsing. It appeared to Inspector Shafir that "neither pharmacist was computer savvy." Ms. Delgado acknowledged that respondent and Ms. Pongnorsing relied upon her to complete any and all documents. Ms. Delgado's handwriting appeared on many of the documents Inspector Shafir reviewed. Inspector Shafir noted that during her interview, respondent kept asking Ms. Delgado for answers.

17. Respondent looked for the sales agreement in the office, and located blank, unsigned copies of a one-page document entitled, "Contract for Sale of Westside Plaza Pharmacy." One copy had a date line, and the other did not. The agreement indicated that Ms. Pongnorsing owned Westside Plaza Pharmacy and was selling it to respondent, including all prescription files, inventory, fixtures, and computers, for \$15,000, under the new business name of West Modesto Pharmacy. When asked by Inspector Shafir whether there was an original document signed by respondent and Ms. Pongnorsing when they completed the sale, respondent stated that it was somewhere in the pharmacy.

18. Ms. Pongnorsing arrived at West Modesto Pharmacy later in the morning, and went into the office with respondent. Ms. Pongnorsing produced a copy of the same sales contract provided earlier to Inspector Shafir. That copy of the contract was signed and dated June 1, 2015, the same date that the pharmacy permit was issued to West Modesto Pharmacy. Inspector Shafir suspected that respondent and Ms. Pongnorsing signed the sales agreement after Ms. Pongnorsing arrived at the pharmacy that morning. Inspector Shafir asked for the original sales agreement, and respondent rummaged through the piles of paper on the desk and could not produce it. Respondent appeared nervous because she kept shuffling documents and would not answer any of Inspector Shafir's questions. Inspector Shafir asked respondent and Ms. Pongnorsing if they had just signed the document. Ms. Pongnorsing did not respond, but respondent acknowledged having signed a copy of the sales agreement after Ms. Pongnorsing arrived, because she could not produce the original as Inspector Shafir requested.

19. Inspector Shafir then asked respondent if she provided a check to Ms. Pongnorsing for the purchase, which respondent answered yes. Inspector Shafir explained to respondent and Ms. Pongnorsing that the sale and purchase of a pharmacy was a significant event, so she again asked them when the sale took place. Neither pharmacist could provide a sale date.

20. Inspector Shafir believed that respondent and Ms. Pongnorsing created a "paper sale" of the pharmacy due to the pending Accusation against Westside Plaza Pharmacy and Ms. Pongnorsing. Inspector Shafir based her belief on the following:

- a. Varying dates on documents to obtain permits and registrations as show in the documents provided on the date of Inspector Shafir's inspection;

- b. Lack of responsiveness regarding the pharmacy sale date from Ms. Pongnorsing to respondent;
- c. Lack of an original sales agreement;
- d. Signing of the contract for sale at the time of the inspection; and
- e. Inability of the staff to identify a date when the business was sold to respondent by Ms. Pongnorsing.

21. After its inspection of West Modesto Pharmacy, Ms. Shafir determined that, from June 1, 2015 to January 8, 2016, respondent maintained two active pharmacy permits for the same location. The Board cancelled the pharmacy permit for Westside Plaza Pharmacy on January 8, 2016. Inspector Shafir instructed Ms. Pongnorsing to submit a discontinuance of business and a disassociation as a PIC, however neither document was received by the Board. Westside Plaza Pharmacy's permit was cancelled because two active permits were not permitted for the same location.

22. On January 11, 2016, respondent sent an email to Inspector Shafir, but the email was signed by Ms. Pongnorsing. The email had attachments, including a signed statement from respondent dated January 8, 2016. In her statement, respondent stated that she purchased Westside Plaza Pharmacy "on or about June 1, 2015." Respondent apologized for making the mistake of checking the "New Pharmacy" box on the permit application for West Modesto Pharmacy. Respondent also stated that an inventory was taken on May 29, 2015, prior to the purchase, and was available at the time of the inspection. Respondent further stated that Ms. Pongnorsing had no financial interest or ownership of West Modesto Pharmacy.

23. Inspector Shafir noted in her report that respondent's statement regarding ownership interest by Ms. Pongnorsing was not true, because Ms. Pongnorsing owned the building where the pharmacy was located. In addition, Inspector Shafir asked for the inventory at the time of inspection, but neither respondent nor Ms. Pongnorsing provided it to her.

