

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

In the Matter of the Accusation Against:

**DRUG THERAPY SYSTEMS CO. INC.,
dba CHICO PHARMACY
251 Cohasset Road, #100
Chico, CA 95926**

Original Pharmacy Permit No. PHY 46018

and

**JANET BALBUTIN HARRIS
1629 Manzanita Avenue
Chico, CA 95926**

Original Pharmacist License No. RPH 25833

Respondents.

Case No. 6128

OAH No. 2018020769

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

**FOR RESPONDENT DRUG THERAPY
SYSTEMS CO. INC.,
DBA CHICO PHARMACY ONLY**

DECISION AND ORDER

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

This Decision shall become effective at 5:00 p.m. on September 20, 2018.

It is so ORDERED on August 21, 2018.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Victor Law, R.Ph.
Board President

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14 Chico, CA 95926

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**STIPULATED SETTLEMENT AND
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15 **Original Pharmacy Permit No. PHY 46018,**
16 **and**

**FOR RESPONDENT DRUG THERAPY
SYSTEMS CO. INC.,
DBA CHICO PHARMACY ONLY**

17 **JANET BALBUTIN HARRIS**
1629 Manzanita Avenue
18 Chico, CA 95926

19 **Original Pharmacist License No. RPH 25833**

20 Respondents.

21
22 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
23 entitled proceedings that the following matters are true:

24 **PARTIES**

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

2. Respondent Drug Therapy Systems Co. Inc., dba Chico Pharmacy (Respondent) is represented in this proceeding by attorney Ivan Petrzelka, PharmD, JD, MBA, whose address is: 49 Discovery, Suite 240 Irvine, CA 92618-6713

3. On or about January 15, 2003, the Board issued Original Pharmacy Permit No. 46018 to Drug Therapy Systems Co. Inc., dba Chico Pharmacy (Respondent). The Original Pharmacy Permit No. 46018 was in full force and effect at all times relevant to the charges brought in Accusation No. 6128, and will expire on January 1, 2019, unless renewed.

JURISDICTION

4. Accusation No. 6128 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on December 26, 2017. Respondent timely filed its Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 6128 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 6128. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

1 CULPABILITY

2 9. Respondent understands and agrees that the charges and allegations in Accusation
3 No. 6128, if proven at a hearing, constitute cause for imposing discipline upon its Original
4 Pharmacy Permit No. 46018.

5 10. For the purpose of resolving Accusation No. 6128 without the expense and
6 uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could
7 establish a factual basis for the charges in Accusation No. 6128, and that Respondent hereby
8 gives up its right to contest those charges.

9 11. Respondent agrees that its Original Pharmacy Permit No. 46018 is subject to
10 discipline and agrees to be bound by the Board's probationary terms as set forth in the
11 Disciplinary Order below.

12 CONTINGENCY

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

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

25 14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
26 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
27 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
28 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary

1 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
2 writing executed by an authorized representative of each of the parties.

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

6 **DISCIPLINARY ORDER**

7 IT IS HEREBY ORDERED that Original Pharmacy Permit No. 46018 issued to
8 Respondent Drug Therapy Systems Co. Inc., dba Chico Pharmacy is revoked. However, the
9 revocation is stayed and Respondent is placed on probation for three (3) years on the following
10 terms and conditions.

11 **1. Definition: Respondent**

12 For the purposes of these terms and conditions, "respondent" shall refer to Drug Therapy
13 Systems Co. Inc., dba Chico Pharmacy. All terms and conditions stated herein shall bind and be
14 applicable to the licensed premises and to all owners, managers, officers, administrators,
15 members, directors, trustees, associates, or partners thereof. For purposes of compliance with any
16 term or condition, any report, submission, filing, payment, or appearance required to be made by
17 respondent to or before the board or its designee shall be made by an owner or executive officer
18 with authority to act on behalf of and legally bind the licensed entity.

19 **2. Obey All Laws**

20 Respondent shall obey all state and federal laws and regulations.

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

- 23 • an arrest or issuance of a criminal complaint for violation of any provision of the
24 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
25 substances laws;
- 26 • a plea of guilty, or nolo contendere, no contest, or similar, in any state or federal criminal
27 proceeding to any criminal complaint, information or indictment;
- 28 • a conviction of any crime; or

- 1 • discipline, citation, or other administrative action filed by any state or federal agency
2 which involves respondent's Original Pharmacy Permit No. 46018 or which is related to
3 the practice of pharmacy or the manufacturing, obtaining, handling or distributing, billing,
4 or charging for any dangerous drug, and/or dangerous device or controlled substance.
5 Failure to timely report any such occurrence shall be considered a violation of probation.

