

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

In the Matter of the Accusation Against:

**GETWELL PHARMACY & MEDICAL SUPPLY,**

Original Permit No. PHY 50159

And

**MICHAEL CHIKAODINAKA ACHOLONU,**

Original Pharmacist License No. RPH 45757,

Respondent.

Case No. 5904

OAH No. 2018020259

**NOTICE TO ALL PARTIES:**

Respondent Ferry's Pharmacy timely submitted a Petition for Reconsideration to the Board of Pharmacy. No action having been taken by the board on the petition before the Decision and Order took effect, pursuant to Government Code section 11521, the petition is deemed denied by operation of law.

The Decision and Order, which became effective on June 7, 2019, at 5:00 p.m., is the Board of Pharmacy's final decision in this matter.

Date: June 10, 2019.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Victor Law", written over a horizontal line.

By

Victor Law, R.Ph.  
Board President

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Respondent.

Case No. 5904

OAH No. 2018020259

**ORDER STAYING EFFECTIVE DATE**

Respondents Getwell Pharmacy & Medical Supply and Michael Chikaodinaka Acholonu timely requested reconsideration of the decision in the above-entitled matter pursuant to section 11521 of the Government Code. In order to allow the board additional time to consider the petition, in accordance with the provisions of section 11521 of the Government Code,

IT IS HEREBY ORDERED that the effective date of the Decision and Order, in the above-entitled matter is stayed until 5 p.m. on June 7, 2019.

It is so ORDERED on May 29, 2019.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

Victor Law, R.Ph.  
Board President

**BEFORE THE  
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Original Pharmacist License No. RPH 45757

Respondents.

Case No. 5904

OAH No. 2018020259

**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 May 29, 2019.

It is so ORDERED on April 29, 2019.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

Victor Law, R.Ph.  
Board President

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

In the Matter of the Accusation Against:

GETWELL PHARMACY & MEDICAL  
SUPPLY,

Original Permit No. PHY 50159

and

MICHAEL CHIKAODINAKA ACHOLONU

Original Pharmacist License No. RPH 45757

Respondents.

Case No. 5904

OAH No. 2018020259

**PROPOSED DECISION**

Administrative Law Judge Regina Brown, State of California, Office of Administrative Hearings, heard this matter on March 6, 2019, in Oakland, California.

Joshua A. Room, Supervising Deputy Attorney General, represented complainant Virginia Herold.<sup>1</sup>

Robert H. Hahn, Law Office of Gould & Hahn, represented respondents Getwell Pharmacy and Medical Supply and Michael Chikaodinaka Acholonu, who was present throughout the hearing.

The matter was submitted on March 6, 2019.

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<sup>1</sup> Currently, Anne Sodergren is the Interim Executive Officer of the Board of Pharmacy.

## FACTUAL FINDINGS

1. On October 18, 2017, complainant Virginia Herold made the Accusation in her official capacity as Executive Officer of the Board of Pharmacy (board), Department of Consumer Affairs.

2. On September 14, 1992, the board issued Original Pharmacist License number RPH 45757 to respondent Michael Chikaodinaka Acholonu (respondent). The license will expire on September 30, 2020, unless renewed. No prior disciplinary action has been taken against respondent; however, administrative actions for failure to comply with the obligation to store, account for and dispense controlled substances were issued against respondent on January 20, 2011 (citation and fine reduced to \$15,750), and December 11, 2012 (citation and fine reduced to \$1,750).

3. On December 17, 2009, the board issued Original Permit number PHY 50159 to Getwell Pharmacy and Medical Supply Corp., doing business as Getwell Pharmacy and Medical Supply, Michael Chikaodinaka Acholonu, President and Pharmacist-in-Charge (respondent Getwell Pharmacy). Administrative actions for failure to comply with obligation to store, account for and dispense controlled substances were issued against respondent Getwell Pharmacy on January 20, 2011 (citation and fine reduced to \$4,250), and December 11, 2012 (citation and fine reduced to \$1,500). The permit was canceled on March 11, 2015, due to discontinuance of the business effective February 18, 2015.<sup>2</sup>

4. In December 2013, a complaint was filed with the board against respondents alleging overdispensing of controlled substances, as prescribed by Hai V. Nguyen, M.D., and Tan D. Nguyen, M.D. In mid-2014, Dr. Tan Nguyen was criminally charged with felonies related to unlawfully prescribing controlled substances. The board commenced an investigation into the dispensing activities of respondents, and other non-related pharmacies and pharmacists involved in Dr. Nguyen's criminal case. An investigation report was issued on April 9, 2015, finding that respondents had violated the Pharmacy Law, Business and Professions Code section 4000 et seq. The Accusation was issued on October 18, 2017.

5. Respondents stipulated to Factual Findings 6 through 8 below, as alleged in the Accusation:

6. Between July 2011 and July 2014, respondents consistently dispensed controlled substances, which substances had a high potential for abuse, to customers despite the existence of multiple indications that the prescriptions at issue should not be filled. In filling the prescriptions, respondents ignored significant indications of possible drug abuse including, but not limited to:

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<sup>2</sup> Pursuant to Business and Professions Code section 4300.1, expiration or cancellation of a license issued by the board does not deprive the board of jurisdiction to proceed with disciplinary proceeding against the licensee.

- a. The vast majority of the prescriptions, numbering over 16,000, were written by two practitioners.
- b. An unusually high percentage of the customers paid cash for these prescriptions.
- c. The prescriptions called for excessive amounts of Promethazine<sup>3</sup> with codeine, a medication designed for temporary use.
- d. The prescriptions manifested monotonous, non-diverse prescribing practices among different patients involving Promethazine with codeine, Norco and Soma.<sup>4</sup>
- e. The prescriptions called for consistently high doses of narcotics without tapering up from lower doses.
- f. Multiple prescriptions were written, near in time, for numerous individuals at the same address or addresses and/or individuals who shared surnames.
- g. Many of the individuals lived far away from the pharmacy.
- h. Customers often sought, and were provided with, refills earlier than necessary.
- i. Prescriptions were, in many cases, inconsistent with applicable standards for geriatric patients.

7. During this time period, respondents failed to appropriately review patients' medication therapy with readily available tools such as Patient Activity Reports, respondents' own records and consideration of what are considered in the industry to be red flags. As a result, patients were furnished with early and/or excessive amounts of controlled substances, and patients involved in obvious doctor and pharmacy shopping were furnished controlled substances. As a result of these failures, respondents filled prescriptions which were not for legitimate medical purposes as that term is used in Health and Safety Code section 11153, in that the prescriptions were for addicts or habitual users.

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<sup>3</sup> Promethazine with codeine syrup is a controlled substance pursuant to Health and Safety Code section 11058, and a cough suppressant which is taken on a short term basis and is a commonly abused drug.

<sup>4</sup> SOMA is a controlled substance and a Schedule II drug pursuant to California Code of Regulations, title 21, section 1308.14, subdivision (c)(6). Norco is a controlled substance and a Schedule II drug pursuant to Health and Safety Code section 11055.