Furthermore, Inspector Shafir noted that an inventory was conducted on May 29, 2015, prior to the sale date of June 1, 2015. Respondent and Ms. Pongnorsing would not have known that the pharmacy permit would be issued on June 1, 2015 by the Board, and any inventory conducted should have occurred after the permit was issued, to allow the transfer of the inventory to a licensed facility. By respondent checking the "New Pharmacy" box on her permit application, the Board had no knowledge of an inventory transfer, which could only occur onto a licensed pharmacy. Here, West Modesto Pharmacy was not issued a permit until June 1, 2015. It did not make sense to Inspector Shafir that respondent purchased the inventory on May 29, 2015.

24. Inspector Shafir's Investigation Report dated June 3, 2016 was submitted in evidence. Inspector Shafir testified credibly and consistently with her report.

Respondent's Testimony

25. Respondent was born in Yugoslavia, and graduated from pharmacy school in Belgrade. She received her pharmacy license there, and practiced for a few years. Respondent came to the United States in 1969. The Board recognized her overseas diploma, but she was required to attend the University of Pacific Pharmacy School in Stockton for an additional three semesters prior to taking the Board's pharmacist examination. Respondent took the Board examination in 1985 or 1986. She passed, and became a licensed pharmacist in 1988. She worked at various pharmacies in the Central Valley and Central Coast, then began working as a pharmacist at Westside Plaza Pharmacy after moving from Monterey to Modesto in 1991.

26. Respondent was present at Westside Plaza Pharmacy at the time of the DEA's inspection in December 2012. After that inspection, respondent stated that the pharmacy was not allowed to purchase controlled substances.

27. Respondent decided in the summer of 2014 to apply for her own pharmacy permit, because she had an opportunity to purchase Westside Plaza Pharmacy. She wanted to call her pharmacy "West Modesto Pharmacy." Respondent testified that she completed and signed the Community Pharmacy Permit Application, dated August 15, 2014. Ms. Delgado assisted her with completing the application. Respondent directed Ms. Delgado to check the "New Pharmacy" box, because she believed that she was the new owner of a new pharmacy. She did not realize that she made a mistake in checking the wrong box, and did not mean to mislead the Board. As a result of checking the "New Pharmacy" box, respondent was granted a pharmacy permit on June 1, 2015, and a DEA registration on September 16, 2015, allowing her pharmacy to sell controlled substances.

28. During the investigation, and again at hearing, respondent could not provide the date of purchase of the pharmacy from Ms. Pongnorsing. She testified that she talked to Ms. Pongnorsing about purchasing the pharmacy in the summer of 2014, decided to purchase the pharmacy in December 2014. Respondent was aware of the Board's Accusation against Ms. Pongnorsing in the summer of 2014.

29. Respondent admitted that she and Ms. Pongnorsing signed the contract for sale of Westside Plaza Pharmacy on the date of Inspector Shafir's inspection. The contract date was backdated to June 1, 2015. She provided Inspector Shafir a copy of that contract during the inspection, but did not provide the original.

30. Respondent sent the Board her fee to acquire a temporary permit which would have allowed her to transfer inventory from Westside Plaza Pharmacy to West Modesto Pharmacy. However, the Board refunded her fee, because she checked the "New Pharmacy" box on her pharmacy permit application, and was told by the Board that temporary permits

are only provided for change of ownership applications. Respondent did not recognize at the time that her pharmacy permit application was incorrect, and that she should make the change on her application.

31. Respondent submitted into evidence the drug inventory that Inspector Shafir asked for, but was not provided with, at the time of her inspection. The inventory was handwritten, and consisted of approximately 65 pages. Respondent stated that the pharmacy technicians assisted her with the counting of medications and the inventory. The inventory was signed and dated by respondent and Ms. Pongnorsing on May 29, 2015, at 6:00 p.m.

32. Respondent submitted into evidence cancelled checks for installment payments for the purchase of Westside Plaza Pharmacy. The checks covered payments of \$283,07 per month from October 1, 2015 to March 1, 2017. She also provided cancelled checks for lease payments of \$1,000 per month, covering the same period. Inspector Shafir asked for proof of payments at the time of her inspection, and was not provided the cancelled checks.