6 **3. Report to the Board**

7 Respondent shall report to the board quarterly, on a schedule as directed by the board or its
8 designee. The report shall be made either in person or in writing, as directed. Among other
9 requirements, respondent shall state in each report under penalty of perjury whether there has
10 been compliance with all the terms and conditions of probation. Failure to submit timely reports
11 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency
12 in submission of reports as directed may be added to the total period of probation. Moreover, if
13 the final probation report is not made as directed, probation shall be automatically extended until
14 such time as the final report is made and accepted by the board.

15 **4. Interview with the Board**

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

21 **5. Cooperate with Board Staff**

22 Respondent shall timely cooperate with the board's inspection program and with the board's
23 monitoring and investigation of respondent's compliance with the terms and conditions of the
24 probation, including but not limited to: timely responses to requests for information by board
25 staff; timely compliance with directives from board staff regarding requirements of any term or
26 condition of probation; and timely completion of documentation pertaining to a term or condition
27 of probation. Failure to timely cooperate shall be considered a violation of probation.

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1 **6. Reimbursement of Board Costs**

2 As a condition precedent to successful completion of probation, Respondents Drug Therapy
3 Systems Co. Inc., dba Chico Pharmacy and Janet Balbutin Harris shall be jointly and severally
4 liable for paying the board its costs of investigation, enforcement, and prosecution in the amount
5 of \$8,000.00.

6 Respondent shall be permitted to pay these costs in a payment plan approved by the board
7 or its designee, so long as full payment is completed no later than one (1) year prior to the end
8 date of probation. There shall be no deviation from this schedule absent prior written approval by
9 the board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a
10 violation of probation.

11 **7. Probation Monitoring Costs**

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

16 **8. Status of License**

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

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

25 **9. License Surrender While on Probation/Suspension**

26 Following the effective date of this decision, should respondent wish to discontinue
27 business, respondent may tender the premises license to the board for surrender. The board or its
28 designee shall have the discretion whether to grant the request for surrender or take any other

1 action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the
2 license, respondent will no longer be subject to the terms and conditions of probation.

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

6 Respondent further stipulates that it shall reimburse the board for its costs of investigation
7 and prosecution prior to the acceptance of the surrender.

8 Upon acceptance of the surrender, respondent shall relinquish the premises wall and
9 renewal license to the board within ten (10) days of notification by the board that the surrender is
10 accepted. Respondent shall further submit a completed Discontinuance of Business form
11 according to board guidelines and shall notify the board of the records inventory transfer within
12 five (5) days. Respondent shall further arrange for the transfer of all records of acquisition and
13 disposition of dangerous drugs and/or devices to premises licensed and approved by the board.

14 Respondent shall also, by the effective date of this decision, arrange for the continuation of
15 care for ongoing patients of the pharmacy by, at minimum, providing a written notice to ongoing
16 patients that specifies the anticipated closing date of the pharmacy and that identifies one or more
17 area pharmacies capable of taking up the patients' care, and by cooperating as may be necessary
18 in the transfer of records or prescriptions for ongoing patients. Within five days of its provision to
19 the pharmacy's ongoing patients, Respondent shall provide a copy of the written notice to the
20 board. For the purposes of this provision, "ongoing patients" means those patients for whom the
21 pharmacy has on file a prescription with one or more refills outstanding, or for whom the
22 pharmacy has filled a prescription within the preceding sixty (60) days.

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

26 Respondent further stipulates that it shall reimburse the board for its costs of investigation
27 and prosecution prior to the acceptance of the surrender.

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1 **10. Sale or Discontinuance of Business**

2 During the period of probation, should respondent sell, trade or transfer all or part of the
3 ownership of the licensed entity, discontinue doing business under the license issued to
4 respondent, or should practice at that location be assumed by another full or partial owner,
5 person, firm, business, or entity, under the same or a different premises license number, the board
6 or its designee shall have the sole discretion to determine whether to exercise continuing
7 jurisdiction over the licensed location, under the current or new premises license number, and/or
8 carry the remaining period of probation forward to be applicable to the current or new premises
9 license number of the new owner.