8. On July 9, 2014, board inspectors conducted an audit of respondents' records from August 27, 2012 through July 9, 2014. The audit revealed that respondents failed to account for 379,473 ml of Promethazine with codeine, 113,999 tablets of Norco, and 40,257 tablets of carisoprodol (also known as SOMA).

*Corresponding responsibility*

9. In the precedential decision of *In the Matter of the Accusation Against Pacifica Pharmacy; Thang Tran* (Agency No. 3802; OAH No. 2011010644; Precedential Decision No. 2013-01) (*Pacifica*), a pharmacist's license and permit were revoked because he had engaged in excessive furnishing, failed to maintain current inventory, had incomplete labeling, maintained expired drugs, failed to comply with his corresponding responsibility, and had engaged in gross negligence, negligence, and unprofessional conduct. In addition, the pharmacist had continued the behavior even after the board had inspected the pharmacy. At the hearing, the pharmacist, who was still operating the pharmacy, offered very little evidence in explanation or mitigation. The precedential decision described corresponding responsibility as follows:

While the responsibility for the proper prescribing of a controlled substance is upon the prescriber, a corresponding responsibility rests with the pharmacist who dispenses a prescription; in other words, a pharmacist does not meet the standard of care simply by selecting the proper pharmaceutical product, accurately labeling that product for use, and counseling the patient. Reasonable inquiry is required.

When a pharmacist is presented with a prescription, the pharmacist must first look at the four corners of the prescription to determine whether the prescription is valid. The prescription must be on security paper; it must be complete; and it must be signed. Nothing should appear on the face of the prescription that makes it questionable. If something appears wrong with the prescription, a pharmacist must call the prescriber to verify that the prescriber has issued the prescription as set forth on the face of the prescription.

After the pharmacist determines that the prescription is valid on its face, the pharmacist should verify that the person presenting the prescription is the patient or the patient's legitimate representative. If the patient is new to the pharmacy, the standard of care requires that some evidence be produced to show that the person picking up the prescription is the patient or is entitled to do so on the patient's behalf. It is helpful for the pharmacist at this point to observe where the patient lives and where the prescriber's office is located, as these matters may be

red flags that indicate that a prescription may not have been issued for a legitimate medical purpose. It is also helpful to determine the patient's age, because some medications may not be age appropriate and because a patient's relative youth may suggest the possibility of misuse or diversion.

[¶] ... [¶]

The pharmacist should evaluate whether the drug therapy is appropriate. In some instances, especially where large amounts of narcotics are being prescribed, the pharmacist should know something about the prescriber's medical practice; the pharmacist should make inquiry about that if the prescriber is unknown. The pharmacist must look at the number and kinds of medications that have been prescribed to determine whether additional inquiry is required to make the determination that the prescription is for a legitimate medical purpose. There should be some logical relationship between the drugs that have been prescribed and the condition that is being treated.

There are a number of warning signs – red flags – that should put a reasonable and prudent dispensing pharmacist on notice that a prescription may not have been issued for a legitimate medical purpose. For example, there may be missing information on the script (e.g. a DEA number); the script may be written for an unusually large quantity of drugs; the script(s) may be written for medications that address the same medical problem and appear unreasonably duplicative; the same combination of drugs may be written by the same prescriber for a number of different patients; concern exists when a prescriber starts a patient on OxyContin 80 mg because that is not a usual starting dose; the prescriber's office or the pharmacy may be located a long distance from the patient's home; patients living at the same address who present prescriptions for the same drugs is a cause of concern; young patients presenting prescriptions for chronic pain medications without any explanation raises cause for concern; large cash payments is a red flag; and patients who requests early refills without any good reason is problematic.

The standard of care requires a pharmacist to consider these matters before dispensing a controlled substance. At some point, when reasonable concerns reach a critical mass, the pharmacist must not fill the prescription without making inquiry and resolving those matters.

10. Michael Ignacio is a licensed pharmacist and has worked as a supervising pharmacist inspector for the board for approximately two and one-half years and prior to that, he worked for five years on the fraud team. Ignacio has investigated over 50 cases involving pharmacists who failed to comply with their corresponding responsibility. Ignacio was assigned to respondents' case and testified at hearing.

11. Ignacio is familiar with the functions and duties of a licensed pharmacist. Ignacio described the Controlled Substance Utilization Review and Evaluation System (CURES), which is a database to monitor controlled substances prescriptions for patients. Furthermore, to comply with their corresponding responsibility, a pharmacist should access CURES before filling a suspicious prescription.

12. Ignacio explained that there were many red flags that should have raised respondent's suspicions, with the over 16,000 prescriptions written by two prescribers, to comply with his corresponding responsibility and respondent should have called the prescribers. Ignacio acknowledged that respondent has called other prescribers in the past regarding suspicious prescriptions. Additionally, Ignacio believed that respondent did not take responsibility for his actions. For example, patients' questionnaires were sent to respondent during the investigation to be completed by respondent. Respondent gave the same answers on each questionnaire and merely referred back to the patients' physicians when respondent should have been able to provide the information. According to Ignacio, this is one of the most egregious cases of failing to comply with corresponding responsibility that he has encountered.

#### *Respondent's evidence*

13. In April 2010, respondent opened respondent Getwell Pharmacy. He worked full-time at the pharmacy during the day and at a Kaiser Permanente pharmacy in the evening. According to respondent, he went into business to be independent and attain the "American dream." He had a business plan with policies and procedures in place. He soon learned that wholesalers would not extend credit to him. He withdrew money out of his 401(k) account to pay for inventory. He expected to be reimbursed from the insurance companies, but they paid less than respondent's costs for the medications. Respondent also explained that many patients wanted brand name medications instead of generic brands and they paid cash instead of using their health insurance. Respondent admitted that he was under significant financial pressure when operating the pharmacy. At the time, he did not consider the prescriptions to be suspicious because he knew the prescribers. Also, he never dispensed more than 60 tablets to a patient. Respondent reiterated that he had practiced 15 years without any issues prior to opening the pharmacy. In 2015, respondent Getwell Pharmacy closed because it was operating at a loss.

14. Respondent is familiar with and has taken a course on corresponding responsibility. According to respondent, the board has changed over the years on its requirements for compliance with corresponding responsibility, especially as a result of the opioid epidemic. For example, pharmacists were not allowed to access a patient's CURES

profile until 2013, and then it became possible to access a patient's history to determine whether to reject a prescription or not. Furthermore, technology has become more user friendly. Respondent understands the board's concern regarding the opioid epidemic and the duty to protect the public.

15. Respondent noted that during the board's investigation, he voluntarily provided the board with all requested records and he complied with all requests. Respondent stated that he has "learned his lesson," he has changed his practices, and he regrets the decisions that he made when he owned the pharmacy.

16. Respondent states that he keeps current with the laws and regulations regarding the practice of pharmacy. He has never been sued for malpractice or been a party to a lawsuit. He has never been accused of self-administration of controlled substances.