33. At hearing, respondent often times appeared confused, and was unable to answer many questions. She had extreme difficulty in reading and understanding the documents before her. She did not recall the specific purchase date of the pharmacy. She felt that she checked the correct box on her pharmacy permit application.

Evidence in Aggravation, Mitigation or Rehabilitation

34. Respondent first learned that she made a mistake on her permit application when Inspector Shafir visited West Modesto Pharmacy on January 6, 2016. She apologized for her mistake at hearing, and characterized her mistake as an honest one, and that it was stupid. She regretted checking the wrong box, stating "I'm a very honest person, and this never happened in my life."

35. After the sale of the Westside Plaza Pharmacy to respondent, Ms. Pongnorsing continued to work as a pharmacist at West Modesto Pharmacy, despite having her pharmacist license revoked on September 26, 2016. Respondent admitted that Ms. Pongnorsing acted as the relief pharmacist on the day of the hearing in this matter.

36. Respondent testified that she had no reason to doubt that Ms. Pongnorsing is currently a licensed pharmacist. Despite having knowledge of the Board's Accusation against Ms. Pongnorsing and Westside Plaza Pharmacy, respondent claimed that she has not spoken to Ms. Pongnorsing about it.

Discussion

37. The Board certainly has legitimate and serious concerns in any case where the sale of a pharmacy occurs during a pending Accusation against the pharmacy and the PIC.

Pharmacists have regular access to dangerous drugs and controlled substances, as well access to confidential patient health and personal information. They hold positions of trust in our communities. Pharmacists are expected to exercise sound judgment in the performance of all their duties and responsibilities. They are also responsible for direct and careful supervision of pharmacy staff. Respondent's conduct during and after Inspector Shafir's inspection on January 6, 2016, was in derogation of the very high standards governing her profession, and compromised her effectiveness and ability to perform pharmacist duties and responsibilities with competence and safety to the public.

38. The documents obtained during the Board inspection of West Modesto Pharmacy show that the pharmacy was involved in obtaining permits and other legal documents well before the purported June 1, 2015 sale date. The long-standing working relationship between respondent and Ms. Pongnorsing, along with the continued ownership of the building by Ms. Pongnorsing, supports the probability of a "paper sale." Ms. Pongnorsing, who had a pending Accusation against her during the time of the Board inspection, and whose pharmacy license is now revoked, continues to work at West Modesto Pharmacy, and is involved in its daily operations. At the time of the Board's inspection, respondent failed to provide any supporting documents to establish that a sale of the pharmacy occurred, such as a cancelled or cashed check for the \$15,000 purchase price, any notarized documentation of the sales contract, or any proof of monthly payments for the building lease.

39. The evidence established that respondent obtained the pharmacy permit for West Modesto Pharmacy by providing false information on the permit application. The Board was not informed by respondent or Ms. Pongnorsing that the pharmacy was sold, and the inventory was transferred before the pharmacy permit was issued to West Modesto Pharmacy. Both pharmacists were aware of and involved in completing the application for the permit for West Modesto Pharmacy, and both participated in signing the contract of sale at the time of inspection and backdating it to June 1, 2015, in lieu of providing an original sales agreement, which appears to be non-existent.

40. The evidence also established that respondent maintained two active pharmacy permits for the same location, from June 1, 2015 to January 8, 2016. Ms. Pongnorsing did not submit a discontinuance of business and a disassociation as a PIC for Westside Plaza Pharmacy, and respondent did not notify the Board of her purchase of Westside Plaza Pharmacy.

41. The evidence also established that by backdating the contract for sale, providing false information on her pharmacy permit application, and failing to provide requested bank documents showing the purchase and lease payments for West Modesto Pharmacy to Inspector Shafir, respondent engaged in unprofessional conduct by subverting or attempting to subvert an investigation of the Board.

42. Respondent did not demonstrate with requisite certainty that she can be entrusted to own and operate a pharmacy without risk of harm to the public. It is contrary to

the public interest to allow respondent to continue to be a licensed pharmacist, and to hold a pharmacy permit.

Cost Recovery

43. Complainant has requested that respondent be ordered to pay costs incurred for investigation and enforcement, and for the legal work performed by the Attorney General's Office in this matter.