10 **11. Notice to Employees**

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

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

24 **12. Owners and Officers: Knowledge of the Law**

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

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

3 **13. Premises Open for Business**

4 Respondent shall remain open and engaged in its ordinary business as a pharmacy in
5 California for a minimum of forty (40) hours per calendar month. Any month during which this
6 minimum is not met shall toll the period of probation, i.e., the period of probation shall be
7 extended by one month for each month during with this minimum is not met. During any such
8 period of tolling of probation, respondent must nonetheless comply with all terms and conditions
9 of probation, unless respondent is informed otherwise in writing by the board or its designee. If
10 respondent is not open and engaged in its ordinary business as a pharmacy for a minimum of forty
11 (40) hours in any calendar month, for any reason (including vacation), respondent shall notify the
12 board in writing within ten (10) days of the conclusion of that calendar month. This notification
13 shall include at minimum all of the following: the date(s) and hours respondent was open; the
14 reason(s) for the interruption or why business was not conducted; and the anticipated date(s) on
15 which respondent will resume business as required. Respondent shall further notify the board in
16 writing with ten (10) days following the next calendar month during which respondent is open
17 and engaged in its ordinary business as a pharmacy in California for a minimum of forty (40)
18 hours. Any failure to timely provide such notification(s) shall be considered a violation of
19 probation.

20 **14. Posted Notice of Probation**

21 Respondent shall prominently post a probation notice provided by the board or its designee
22 in a place conspicuous to and readable by the public within two (2) days of receipt thereof from
23 the board or its designee. Failure to timely post such notice, or to maintain the posting during the
24 entire period of probation, shall be considered a violation of probation.

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

1 **15. Violation of Probation**

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

7 If respondent violates probation in any respect, the board, after giving respondent notice
8 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
9 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a
10 violation thereof may lead to automatic termination of the stay and/or revocation of the Pharmacy
11 Permit. If a petition to revoke probation or an accusation is filed against respondent during
12 probation, the board shall have continuing jurisdiction and the period of probation shall be
13 automatically extended until the petition to revoke probation or accusation is heard and decided,
14 and the charges and allegations in the Accusation shall be deemed true and correct.

15 **16. Completion of Probation**

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

18 **17. Consultant Pharmacist Review**

19 During the period of probation, Respondent shall retain an independent consultant at its
20 own expense who shall be responsible for reviewing pharmacy operations on a quarterly basis for
21 compliance by Respondent with state and federal laws and regulations governing the practice of
22 pharmacy and for compliance by Respondent with the obligations of a pharmacist-in-charge. The
23 consultant shall be a pharmacist licensed by, and not on probation with, the Board and whose
24 name shall be submitted to the Board or its designee, for prior approval, within thirty (30) days of
25 the effective date of this decision. The consultant shall report to the Board or its designee any
26 non-compliance with state and federal laws and regulations governing the practice of pharmacy
27 and non-compliance with the obligations of a pharmacist-in-charge within forty-eight (48) hours
28 of discovery of the non-compliance. During the period of probation, the Board or its designees

1 retains the discretion to reduce the frequency of the consultant's review of Respondent's
2 operations. Failure to timely retain, seek approval of, or ensure timely reporting by the consultant
3 shall be considered a violation of probation.

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DATED:

DRUG THERAPY SYSTEMS CO. INC., DBA
CHICO PHARMACY
Respondent

DATED:

IVAN PETRZELKA, PHARMD, JD, MBA
Attorney for Respondent

Dated:

~~MABEL LEW~~
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 6128

1 XAVIER BECERRA
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2 KENT D. HARRIS
Supervising Deputy Attorney General
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11 **DEPARTMENT OF CONSUMER AFFAIRS**
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12 In the Matter of the Accusation Against:

Case No. 6128

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14 **DBA CHICO PHARMACY**
15 **251 Cohasset Road, #100**
Chico, CA 95926

ACCUSATION

16 **Original Pharmacy Permit No. PHY 46018,**

17 **and**

18 **JANET BALBUTIN HARRIS**
19 **1629 Manzanita Avenue**
Chico, CA 95926

20 **Original Pharmacist License No. RPH 25833**

21 **and**

22 **AVA BALBUTIN**
23 **436 W. Shasta Avenue**
Chico, CA 95973

24 **Original Pharmacist License No. RPH 27228**

25
26 Respondents.
27

28 ///

1 Complainant alleges:

2 **PARTIES**

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

5 2. On or about January 15, 2003, the Board issued Original Pharmacy Permit Number
6 PHY 46018 to Chico Pharmacy (Respondent Chico Pharmacy). The Original Pharmacy Permit
7 was in full force and effect at all times relevant to the charges brought herein and will expire on
8 January 1, 2018, unless renewed.