#### *Mitigating evidence*

17. Respondent provided letters of support. Ngoc La, CVS Pharmacy Manager, writes that respondent is a good person and a hardworking pharmacist. Scott Kamimura and Vivian Turner write that they have known and worked with respondent for two years, and they describe respondent as a reliable, good and honest pharmacist, who is thorough, efficient, competent, and can be trusted. Esther Contreras, a CVS technician, works with respondent and describes him as efficient, reliable, and trustworthy.

18. Respondent is approximately 63 years old and married with four adult children. Respondent received his bachelor's degree in Pharmacy from the University of Nigeria in 1987. He has taken advanced courses, including but not limited to, DEA & Pharmacy Regulatory Training for Pharmacists, and a course entitled "Expanding the Pharmacists Role in Preventing Opioid Abuse: Understanding Abuse-deterrent Formulations and Identifying Risks."

19. Respondent worked for Walgreens as an intern from 1992 to 1995. He worked as a pharmacist for Payless Pharmacy from 1995 to 1998; Rite Aid from 1998 to 2000; and Walmart from 2000 to 2004. Respondent returned to Rite Aid in 2004, as the Pharmacist in Charge. From 2005 to 2012, respondent worked at night as a pharmacist for Kaiser Permanente in Livermore. Currently, respondent is employed as a pharmacist at CVS, where he complies with his corresponding responsibility and he has sometimes refused to fill prescriptions. He has received training in patient confrontation and how to diffuse situations with patients when denying a prescription.

#### *Costs*

20. Complainant seeks total costs in the amount of \$70,004. The certification of prosecution costs filed by the Attorney General seeks recovery of costs in the amount of \$26,210, and is supported by a billing summary detailing the professionals who worked on the matter, the date the professional worked on the matter, the tasks performed, the amount

of time billed for the activity and the hourly rate of the professional who performed the work. The costs sought by the Attorney General are reasonable.

21. The board filed Certifications of Costs of Investigation by the Interim Executive Officer; Declarations of Janice Dang, and a Declaration of Ignacio seeking recovery of investigation costs in the amount of \$43,794. The certifications listed the total of investigative hours spent working on the case, the hourly rate charged and a breakdown of activities by categories; the total number of hours worked on the matter was divided into investigation, travel, report preparation and hearing preparation. These certifications did not detail the date the activities were performed or the time spent performing those activities on each date.

22. Catherine Hodnett was the assigned investigator who performed the bulk of the investigation. She did not sign a declaration and she did not testify at the hearing. Instead, Hodnett's supervisor signed a declaration indicating that Hodnett spent over 400 hours on the case, including 192.24 hours of investigation and 207 hours of report preparation. This certification did not contain information regarding the specific tasks performed, the date they were performed, or how long it took to complete each task. Because the certifications did not comply with California Code of Regulations, title 1, section 1042, subdivision (b)(3), it is nearly impossible to determine the reasonableness of the costs being sought.

23. Respondent stipulated to the factual allegations and causes for discipline. Also, the scope of the investigation (which included other unrelated pharmacists and pharmacies) and costs do not appear appropriate to the alleged conduct of respondent. A reduction of the reasonable costs of investigation is warranted and shall be reduced to \$21,897. The total reasonable costs are determined to be \$48,107 (\$26,210 + \$21,897).

## LEGAL CONCLUSIONS

1. The standard of proof applied in this proceeding is clear and convincing evidence to a reasonable certainty. (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

2. Protection of the public is the board's highest priority in exercising its disciplinary functions; whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public is paramount. (Bus. & Prof. Code, § 4001.1.)<sup>5</sup>

3. Section 4301 provides that a license to practice pharmacy may be disciplined if the licensee has engaged in unprofessional conduct. The pharmacist-in-charge is

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<sup>5</sup>All statutory references are to the Business and Professions Code, unless otherwise noted.

responsible for a pharmacy's compliance with all state and federal laws and regulations regarding the practice of pharmacy. (§ 4113, subd. (c).)

4. Respondents stipulated that there is clear and convincing evidence to support each of the causes for discipline in the Accusation and agreed to accept discipline on the basis of that evidence, as follows:

*First Cause for Discipline – Excessive Furnishing*

5. Cause exists to take disciplinary action against respondents' license and permit, pursuant to section 4113, subdivision (c); section 4301, subdivision (d) (engaging in clearly excessive furnishing of controlled substances in violation of Health and Safety Code section 11153<sup>6</sup>; section 4301, subdivision (j) (violating a statute regulating controlled substances); section 4301, subdivision (o) (directly or indirectly violating, attempting to violate, or assisting in or abetting a violation of laws or regulations governing the practice of pharmacy); and California Code of Regulations, title 16, section 1761<sup>7</sup>, individually and collectively, by reason of the matters set forth in Findings 5 through 12.

*Second Cause for Discipline – Failure to Exercise Due Caution*

6. Cause exists to take disciplinary action against respondents' license and permit, pursuant to section 4113, subdivision (c); section 4301, subdivisions (j) and (o); section 4306.5, subdivision (a) (failing to appropriately exercise the education, training and experience of a pharmacist; section 4306.5, subdivision (b) (failing to exercise or implement professional judgment); section 4306.5, subdivision (c) (failing to consult appropriate records); and California Code of Regulations, title 16, section 1707.3<sup>8</sup>, individually and collectively, in that they engaged in unprofessional conduct in the furnishing of controlled substances, by reason of the matters set forth in Findings 5 through 12.

*Third Cause for Discipline – Incomplete Inventory and/or Records of Acquisition and/or Disposition*

7. Cause exists to take disciplinary action against respondents' license and permit, pursuant to section 4113, subdivision (c); and section 4301, subdivisions (j) and (o);

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<sup>6</sup> The responsibility for the proper prescribing and dispensing of controlled substances is on the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. (Health & Saf. Code, § 11153.)

<sup>7</sup> A pharmacist shall not dispense any prescription that contains any irregularity, uncertainty or ambiguity. (Cal. Code Regs., tit. 16, § 1761.)

<sup>8</sup> A pharmacist must review a patient's drug therapy and medication record before each prescription drug is delivered, and include screening for severe potential drug therapy problems. (Cal. Code Regs., tit. 16, § 1707.3.)

as these provisions interact with section 4081 (failed to maintain an accurate, complete and readily retrievable inventory); 4105 (failed to retain records of acquisition and disposition of dangerous drugs in pharmacy inventory); and California Code of Regulations, title 16, section 1718<sup>9</sup>, individually and collectively, by reason of the matters set forth in Findings 5 and 8.

#### *Fourth Cause for Discipline – Unprofessional Conduct*

8. Cause exists to take disciplinary action against respondents' license and permit, pursuant to section 4301, for unprofessional conduct, by reason of the matters set forth in Findings 5 through 12.

#### *Disciplinary considerations*

9. The board has established disciplinary guidelines for evaluating the appropriate disciplinary penalty to impose on a licensee who is subject to discipline. The factors to be considered include actual or potential harm to pharmacy consumers or the public; prior disciplinary record; number of current violations; nature and severity of the acts under consideration; time that has passed since the acts; compliance with terms of any criminal sentence, parole, or probation; overall criminal record; expungement; whether the conduct was intentional or negligent or demonstrated incompetence; any financial benefit to the respondent from the misconduct; mitigating and aggravating evidence; and evidence of rehabilitation. All factors have been considered.