The Department of Justice provided a billing summary of time spent working on this case on various items including pleading preparation, case management, analysis/strategy, document analysis, communication with other party, and witness-related preparation, settlement preparation/negotiation. The Department of Justice billed the Board a total cost of \$3,545 (20.5 attorney hours @ \$170, and .5 paralegal hours @ \$120) through the commencement of hearing. Complainant seeks an additional \$9,498.50 associated with investigation and report preparation time by Manisha Shafir (78.5 hours @ \$121/hour).

Total costs incurred in connection with the investigation and prosecution of this case equal \$13,043.50. Complainant's request for costs is addressed in the Legal Conclusions below.

LEGAL CONCLUSIONS

1. To discipline respondent's license, complainant must prove cause for disciplinary action by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-856.)

2. The Pharmacy Law is set forth in Business and Professions Code section 4000 et seq. Pursuant to Business and Professions Code section 4301, the Board may discipline any holder of a license who has engaged in unprofessional conduct. Unprofessional conduct shall include, but is not limited to, any of the following:

[¶] ... [¶]

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

[¶] ... [¶]

(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.

[¶] ... [¶]

(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the board.

3. California Code of Regulations, title 16, section 1709 provides:

(a) Each permit to operate a pharmacy shall show the name and address of the pharmacy, the form of ownership (individual, partnership or corporation) and the pharmacist-in-charge. Each pharmacy shall, in its initial application on the annual renewal form, report the name of the pharmacist-in-charge, the names of all owners and the names of the corporate officers (if a corporation). Any changes in the pharmacist-in-charge, or the owners, or corporate officers shall be reported to the Board within 30 days.

(b) Any transfer, in a single transaction or in a series of transactions, of 10 percent or more of the beneficial interest in a business entity licensed by the board to a person or entity who did not hold a beneficial interest at the time the original permit was issued, shall require written notification to the board within 30 days.

(c) The following shall constitute a transfer of permit and require application for a change of ownership: any transfer of a beneficial interest in a business entity licensed by the board, in a single transaction or in a series of transactions, to any person or entity, which transfer results in the transferee's holding 50% or more of the beneficial interest in that license.

4. Business and Professions Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate 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.

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Causes for Discipline

RESPONDENT WEST MODESTO PHARMACY

5. Cause for disciplinary action exists under Business and Professions Code section 4301, subdivision (g), by reason of the matters set forth in Findings 9 to 23, and 39. It was established through clear and convincing evidence that respondent West Modesto Pharmacy, by and through its owner respondent Nada Vicijan, engaged in unprofessional conduct by knowingly signing a document that falsely represented the existence of a set of facts, by backdating the contract for sale of Westside Plaza Pharmacy, and providing false information on her pharmacy permit application.

6. Cause for disciplinary action exists under Business and Professions Code section 4301, subdivision (o), in conjunction with California Code of Regulations, title 16, section 1709, by reason of the matters set forth in Findings 9 to 23, and 40. It was established through clear and convincing evidence that respondent West Modesto Pharmacy, by and through its owner respondent Nada Vicijan, engaged in unprofessional conduct by failing to notify the Board of her purchase of Westside Plaza Pharmacy prior to transferring inventory, and maintaining two active permits for the same location.

7. Cause for disciplinary action exists under Business and Professions Code section 4301, subdivision (q), by reason of the matters set forth in Findings 9 to 23, and 40. It was established through clear and convincing evidence that respondent West Modesto Pharmacy, by and through its owner respondent Nada Vicijan, engaged in unprofessional conduct by subverting or attempting to subvert an investigation of the Board, by backdating the contract for sale of Westside Plaza Pharmacy, providing false information on her pharmacy permit application, and failing to provide requested bank documents showing purchase and lease payments for West Modesto Pharmacy.

RESPONDENT NADA VICIJAN

8. Cause for disciplinary action exists under Business and Professions Code section 4301, subdivision (g), by reason of the matters set forth in Findings 9 to 23, and 39. It was established through clear and convincing evidence that respondent Nada Vicijan engaged in unprofessional conduct by knowingly signing a document that falsely represented the existence of a set of facts, by backdating the contract for sale of Westside Plaza Pharmacy, and providing false information on her pharmacy permit application.

9. Cause for disciplinary action exists under Business and Professions Code section 4301, subdivision (o), in conjunction with California Code of Regulations, title 16, section 1709, by reason of the matters set forth in Findings 9 to 23, and 40. It was established through clear and convincing evidence that respondent Nada Vicijan engaged in unprofessional conduct by failing to notify the Board of her purchase of Westside Plaza Pharmacy prior to transferring inventory, and maintaining two active permits for the same location.