9 3. On or about November 6, 1968, the Board issued Original Pharmacist License
10 Number RPH 25833 to Janet Balbutin Harris (Respondent Harris). The Original Pharmacist
11 License was in full force and effect at all times relevant to the charges brought herein and will
12 expire on March 31, 2018, unless renewed.

13 4. On or about May 7, 1971, the Board issued Original Pharmacist License Number
14 RPH 27228 to Ava Balbutin (Respondent Balbutin). The Original Pharmacist License was in full
15 force and effect at all times relevant to the charges brought herein and will expire on May 31,
16 2019, unless renewed.

17 **JURISDICTION**

18 5. This Accusation is brought before the Board under the authority of the following
19 laws. All section references are to the Business and Professions Code unless otherwise indicated.

20 6. Section 4301 of the Code states, in pertinent part:

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

24 ...

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

27 ...

28 (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

1 applicable federal and state laws and regulations governing pharmacy, including regulations
2 established by the board or by any other state or federal regulatory agency.

3 ...
4
5 7. Section 4300.1 of the Code states:

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

12 8. Section 4113 of the Code states, in pertinent part:

13 (a) Every pharmacy shall designate a pharmacist-in-charge and, within 30 days
14 thereof, shall notify the board in writing of the identity and license number of that
15 pharmacist and the date he or she was designated.

16 ...
17 (c) The pharmacist-in-charge shall be responsible for a pharmacy's compliance with
18 all state and federal laws and regulations pertaining to the practice of pharmacy.

19 ...
20 9. Section 4300.4 of the Code states that:

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

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

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

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1 **HEALTH & SAFETY CODE**

2 13. Section 11153 of the California Health & Safety Code states, in pertinent part:

- 3 (a) ...The responsibility for a proper prescribing and dispensing of controlled
4 substances is upon the prescribing practitioner, but a corresponding responsibility
5 rests with the pharmacist who fills the prescription....

6 **REGULATORY PROVISIONS**

7 **CALIFORNIA CODE OF REGULATIONS**

8 14. Section 1707.1 of title 16 of the California Code of Regulations (16 CCR 1707.1)
9 states:

10 (a) A pharmacy shall maintain medication profiles on all patients who have
11 prescriptions filled in that pharmacy except when the pharmacist has reasonable belief that
the patient will not continue to obtain prescription medications from that pharmacy.

12 (1) A patient medication record shall be maintained in an automated data processing
13 or manual record mode such that the following information is readily retrievable during the
pharmacy's normal operating hours.

14 (A) The patient's full name and address, telephone number, date of birth (or age) and
15 gender;

16 (B) For each prescription dispensed by the pharmacy:

17 1. The name, strength, dosage form, route of administration, if other than oral,
18 quantity and directions for use of any drug dispensed;

19 2. The prescriber's name and where appropriate, license number, DEA registration
number or other unique identifier;

20 3. The date on which a drug was dispensed or refilled;

21 4. The prescription number for each prescription; and

22 5. The information required by section 1717.

23 (C) Any of the following which may relate to drug therapy: patient allergies,
24 idiosyncrasies, current medications and relevant prior medications including
25 nonprescription medications and relevant devices, or medical conditions which are
26 communicated by the patient or the patient's agent.

27 (D) Any other information which the pharmacist, in his or her professional judgment,
28 deems appropriate.

1 (2) The patient medication record shall be maintained for at least one year from the
2 date when the last prescription was filled.

3 15. 16 CCR 1707.2 states, in pertinent part:

4 (a) A pharmacist shall provide oral consultation to his or her patient or the patient's
5 agent in all care settings:

6 (1) upon request; or

7 (2) whenever the pharmacist deems it warranted in the exercise of his or her
8 professional judgment.

9 (b)(1) In addition to the obligation to consult set forth in subsection (a), a pharmacist
10 shall provide oral consultation to his or her patient or the patient's agent in any care setting
11 in which the patient or agent is present:

12 (A) whenever the prescription drug has not previously been dispensed to a patient; or

13 (B) whenever a prescription drug not previously dispensed to a patient in the same
14 dosage form, strength or with the same written directions, is dispensed by the pharmacy.