10. A violation of section 4301, as in this case, falls within a Category III violation in determining the appropriate disciplinary penalty. The maximum penalty for a Category III violation is revocation. The minimum penalty is a 90-day suspension and stayed revocation with three to five years' probation with all the standard terms and conditions of probation and optional terms and conditions as appropriate.

11. Given that respondent Getwell Pharmacy is no longer in operation, there is no need to evaluate whether probation is appropriate. Under the totality of the circumstances, the permit should be revoked.

12. Regarding respondent's pharmacist license, it has been almost five years since he committed the acts that he stipulated to in the Accusation. This is the first disciplinary action against respondent's license; however, he received two administrative citations which constitute prior warnings of the violations alleged in the Accusation. Furthermore, he was not charged with fraudulent acts or incompetency. Neither did respondent appear to receive any financial benefit from his unprofessional conduct as he was forced to close the pharmacy. In mitigation, respondent fully complied with the board's investigation. Respondent has maintained steady employment. He also has character letters that attest to

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<sup>9</sup> Current inventory includes complete accountability of all dangerous drugs handled by every licensee. (Cal. Code Regs., tit. 16, § 1718.)

his qualities as a pharmacist. It is noted that respondent engaged in unprofessional conduct and abrogated his corresponding responsibility when he failed to identify and resolve multiple red flags between July 2011 and July 2014. This involved potential harm to pharmacy consumers and the public. However, the seriousness of the violations is weighed against the rehabilitation evidence establishing that respondent is a competent pharmacist who is capable of complying with the pharmacy law.

13. Complainant contends that revocation is appropriate relying upon *Pacifica, supra*. However, *Pacifica* is distinguishable. Here, unlike in *Pacifica*, respondent is no longer operating the pharmacy. Respondent had fewer causes for discipline than the pharmacist in *Pacifica*. Finally, the pharmacist in *Pacifica* continued the behavior even after the board's inspection which is a continued flagrant disregard of the law which is not at issue in this case. Again, in this case, respondent admitted to his wrongdoing and stipulated to the facts and causes for discipline. He offered persuasive evidence of mitigation and rehabilitation. Outright revocation of respondent's pharmacist license is not required for protection of the public.

14. Pharmacies and pharmacists are heavily regulated because they control dangerous drugs that can make a pharmacist, like respondent, the target of drug abusing patients and of unscrupulous physicians. Respondent has demonstrated an ability to understand and comply with the rules and regulations governing pharmacies and pharmacists. Respondent has demonstrated that he can be trusted and he no longer presents a potential of harm to the public. It is very unlikely that he will repeat his past mistakes, especially since he will not be operating a pharmacy. Furthermore, under the terms of probation, he will perform his duties under the direct supervision of a pharmacist for a period of time. All things considered, it is concluded that protection of the public does not compel revocation of respondent's license to practice as a pharmacist. The public will be adequately protected by placing respondent's license on probation for four years with optional terms and conditions, including taking an ethics course and performing community service.

#### *Costs*

15. Business and Professions Code section 125.3, provides that respondents may be ordered to pay the board "a sum not to exceed the reasonable costs of the investigation and enforcement of the case." The board's certification of the actual costs constitutes prima facie evidence of the reasonable costs.

The case of *Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32, sets forth the factors to be considered in determining the reasonableness of costs. Those 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 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 to the alleged misconduct. The *Zuckerman* factors have been considered.

In this case, respondents admitted the violations at the outset of the hearing which streamlined the proceedings. They presented substantial evidence of their subjective good faith belief in their mitigation and rehabilitation efforts. Furthermore, respondent was successful in providing sufficient evidence at hearing to retain his pharmacist license with probationary conditions. Additionally, respondent testified that he cannot pay the costs because of the losses from the pharmacy and he has four children, ages 24, 21, 19, and 18, who are in college. These factors also support a reduction of the costs. The board's reasonable costs of investigation and enforcement are determined to be \$48,107, as set forth in Findings 20-23. Respondents are jointly and severally liable for the costs.

## ORDER

A. Original Pharmacist License Number RPH 45757 issued to Michael Chikaodinaka Acholonu is revoked; however, the revocation is stayed and respondent is placed on probation for four years upon the following terms and conditions:

1. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

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

an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws

a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment

a conviction of any crime

the filing of a disciplinary pleading, issuance of a citation, or initiation of another administrative action filed by any state or federal agency which involves respondent's license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

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

2. Report to the Board

Respondent shall report to the board quarterly, on a schedule as directed by the board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation.

Failure to submit timely 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 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 shall timely 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 his probation, including but not limited to: timely responses to requests for information by board staff, timely compliance with directives from board staff regarding requirements of any term or condition of probation; and timely completion of documentation pertaining to a term or condition of probation. Failure to timely cooperate shall be considered a violation of probation.

5. Continuing Education

Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the board or its designee.

6. Reporting of Employment and Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 5904 (OAH No. 2018020259) and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within ten (10) days of undertaking any new employment, respondent shall report to the board in writing the name, physical address, and mailing address of each of his employer(s), and the name(s) and telephone number(s) of all of his direct supervisor(s), as well as any pharmacist(s)-in-charge, designated representative(s)-in-charge, responsible manager or other supervisor(s) and the work schedule if known. Respondent shall also include the reason(s) for leaving the prior employment. Respondent shall sign and return to the board a written consent authorizing the board or its designee to communicate with all of respondent's employer(s) and supervisor(s), and authorizing those employer(s) or supervisor(s) to communicate with the board or its designee, concerning respondent's work status, performance and monitoring. Failure to comply with the requirements or deadlines of this condition shall be considered a violation of probation.

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause (a) his direct supervisor, (b) his pharmacist-in-charge, designated representative-in-charge, responsible manager or other compliance supervisor, and (c) the owner or owner representative of his employer, to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 5904 (OAH No. 2018020259), and terms and conditions imposed thereby. If one person serves in more than one role described in (a), (b), or (c), the acknowledgement shall so state. It shall be respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the board. In the event of a change in the person(s) serving the role(s) described in (a), (b), or (c) during the term of probation, respondent shall cause the person(s) taking over the role(s) to report to the board in writing within fifteen (15) days of the change acknowledging that he or she has read the decision in case number 5904 (OAH No. 2018020259), and the terms and conditions imposed thereby.

If respondent works for or is employed by or through an employment service, respondent must notify the person(s) described in (a), (b), or (c) above at every entity licensed by the board in case number 2018020259, and the terms and conditions imposed thereby in advance of respondent commencing work such licensed entity. A record of the notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through an employment service, respondent shall cause the person described in (a), (b), and (c) above at the employment service to report to the board in writing acknowledging that he or she has read the decision in case number 5904 (OAH No. 2018020259) and the terms and conditions imposed thereby.

It shall be respondent's responsibility to ensure that these acknowledgements are timely submitted to the board.

Failure to timely notify present or prospective employer(s) or failure to cause the identified person(s) with that/those employer(s) to submit timely written acknowledgements to the board shall be considered a violation of probation.