10. Cause for disciplinary action exists under Business and Professions Code section 4301, subdivision (q), by reason of the matters set forth in Findings 9 to 23, and 40. It was established through clear and convincing evidence that respondent Nada Vicijan engaged in unprofessional conduct by subverting or attempting to subvert an investigation of the Board, backdating the contract for sale of Westside Plaza Pharmacy, providing false information on her pharmacy permit application, and failing to provide requested bank documents showing purchase and lease payments for West Modesto Pharmacy.

11. When all the evidence is considered, and by reason of Findings 37 to 42, in order to ensure that the public health, safety and welfare are adequately protected, the pharmacy permit of respondent West Modesto Pharmacy, and the pharmacist license of respondent Nada Vicijan must be revoked.

Costs

12. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated a licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

13. Complainant seeks \$13,043.50 in costs. Respondent was not successful in getting the charges dismissed or reduced, and did not raise a colorable challenge to the proposed discipline. The scope of the investigation and prosecution was appropriate in light of the alleged misconduct. When all the *Zuckerman* factors are considered, costs of investigation and prosecution of this case are reasonable.

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ORDER

1. Original Permit No. PHY 52073, issued to respondent Nada Vicijan, doing business as West Modesto Pharmacy, and Original Pharmacist License No. RPH 41607, issued to respondent Nada Vicijan, are hereby REVOKED.

2. Respondent Nada Vicijan shall pay to the Board its costs of investigation and prosecution in the amount of \$13,043.50, in a manner as prescribed by the Board.

DATED: April 6, 2017

DocuSigned by:
Danette C. Brown
ACEA0DD79CC44EF...

DANETTE C. BROWN
Administrative Law Judge
Office of Administrative Hearings

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

11 In the Matter of the Accusation Against:

Case No. 5901

12 **NADA VICIJAN dba WEST MODESTO**
13 **PHARMACY**
14 314 I Street
Modesto, CA 95351

ACCUSATION

15 **Original Permit Number No. PHY 52073**

16 and

17 **NADA VICIJAN**
18 3423 Pock Lane
Stockton, CA 95205

19 **Original Pharmacist License No. RPH 41607**

20 Respondents.

21
22 Complainant alleges:

23 **PARTIES**

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

26 2. On or about June 1, 2015, the Board of Pharmacy issued Original Permit Number
27 PHY 52073 to Nada Vicijan dba West Modesto Pharmacy (Respondent West Modesto). Nada
28 Vicijan is and has been the Pharmacist-in-Charge at Respondent West Modesto since June 1,

1 2015. The Original Permit was in full force and effect at all times relevant to the charges brought
2 herein and will expire on June 1, 2017, unless renewed.

3 3. On or about April 23, 1988, the Board of Pharmacy issued Original Pharmacist
4 License Number RPH 41607 to Nada Vicijan (Respondent Vicijan). The Original Pharmacist
5 License was in full force and effect at all times relevant to the charges brought herein and will
6 expire on December 31, 2017, unless renewed.

7 **JURISDICTION**

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

11 5. Code section 4300.1 states:

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

17 **BUSINESS AND PROFESSIONS CODE**

18 6. Code section 4301 states, in pertinent part:

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

22 "...

23 "(g) Knowingly making or signing any certificate or other document that falsely represents
24 the existence or nonexistence of a state of facts.

25 "...

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

3 “ . . .

4 “(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the
5 board. . . .”

6 **CALIFORNIA CODE OF REGULATIONS**

7 7. California Code of Regulations, title 16, section 1709 states:

8 “(a) Each permit to operate a pharmacy shall show the name and address of the pharmacy,
9 the form of ownership (individual, partnership or corporation) and the pharmacist-in-charge.
10 Each pharmacy shall, in its initial application on the annual renewal form, report the name of the
11 pharmacist-in-charge, the names of all owners and the names of the corporate officers (if a
12 corporation). Any changes in the pharmacist-in-charge, or the owners, or corporate officers shall
13 be reported to the Board within 30 days.

14 “(b) Any transfer, in a single transaction or in a series of transactions, of 10 percent or more
15 of the beneficial interest in a business entity licensed by the board to a person or entity who did
16 not hold a beneficial interest at the time the original permit was issued, shall require written
17 notification to the board within 30 days.