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary, relief or pharmacy management service as a pharmacist or any position for which a pharmacist license is a requirement or criterion for employment, whether respondent is an employee, independent contractor or volunteer.

7. Notification of a Change(s) in Name, Address(es) or Phone Numbers

Respondent shall further notify the board in writing within ten (10) days of any change in name, residence address, mailing address, e-mail address or phone number.

Failure to timely notify the board of any change in employer, name, address, or phone number shall be considered a violation of probation

8. Restrictions on Supervision and Oversight of Licensed Facilities

During the period of probation, respondent shall not supervise any intern pharmacist, be the pharmacist-in-charge, designated representative-in-charge, responsible manager or other compliance supervisor of any entity licensed by the board, nor serve as a consultant. Assumption of any such unauthorized supervision responsibilities shall be considered a violation of probation.

9. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, respondent shall pay to the board its costs of investigation and prosecution in the amount of \$48,107, jointly and severally liable with respondent Getwell Pharmacy. Respondent shall make scheduled payments as determined by the board.

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.

Respondent shall be permitted to pay these costs in a payment plan approved by the board or its designee, so long as full payment is completed no later than one (1) year prior to the end date of probation.

10. Probation Monitoring Costs

Respondent 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 directed shall be considered a violation of probation.

11. Status of License

Respondent shall, at all times while on probation, maintain an active, current license with the board, including any period during which suspension or probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation.

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

12. License Surrender While on Probation/Suspension

Following the effective date of this decision, should respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may relinquish his license, including any indicia of licensure issued by the board, along with a request to surrender the license. The board or its designee shall have the discretion whether to accept the surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of respondent's license history with the board.

Upon acceptance of the surrender, respondent shall relinquish his pocket and/or wall license, including any indicia of licensure not previously provided to the board within ten (10) days of notification by the board that the surrender is accepted if not already provided. Respondent may not reapply for any license from the board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board, including any outstanding costs.

13. Practice Requirement – Extension of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacist in California for a minimum of 30 hours per calendar month. Any month during which this minimum is not met shall extend the period of probation by one month. During any such period of insufficient employment, respondent must nonetheless comply with all terms and conditions of probation, unless respondent receives a waiver in writing from the board or its designee.

If does not practice as a pharmacist in California for the minimum number of hours in any calendar month, for any reason (including vacation), respondent shall notify the board in writing within ten (10) days of the conclusion of that calendar month. This notification shall include at least: the date(s), location(s), and hours of last practice; the reason(s) for the interruption or reduction in practice; and the anticipated date(s) on which respondent will resume practice at the required level. Respondent shall notify the board in writing within ten (10) days following the next calendar month during which respondent practices as a pharmacist in California for the minimum number of hours. Any failure to provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for respondent's probation to be extended pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months. The board or its designee may post a notice of the extended probation period on its website.

14. Violation of Probation

If respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent, and the board shall provide notice to respondent that probation shall automatically be extended, until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed. The board or its designee may post a notice of the extended probation period on its website.

If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation or an accusation is filed against respondent during probation, or the preparation of an accusation or petition to revoke probation is requested from the Office of the Attorney General, the board shall have continuing jurisdiction

and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

15. Completion of Probation

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

16. Community Services Program

Within sixty (60) days of the effective date of this decision, respondent shall submit to the board or its designee, for prior approval, a community service program in which respondent shall provide free health-care related services on a regular basis to a community or charitable facility or agency for at least 25 hours per year for the first two years of probation. Within thirty (30) days of board approval thereof, respondent shall submit documentation to the board demonstrating commencement of the community service program. A record of this notification must be provided to the board upon request. Respondent shall report on progress with the community service program in the quarterly reports. Failure to timely submit, commence, or comply with the program shall be considered a violation of probation.

17. Remedial Education

Within ninety (90) days of the effective date of this decision, respondent shall submit to the board or its designee, for prior approval, an appropriate program of remedial education related to unprofessional conduct. The program of remedial education shall consist of at least 10 hours, which shall be completed within 18 months at respondent's own expense. All remedial education shall be in addition to, and shall not be credited toward, continuing education (CE) courses used for license renewal purposes.

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

Following the completion of each course, the board or its designee may require respondent, at his own expense, to take an approved examination to test respondent's knowledge of the course. If respondent does not achieve a passing score on the examination, this failure shall be considered a violation of probation. Any such examination failure shall require respondent to take another course approved by the board in the same subject area.

18. Ethics Course

Within sixty (60) calendar days of the effective date of this decision, respondent shall enroll in a course in ethics, at respondent's expense, approved in advance by the board or its designee that complies with Title 16 California Code of Regulations section 1773.5. Respondent shall provide proof of enrollment upon request. Within five (5) days of completion, respondent shall submit a copy of the certificate of completion to the board or its designee. Failure to timely enroll in an approved ethics course, to initiate the course during the first year of probation, to successfully complete it before the end of the second year of probation, or to timely submit proof of completion to the board or its designee, shall be considered a violation of probation.

19. Supervised Practice

Within thirty (30) days of the effective date of this decision, respondent shall submit to the board or its designee, for prior approval, the name of a pharmacist licensed by and not on probation with the board, to serve as respondent's practice supervisor. As part of the documentation submitted, respondent shall cause the proposed practice supervisor to report to the board in writing acknowledging that he or she has read the decision in case number 5904 (OAH No. 2018020259), and is familiar with the terms and conditions imposed thereby, including the level of supervision required by the board or its designee. This level will be determined by the board or its designee, will be communicated to the respondent on or before the effective date of this decision and shall be one of the following:

Continuous - At least 75% of a work week

Substantial - At least 50% of a work week

Partial - At least 25% of a work week

Daily Review - Supervisor's review of probationer's daily activities within 24 hours

Respondent may practice only under the required level of supervision by an approved practice supervisor. If, for any reason, including change of employment, respondent is no longer supervised at the required level by an approved practice supervisor, within ten (10) days of this change in supervision respondent shall submit to the board or its designee, for prior approval, the name of a pharmacist licensed by and not on probation with the board, to serve as respondent's replacement practice supervisor. As part of the documentation submitted, respondent shall cause the proposed replacement practice supervisor to report to the board in writing acknowledging that he or she has read the decision in case number 5904 (OAH No. 2018020259), and is familiar with the terms and conditions imposed thereby, including the level of supervision required.

Any of the following shall result in the automatic suspension of practice by respondent and shall be considered a violation of probation:

Failure to nominate an initial practice supervisor, and to have that practice supervisor report to the board in writing acknowledging the decision, terms and conditions, and supervision level, within thirty (30) days;

Failure to nominate a replacement practice supervisor, and to have that practice supervisor report to the board in writing acknowledging the decision, terms and conditions, and supervision level, within ten (10) days;

Practicing in the absence of an approved practice supervisor beyond the initial or replacement nomination period; or

Any failure to adhere to the required level of supervision.

Respondent shall not resume practice until notified in writing by the board or its designee.

During any suspension, respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, third-party logistics provider, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the board, or any manufacturer, or any area where dangerous drugs and/or dangerous devices or controlled substances are maintained.

Respondent shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the board, or have access to or control the ordering, distributing, manufacturing or dispensing of dangerous drugs and/or dangerous devices or controlled substances.

During any suspension, respondent shall not engage in any activity that requires the professional judgment and/or licensure as a pharmacist.

Respondent shall not direct or control any aspect of the practice of pharmacy or of the manufacture, distribution, wholesaling, or retailing of dangerous drugs and/or dangerous devices or controlled substances.

Failure to comply with any suspension shall be considered a violation of probation.

20. No Ownership or Management of Licensed Premises

Respondent shall not own, have any legal or beneficial interest in, or serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90) days following the effective date of this decision and shall immediately thereafter provide written proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide documentation thereof shall be considered a violation of probation.

B. Original Permit Number PHY 50159 issued to Getwell Pharmacy and Medical Supply Corp., doing business as Getwell Pharmacy and Medical Supply, Michael Chikaodinaka Acholonu, President and Pharmacist-in-Charge is revoked. Respondent Getwell Pharmacy is jointly and severally liable for the total costs in the amount of \$48,107.

DATED: March 25, 2019

DocuSigned by:

*Regina Brown*

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REGINA BROWN  
Administrative Law Judge  
Office of Administrative Hearings

1 KAMALA D. HARRIS  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 JONATHAN D. COOPER  
Deputy Attorney General  
4 State Bar No. 141461  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 703-1404  
6 Facsimile: (415) 703-5480  
*Attorneys for Complainant*

7  
8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 5904

11 **GETWELL PHARMACY & MEDICAL**  
12 **SUPPLY**  
13 **699 E. 14<sup>th</sup> Street**  
**San Leandro, CA 94577**

**A C C U S A T I O N**

14 **Pharmacy Permit No. PHY 50159**

15 **And**

16 **MICHAEL CHIKAODINAKA**  
17 **ACHOLONU**  
18 **P.O. Box 2013**  
**San Leandro, CA 94577**

19 **Original Permit No. RPH 45757**

20 Respondent.

21 Complainant alleges:

22 **PARTIES**

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

25 2. On or about September 14, 1992, the Board of Pharmacy issued Original Permit  
26 Number RPH 45757 to Michael Chikaodinaka Acholonu (hereinafter "Respondent Acholonu").  
27 The Original Permit was in full force and effect at all times pertinent to this Accusation and will  
28 expire on September 30, 2018, unless renewed.



1 institution, or establishment holding a currently valid and unrevoked certificate, license, permit,  
2 registration, or exemption under Division 2 (commencing with Section 1200) of the Health and  
3 Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and  
4 Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

5 (b) The owner, officer, and partner of a pharmacy, wholesaler, or veterinary food-animal  
6 drug retailer shall be jointly responsible, with the pharmacist-in-charge or designated  
7 representative-in-charge, for maintaining the records and inventory described in this section.

8 . . .

9 10. Section 4105 of the Code requires, in pertinent part, that unless a waiver is granted by  
10 the board, all records and other documentation of the acquisition and disposition of dangerous  
11 drugs and devices by any entity licensed by the board be retained on the licensed premises, in a  
12 readily retrievable form, for three years from the date of making.

13 11. Section 4113(c) of the Code states:

14 The pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state  
15 and federal laws and regulations pertaining to the practice of pharmacy.

16 12. Section 4301 of the Code states, in pertinent part:

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

20 . . .

21 (d) The clearly excessive furnishing of controlled substances in violation of subdivision (a)  
22 of Section 11153 of the Health and Safety Code.

23 . . .

24 (j) The violation of any of the statutes of this state, of any other state, or of the United  
25 States regulating controlled substances and dangerous drugs.

26 . . .

27 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
28 violation of or conspiring to violate any provision or term of this chapter or of the applicable

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 13. Section 4306.5 of the Code states:

5 Unprofessional conduct for a pharmacist may include any of the following:

6 (a) Acts or omissions that involve, in whole or in part, the inappropriate exercise of his or  
7 her education, training, or experience as a pharmacist, whether or not the act or omission arises in  
8 the course of the practice of pharmacy or the ownership, management, administration, or  
9 operation of a pharmacy or other entity licensed by the board.

10 (b) Acts or omissions that involve, in whole or in part, the failure to exercise or implement  
11 his or her best professional judgment or corresponding responsibility with regard to the  
12 dispensing or furnishing of controlled substances, dangerous drugs, or dangerous devices, or with  
13 regard to the provision of services.

14 (c) Acts or omissions that involve, in whole or in part, the failure to consult appropriate  
15 patient, prescription, and other records pertaining to the performance of any pharmacy function.

16 (d) Acts or omissions that involve, in whole or in part, the failure to fully maintain and  
17 retain appropriate patient-specific information pertaining to the performance of any pharmacy  
18 function.

19 14. Section 4307 of the Code states:

20 (a) Any person who has been denied a license or whose license has been revoked or is  
21 under suspension, or who has failed to renew his or her license while it was under suspension, or  
22 who has been a manager, administrator, owner, member, officer, director, associate, partner, or  
23 any other person with management or control of any partnership, corporation, trust, firm, or  
24 association whose application for a license has been denied or revoked, is under suspension or has  
25 been placed on probation, and while acting as the manager, administrator, owner, member,  
26 officer, director, associate, partner, or any other person with management or control had  
27 knowledge of or knowingly participated in any conduct for which the license was denied,  
28 revoked, suspended, or placed on probation, shall be prohibited from serving as a manager,

1 administrator, owner, member, officer, director, associate, partner, or in any other position with  
2 management or control of a licensee as follows:

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

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

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

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

18 15. Section 4332 of the Code states:

19 Any person who fails, neglects, or refuses to maintain the records required by Section 4081  
20 or who, when called upon by an authorized officer or a member of the board, fails, neglects, or  
21 refuses to produce or provide the records within a reasonable time, or who willfully produces or  
22 furnishes records that are false, is guilty of a misdemeanor.

23 **California Code of Regulations:**

24 16. California Code of Regulations, title 16, section 1707.3 states:

25 Prior to consultation as set forth in section 1707.2, a pharmacist shall review a patient's  
26 drug therapy and medication record before each prescription drug is delivered. The review shall  
27 include screening for severe potential drug therapy problems.

28 17. California Code of Regulations, title 16, section 1715 states:

1 (a) The pharmacist-in-charge of each pharmacy as defined under section 4029 or section  
2 4037 of the Business and Professions Code shall complete a self-assessment of the pharmacy's  
3 compliance with federal and state pharmacy law. The assessment shall be performed before July 1  
4 of every odd-numbered year. The primary purpose of the self-assessment is to promote  
5 compliance through self-examination and education.

6 (b) In addition to the self-assessment required in subdivision (a) of this section, the  
7 pharmacist-in-charge shall complete a self-assessment within 30 days whenever:

8 (1) A new pharmacy permit has been issued, or

9 (2) There is a change in the pharmacist-in-charge, and he or she becomes the new  
10 pharmacist-in-charge of a pharmacy.