18 “(c) The following shall constitute a transfer of permit and require application for a change
19 of ownership: any transfer of a beneficial interest in a business entity licensed by the board, in a
20 single transaction or in a series of transactions, to any person or entity, which transfer results in
21 the transferee's holding 50% or more of the beneficial interest in that license.”

22 **COST RECOVERY**

23 8. Section 125.3 of the Code states, in pertinent part, that the Board may request the
24 administrative law judge to direct a licentiate found to have committed a violation or violations of
25 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
26 enforcement of the case.

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1 BACKGROUND

2 9. On or about October 2, 2001, the Board issued pharmacy permit PHY 45161 to
3 Westside Plaza Pharmacy, located at 314 I Street in Modesto, California. On or about January 8,
4 2016, the Board canceled this pharmacy permit.

5 10. In or about October 2012, the United States Drug Enforcement Administration (DEA)
6 requested the Board's assistance in inspecting and investigating various pharmacies, including
7 Westside Plaza Pharmacy, with regard to the purchase and furnishing of controlled substances.
8 Westside Plaza Pharmacy had allegedly purchased medications containing hydrocodone and
9 oxycodone from several different wholesalers and filled numerous prescriptions for the drugs
10 based upon prescriptions issued by Drs. T.B. and C.P.

11 11. On or about December 11, 2012, two Board Inspectors, along with several DEA
12 agents, inspected Westside Plaza Pharmacy. After the inspection was completed, the Pharmacist-
13 in-Charge and owner of Westside Plaza Pharmacy, Suwonnee Pongnorsing, surrendered Westside
14 Plaza Pharmacy's DEA registration BW7566170, which allowed Westside Plaza Pharmacy to
15 possess and dispense controlled substances.

16 12. When the December 11, 2012 inspection of Westside Plaza Pharmacy was conducted,
17 Respondent Vicijan was working at Westside Plaza Pharmacy as a pharmacist.

18 13. Following the December 11, 2012 inspection of Westside Plaza Pharmacy, the Board
19 conducted an investigation into Westside Plaza Pharmacy which revealed that: (1) between
20 February and November 2012, Pharmacist-in-Charge and owner Suwonnee Pongnorsing failed to
21 reverse the claims on at least twenty-nine prescriptions or adjust the billings on the claims even
22 though Ms. Pongnorsing had not dispensed the medications to the patients, or had dispensed only
23 a portion of the medications, and had received payment for the drugs from the patients' insurance
24 companies; (2) on at least six occasions, Westside Plaza Pharmacy failed to deliver controlled
25 substance prescriptions, each of which were filled by another pharmacy, to the patients, and kept
26 the prescriptions within Westside Plaza Pharmacy's inventory, and failed to notify the other
27 pharmacy that the insurance billings/claims on the prescriptions needed to be reversed;
28 (3) Pharmacist-in-Charge and owner Suwonnee Pongnorsing failed to keep proper invoices,

1 inventory, and dispensing records for controlled substances; and (4) Westside Plaza Pharmacy
2 dispensed numerous prescriptions for controlled substances to over sixty-three of Dr. T.B.'s
3 patients, when Pharmacist-in-Charge and owner Suwonnee Pongnorsing knew, or had reason to
4 know, of Dr. T.B.'s repetitive prescribing pattern of highly abused controlled substances, the
5 location of Dr. T.B.'s practice in relation to Westside Plaza Pharmacy, the location of Dr. T.B.'s
6 patients in relation to Westside Plaza Pharmacy, and that the prescriptions were not issued for a
7 legitimate medical purpose.

8 14. On May 28, 2015, an Accusation was filed against Westside Plaza Pharmacy and
9 Suwonnee Pongnorsing, seeking to discipline Westside Plaza Pharmacy's pharmacy permit and
10 Ms. Pongnorsing's pharmacist license.

11 15. On or about December 23, 2015, the Board's enforcement team became aware that on
12 or about June 1, 2015, Board licensing staff had issued a new pharmacy permit to Respondent
13 West Modesto, located at the same address as Westside Plaza Pharmacy (they are the same
14 pharmacy, just with a new name).

15 16. Under the Board's pharmacy laws, when an existing pharmacy undergoes a change in
16 ownership, the new owner is required to submit to the Board a form indicating a change of
17 ownership. The purpose of this requirement is to ensure that the existing pharmacy permit
18 number, issued to the pharmacy, remains with the pharmacy location and that any pending
19 disciplinary action against that pharmacy permit can continue, despite a change in ownership. It
20 also ensures that any DEA registration associated with the pharmacy permit remains in effect.

21 17. No change in ownership was filed with the Board for Westside Plaza Pharmacy's
22 permit. Instead, Respondent Vicijan submitted to the Board an application for a new permit,
23 identifying herself as the owner and Pharmacist-in-Charge for Respondent West Modesto, which
24 is located at the same address as Westside Plaza Pharmacy.

25 18. Obtaining a new pharmacy permit with the Board allowed Respondent Vicijan to
26 obtain a new DEA registration, thus allowing the pharmacy to resume possessing and dispensing
27 controlled substances.

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1 19. On or about January 6, 2016, a Board Inspector went to West Modesto
2 Pharmacy/Westside Plaza Pharmacy to conduct an inspection and determine why Respondent
3 Vicijan submitted to the Board an application for a new permit instead of a change of ownership.
4 Upon the Inspector's arrival, she encountered Respondent and later, Suwonnee Pongnorsing, who
5 was working at Respondent West Modesto as a pharmacist.

6 20. During the Board Inspector's conversation with Respondent Vicijan on January 6,
7 2016, the Inspector requested a sales agreement showing that Suwonnee Pongnorsing sold
8 Respondent Vicijan the pharmacy. In response, Vicijan provided a large stack of documents
9 which showed the following: (1) on September 15, 2014, the Board of Equalization issued
10 Respondent West Modesto a seller's permit; (2) on July 25, 2015, Respondent West Modesto
11 submitted an application for an Employer Identification Number; (3) e-mail communication
12 confirming that a pharmacy permit was issued to Respondent West Modesto on June 1, 2015;
13 (4) an online DEA application, dated June 3, 2015; and (5) a store lease agreement between
14 Suwonnee Pongnorsing and Respondent Vicijan, dated October 1, 2015.

15 21. During the Board Inspector's conversation with Respondent Vicijan on January 6,
16 2016, Vicijan provided an unsigned sales agreement indicating that Suwonnee Pongnorsing
17 owned the business and was selling it to Vicijan for \$15,000.00 under the new name West
18 Modesto Pharmacy.

19 22. During the Board Inspector's conversation with Suwonnee Pongnorsing on January 6,
20 2016, Pongnorsing provided a signed and dated sales agreement, dated June 1, 2015 (the same
21 date the pharmacy permit was issued to Respondent West Modesto). After becoming suspicious
22 of whether the sales agreement Pongnorsing provided to the Inspector was in fact signed and
23 dated June 1, 2015, the Inspector questioned Respondent Vicijan about it and Vicijan admitted
24 that she had signed the document shortly after Pongnorsing arrived at the pharmacy, on January 6,
25 2016, because she could not produce a signed original as the Inspector requested.

26 23. During the Board Inspector's conversation with Respondent Vicijan on January 6,
27 2016, the Inspector asked if Vicijan had provided a check to Suwonnee Pongnorsing for purchase
28 of the pharmacy. Vicijan stated she did. However, neither Vicijan nor Pongnorsing could tell the

1 Inspector the date of sale and purchase of the pharmacy. The Inspector requested from Vicijan
2 any documents to establish the date of sale and purchase of the pharmacy.

3 24. Based upon the Board Inspector's inspection of Respondent West Modesto on
4 January 6, 2016, it became apparent that Respondent Vicijan and Suwonnee Pongnorsing created
5 a sham "paper" sale of the business in order to circumvent the pending charges against Westside
6 Plaza Pharmacy's permit (Pongnorsing continued to operate and control the pharmacy), in the
7 aforementioned Accusation, and to obtain a new DEA registration so the pharmacy could resume
8 possessing and distributing controlled substances.

9 25. At the conclusion of the January 6, 2016 inspection, the Board Inspector requested
10 that Respondent Vicijan provide a copy of the canceled check or any proof of payment regarding
11 her alleged purchase of Westside Plaza Pharmacy. Vicijan never provided any proof of payment
12 regarding her alleged purchase of Westside Plaza Pharmacy except for a copy of a check for
13 \$283.07, dated January 4, 2016, two days prior to the inspection, with no proof the check was
14 cashed or deposited.