11 (3) There is a change in the licensed location of a pharmacy to a new address.

12 (c) The components of this assessment shall be on Form 17M-13 (Rev. 10/14) entitled  
13 "Community Pharmacy Self-Assessment Hospital Outpatient Pharmacy Self-Assessment" and on  
14 Form 17M-14 (Rev. 10/14) entitled "Hospital Pharmacy Self-Assessment" which are hereby  
15 incorporated by reference to evaluate compliance with federal and state laws and regulations.

16 (d) Each self-assessment shall be kept on file in the pharmacy for three years after it is  
17 performed.

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

19 "Current Inventory" as used in Sections 4081 and 4332 of the Business and Professions  
20 Code shall be considered to include complete accountability for all dangerous drugs handled by  
21 every licensee enumerated in Sections 4081 and 4332.

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

24 19. California Code of Regulations, title 16, section 1761, states:

25 (a) No pharmacist shall compound or dispense any prescription which contains any  
26 significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon receipt of any  
27 such prescription, the pharmacist shall contact the prescriber to obtain the information needed to  
28 validate the prescription.

1 (b) Even after conferring with the prescriber, a pharmacist shall not compound or dispense  
2 a controlled substance prescription where the pharmacist knows or has objective reason to know  
3 that said prescription was not issued for a legitimate medical purpose.

4 **Controlled Substances/Dangerous Drugs:**

5 Section 4021 of the Code provides that a “controlled substance” means any substance  
6 listed in Schedules I through V contained in Health and Safety Code section 11053 et seq.

7 20. Section 4022 of the Code states, in pertinent part:

8 “Dangerous drug: or “dangerous device” means any drug or device unsafe for self use,  
9 except veterinary drugs that are labeled as such, and includes the following:

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

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

14 22. California Health and Safety Code section 11153 states:

15 (a) A prescription for a controlled substance shall only be issued for a legitimate medical  
16 purpose by an individual practitioner acting in the usual course of his or her professional practice.  
17 The responsibility for the proper prescribing and dispensing of controlled substances is upon the  
18 prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the  
19 prescription. Except as authorized by this division, the following are not legal prescriptions: (1)  
20 an order purporting to be a prescription which is issued not in the usual course of professional  
21 treatment or in legitimate and authorized research; or (2) an order for an addict or habitual user of  
22 controlled substances, which is issued not in the course of professional treatment or as part of an  
23 authorized narcotic treatment program, for the purpose of providing the user with controlled  
24 substances, sufficient to keep him or her comfortable by maintaining customary use.

25 (b) Any person who knowingly violates this section shall be punished by imprisonment  
26 pursuant to subdivision (h) of Section 1170 of the Penal Code, or in a county jail not exceeding  
27 one year, or by a fine not exceeding twenty thousand dollars (\$20,000), or by both that fine and  
28 imprisonment.

1 (c) No provision of the amendments to this section enacted during the second year of the  
2 1981-82 Regular Session shall be construed as expanding the scope of practice of a pharmacist.

3 23. **Promethazine with Codeine Syrup (PCS)** is a controlled substance pursuant to  
4 Health and Safety Code section 11058 and a dangerous drug pursuant to Business and Professions  
5 Code section 4022.

6 24. **Norco, or Hydrocodone with Acetaminophen**, is a controlled substance pursuant to  
7 Health and Safety Code section 11056 and a dangerous drug pursuant to Business and Professions  
8 Code section 4022.

9 25. **Soma, or Carisoprodol**, is a controlled substance pursuant to title 21 C.F.R. section  
10 1308.14(c)(6)<sup>1</sup> and a dangerous drug pursuant to Business and Professions Code section 4022.

#### 11 COST RECOVERY

12 26. Section **125.3** of the Code provides, in pertinent part, that the Board may request the  
13 administrative law judge to direct a licentiate found to have committed a violation or violations of  
14 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
15 enforcement of the case.

#### 16 FACTUAL SUMMARY

##### 17 Excessive Furnishing:

18 27. Between July, 2011 and July, 2014, Respondents consistently dispensed controlled  
19 substances, which substances had a high potential for abuse, to customers despite the existence of  
20 multiple indications that the prescriptions at issue should not be filled. In filling the prescriptions,  
21 Respondents ignored significant indications of possible drug abuse including, but not limited to:

- 22 1. The fact that the vast majority of the prescriptions, numbering over 16,000, were written by  
23 two practitioners.
- 24 2. The fact that an unusually high percentage of the customers paid cash for these  
25 prescription.
- 26 3. The fact that the prescriptions called for excessive amounts of Promethazine with codeine,

27  
28 <sup>1</sup> Effective January 11, 2012.

- 1 a medication designed for temporary use.
- 2 4. The fact that the prescriptions manifested monotonous, non-diverse prescribing practices
- 3 among different patients involving Promethazine with codeine, Norco and Soma.
- 4 5. The fact that the prescriptions called for consistently high doses of narcotic without
- 5 tapering up from lower doses.
- 6 6. The fact that multiple prescriptions were written, near in time, for numerous individuals at
- 7 the same address or addresses and/or individuals who shared surnames.
- 8 7. The fact that many of the individuals lived far away from the pharmacy.
- 9 8. The fact that the customers often sought, and were provided with, refills earlier than
- 10 necessary.
- 11 9. The fact that the prescriptions were, in many cases, inconsistent with applicable standards
- 12 for geriatric patients.

13 28. During this time period, Respondents failed to appropriately review patients'

14 medication therapy with readily available tools such as Patient Activity Reports, Respondents'

15 own records and consideration of what are considered in the industry to be red flags. As a result,

16 patients were furnished with early and/or excessive amounts of controlled substances, and

17 patients involved in obvious doctor and pharmacy shopping were furnished controlled substances.

18 As a result of these failures, and those set forth above in paragraph, Respondents filled

19 prescriptions which were not for legitimate medical purposes as that term is used in California

20 Health and Safety Code section 11153, in that the prescriptions were for addicts or habitual users.

21 July 9, 2014 Inspection:

22 29. On or about July 9, 2014, Board of Pharmacy inspectors conducted an audit of

23 Respondents' records. The records at issue were those pertaining to August 27, 2012 through

24 July 9, 2014. The audit revealed that Respondents failed to account for 379,473 ml of

25 promethazine with codeine, 113,999 tablets of Norco and 40,257 tablets of carisoprodol.

26 ///

27 ///

28 ///

1 **FIRST CAUSE FOR DISCIPLINE**

2 (Excessive Furnishing)

3 30. Respondents are each and severally subject to discipline under Code sections 4113(c)  
4 and 4301, subsections (d), (j) and (o), and under California Code of Regulations, title 16, section  
5 1761, in that they engaged in clearly excessive furnishing of controlled substances in violation of  
6 Health and Safety Code section 11153 and not for a valid medical purpose, as set forth above in  
7 paragraphs 27-29.