15 26. On or about January 11, 2016, Suwonnee Pongnorsing provided an e-mail to the
16 Board Inspector in which Pongnorsing stated that an inventory of all controlled substances at
17 Westside Plaza Pharmacy was conducted on May 29, 2015, prior to Respondent Vicijan's alleged
18 purchase of Westside Plaza Pharmacy.

19 27. From June 1, 2015 through January 8, 2016, Respondent Vicijan maintained two
20 active pharmacy permits for the same location—one for Westside Plaza Pharmacy and another for
21 Respondent West Modesto, both of which have the same location.

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1 to a Board Inspector in order to support Vicijan's false statements that she had actually bought
2 Westside Plaza Pharmacy in a bona fide transaction.

3 b. Respondent West Modesto, by and through its owner and Pharmacist-in-Charge
4 Respondent Vicijan, provided false information on its pharmacy permit application when it
5 indicated that it was a new pharmacy rather than a change of ownership.

6 c. Respondent West Modesto, by and through its owner and Pharmacist-in-Charge
7 Respondent Vicijan, failed to provide requested bank documents to Board Inspector M.S.
8 showing the alleged purchase and lease payments for the pharmacy.

9 d. The circumstances are described with more particularity in paragraphs 9-27, above.

10 **RESPONDENT VICIJAN**

11 **FOURTH CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct—Knowingly Signing a Document That Falsely Represents the**
13 **Existence of a Set of Facts)**

14 31. Respondent Vicijan is subject to disciplinary action under section 4301(g) of the Code
15 in that on January 6, 2016, Respondent Vicijan, as Respondent West Modesto's owner and
16 Pharmacist-in-Charge, signed a contract for sale, back-dated it to June 1, 2015, and then provided
17 it to Board Inspector in order to support Vicijan's false statements that she had actually bought
18 Westside Plaza Pharmacy in a bona fide transaction, and Vicijan provided false information on
19 Respondent West Modesto's pharmacy permit application when Vicijan indicated it was a new
20 pharmacy rather than a change of ownership. The circumstances are described with more
21 particularity in paragraphs 9-27, above.

22 **FIFTH CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct—Change in Owners)**

24 32. Respondent Vicijan is subject to disciplinary action under section 4301(o) of the
25 Code, in conjunction with California Code of Regulations, title 16, section 1709, in that
26 Respondent Vicijan, as West Modesto's owner and Pharmacist-in-Charge, failed to notify the
27 Board of her alleged purchase of Westside Plaza Pharmacy prior to transferring inventory, and
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1 maintained two active permits for the same location. The circumstances are described with more
2 particularity in paragraphs 9-27, above.

3 **SIXTH CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct—Engaging in Conduct That Subverts or Attempts to Subvert an**
5 **Investigation of the Board)**

6 33. Respondent Vicijan is subject to disciplinary action under section 4301(q) of the Code
7 in that:

8 a. On January 6, 2016, Respondent Vicijan, as Respondent West Modesto's owner and
9 Pharmacist-in-Charge, signed a contract for sale, back-dated it to June 1, 2015, and then provided
10 it to a Board Inspector in order to support Vicijan's false statements that she had actually bought
11 Westside Plaza Pharmacy in a bona fide transaction.

12 b. Respondent Vicijan provided false information on Respondent West Modesto's
13 pharmacy permit application when she indicated that it was a new pharmacy rather than a change
14 of ownership.

15 c. Respondent Vicijan failed to provide requested bank documents to a Board Inspector
16 showing Vicijan's alleged purchase of Westside Plaza Pharmacy.

17 d. The circumstances are described with more particularity in paragraphs 9-27, above.

18 **PRAYER**

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

21 1. Revoking or suspending Original Permit Number PHY 52073, issued to Nada Vicijan
22 dba West Modesto Pharmacy.

23 2. Revoking or suspending Original Pharmacist License Number RPH 41607, issued to
24 Nada Vicijan;

25 3. Ordering Nada Vicijan dba West Modesto Pharmacy to pay the Board of Pharmacy
26 the reasonable costs of investigation and enforcement of this case, pursuant to Business and
27 Professions Code section 125.3; and,

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

DATED: 9/27/16 Virginia Herold

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

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