8 **SECOND CAUSE FOR DISCIPLINE**

9 (Failure to Exercise Due Caution)

10 31. Respondents are each and severally subject to discipline under Code sections 4113(c),  
11 4301, subsections (j) and (o), and 4306.5, and under California Code of Regulations, title 16,  
12 section 1707.3, in that Respondents committed unprofessional conduct by failure to appropriately  
13 exercise the education training and experience of a pharmacist, and failure to exercise or  
14 implement professional judgment, and failure to consult appropriate records, in the furnishing of  
15 controlled substances, as set forth above in paragraphs 27-29.

16 **THIRD CAUSE FOR DISCIPLINE**

17 (Incomplete Inventory and/or Records of Acquisition and/or Disposition)

18 32. Respondents are each and severally subject to discipline under Code sections 4113(c),  
19 4301, subsections (j) and (o), and, by reference to section(s) 4081, 4105 and/or 4332 of the Code,  
20 and/or California Code of Regulations, title 16, section 1718, for violating statutes regulating  
21 controlled substances or dangerous drugs, and/or directly or indirectly violating, attempting to  
22 violate, or assisting in or abetting a violation of laws or regulations governing the practice of  
23 pharmacy, in that, as described in paragraphs 27-29, Respondents failed to maintain an accurate,  
24 complete, and readily retrievable inventory and/or records of acquisition and disposition of all  
25 dangerous drugs in the pharmacy inventory.

26 **FOURTH CAUSE FOR DISCIPLINE**

27 (Unprofessional Conduct)

28 33. Respondents are each and severally subject to discipline under section 4301 of the

1 Code in that Respondents, as described in paragraphs 27-29 above, engaged in unprofessional  
2 conduct.

3 **OTHER MATTERS**

4 34. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number  
5 PHY 50159, issued to Getwell Pharmacy & Medical Supply Corp., Michael Chikaodinak  
6 Acholonu, President, Owner, Pharmacist-in-Charge (Respondent Getwell Pharmacy), then  
7 Respondent Getwell Pharmacy shall be prohibited from serving as a manager, administrator,  
8 owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy  
9 Permit Number PHY 50159 is placed on probation or until Pharmacy Permit Number PHY  
10 50159 is reinstated if it is revoked.

11 35. Pursuant to Code section 4307, if discipline is imposed on Respondent Getwell  
12 Pharmacy while Michael Chikaodinak Acholonu has been an officer and owner and had  
13 knowledge of or knowingly participated in any conduct for which the licensee was disciplined,  
14 Michael Chikaodinak Acholonu shall be prohibited from serving as a manager, administrator,  
15 owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy  
16 Permit Number PHY 50159 is placed on probation or until Pharmacy Permit Number PHY  
17 50159 is reinstated if it is revoked.

18 36. Pursuant to Code section 4307, if discipline is imposed on Pharmacist License  
19 Number RPH 45757, issued to Michael Chikaodinak Acholonu, then Michael Chikaodinak  
20 Acholonu shall be prohibited from serving as a manager, administrator, owner, member, officer,  
21 director, associate, or partner of a licensee for five years if Pharmacist License Number RPH  
22 45757 is placed on probation or until Pharmacist License Number RPH 45757 is reinstated if it is  
23 revoked.

24 **DISCIPLINE CONSIDERATIONS**

25 37. To determine the level of discipline, if any, to be imposed on Respondent Acholonu  
26 and/or Respondent Getwell Pharmacy (collectively, Respondents), Complainant further alleges  
27 that:

28 38. On or about January 20, 2011, Citation No. CI 2010 45837, with a fine of

1 \$329,250.00,<sup>2</sup> was issued to Respondent Getwell Pharmacy for failure(s) to comply with its  
2 obligation(s) with regard to storing, accounting for and dispensing controlled substances. That  
3 citation is now final and is incorporated by reference as if fully set forth herein.

4 39. On or about January 20, 2011, Citation No. CI 2010 47073, with a fine of  
5 \$329,250.00,<sup>3</sup> was issued to Respondent Acholonu for failure(s) to comply with his obligation(s)  
6 with regard to storing, accounting for and dispensing controlled substances. That citation is now  
7 final and is incorporated by reference as if fully set forth herein.

8 40. On or about December 11, 2012, Citation No. CI 2011 52731, with a fine of  
9 \$2,500.00,<sup>4</sup> was issued to Respondent Getwell Pharmacy for failure(s) to comply with its  
10 obligation(s) with regard to storing, accounting for and dispensing controlled substances. That  
11 citation is now final and is incorporated by reference as if fully set forth herein.

12 41. On or about December 11, 2012, Citation No. CI 2012 54958, with a fine of  
13 \$2,000.00,<sup>5</sup> was issued to Respondent Acholonu for failure(s) to comply with his obligation(s)  
14 with regard to storing, accounting for and dispensing controlled substances. That citation is now  
15 final and is incorporated by reference as if fully set forth herein.

16 **PRAYER**

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

19 1. Revoking or suspending Original Permit Number RPH 45757, issued to Michael  
20 Chikaodinaka Acholonu;

21 2. Revoking or suspending Pharmacy License No. PHY 50159, issued to Getwell  
22 Pharmacy & Medical Supply Corp., Michael Chikaodinak Acholonu, President, Owner,  
23 Pharmacist-in-Charge;

24 3. Prohibiting Getwell Pharmacy & Medical Supply Corp., Michael Chikaodinak  
25 Acholonu, President, Owner, Pharmacist-in-Charge from serving as a manager, administrator,

26 <sup>2</sup> The amount was subsequently reduced to \$4,250.00.

27 <sup>3</sup> The amount was subsequently reduced to \$15,750.00.

28 <sup>4</sup> The amount was subsequently reduced to \$1,500.00.

<sup>5</sup> The amount was subsequently reduced to \$1,750.00.

1 owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy  
2 Permit Number PHY 50159 is placed on probation or until Pharmacy Permit Number PHY 50159  
3 is reinstated if Pharmacy Permit Number PHY 50159 is revoked;

4 4. Prohibiting Michael Chikaodinak Acholonu from serving as a manager,  
5 administrator, owner, member, officer, director, associate, or partner of a licensee for five years if  
6 Pharmacy Permit Number PHY 50159 is placed on probation or until Pharmacy Permit Number  
7 PHY 50159 is reinstated if Pharmacy Permit Number PHY 50159 is revoked;

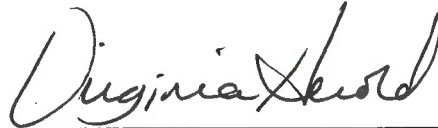
8 5. Prohibiting Michael Chikaodinak Acholonu from serving as a manager,  
9 administrator, owner, member, officer, director, associate, or partner of a licensee for five years if  
10 Pharmacist License Number RPH 45757 is placed on probation or until Pharmacist License  
11 Number RPH 45757 is reinstated if Pharmacist License Number RPH is revoked;

12 6. Ordering Respondents to jointly and severally be responsible to pay the Board of  
13 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to  
14 Business and Professions Code section 125.3;

15 7. Taking such other and further action as deemed necessary and proper.

16  
17 DATED: \_\_\_\_\_

10/18/17



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