15 (2) When the patient or agent is not present (including but not limited to a
16 prescription drug that was shipped by mail) a pharmacy shall ensure that the patient
17 receives written notice:

18 (A) of his or her right to request consultation; and

19 (B) a telephone number from which the patient may obtain oral consultation from a
20 pharmacist who has ready access to the patient's record.

21 ...

22 16. 16 CCR 1707.3 states, in pertinent part:

23 ...A pharmacist shall review a patient's drug therapy and medication record before
24 each prescription drug is delivered....

25 17. 16 CCR 1714 states, in pertinent part:

26 ...

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

1 ...
2 18. 16 CCR 1761 states, in pertinent part:

- 3 (a) No pharmacist shall compound or dispense any prescription which contains any
4 significant error, omission, irregularity, uncertainty, ambiguity or alteration.
5 Upon receipt of any such prescription, the pharmacist shall contact the prescriber
6 as to obtain the information needed to validate the prescription.

7 19. 16 CCR 1764 states:

8 No pharmacist shall exhibit, discuss, or reveal the contents of any prescription, the
9 therapeutic effect thereof, the nature, extent, or degree of illness suffered by any patient or
10 any medical information furnished by the prescriber with any person other than the patient
11 or his or her authorized representative, the prescriber or other licensed practitioner then
12 caring for the patient, another licensed pharmacist serving the patient, or a person duly
13 authorized by law to receive such information.

14 CODE OF FEDERAL REGULATIONS

15 20. Section 1301.75 of title 21 of the Code of Federal Regulations (21 CFR 1301.75)
16 states, in pertinent part:

- 17 (b) Controlled substances listed in Schedules II, III, IV, and V shall be stored in a
18 securely locked, substantially constructed cabinet. However, pharmacies and
19 institutional practitioners may disperse such substances throughout the stock of
20 noncontrolled substances in such a manner as to obstruct the theft or diversion of
21 the controlled substances.

22 COST RECOVERY

23 21. 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.

27 DRUGS

28 22. Fentanyl is a Schedule II controlled substance as designated by Health and Safety
Code section 11055, subdivision (c)(8).

23. Hydrocodone/acetaminophen (APAP), generic for Norco, is a Schedule II controlled substance as designated by Health and Safety Code section 11056, subdivision (e), and is a dangerous drug as designated by Code section 4022. It is used to treat pain and is an opiate.

24. Methadone is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (c)(14).

25. Morphine is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(L).

26. Oxycodone is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(M). Oxycodone can also be prescribed in extended release form as OxyContin, and in combination with acetaminophen as Oxycodone/APAP.

27. Suboxone is a Schedule III controlled substance as designated by Health and Safety Code section 11056, subdivision (e), and is a dangerous drug as designated by Code section 4022. It is used to treat opiate addiction.

28. Temazepam is a Schedule IV controlled substance as designated by Health and Safety Code section 11057, subdivision (d)(29).

29. Tramadol is a Schedule IV controlled substance as designated by the Code of Federal Regulations, Title 21, section 1308.14, subdivision (b)(3).

CAUSES FOR DISCIPLINE

Respondent Chico Pharmacy

FIRST CAUSE FOR DISCIPLINE

(Failure to Maintain Accurate Patient Profiles)

30. Respondent Chico Pharmacy is subject to disciplinary action under title 16 of the California Code of Regulations, section 1707.1, (16 CCR 1707.1), by and through Code section 4301(o), in that they failed to maintain accurate patient profiles. The circumstances are as follows:

31. On or about December 22, 2015, two prescriptions (Hydrocodone/apap 5/300mg #20, RX 8500486 and Tramadol 50mg #20 RX 8500486) written for Patient F Jr. were typed and

1 dispensed to Patient F Sr. The failure to maintain an accurate address in the patient profile for
2 Patient F Jr. resulted in the two prescriptions being dispensed in error to Patient F Sr.

3 **SECOND CAUSE FOR DISCIPLINE**

4 (Unauthorized Disclosure of Prescriptions)

5 32. Respondent Chico Pharmacy is subject to disciplinary action under 16 CCR 1764, as
6 it relates to California Civil Code section 56.10, by and through Code section 4301(o), in that
7 they failed to maintain patient confidentiality regarding prescriptions. The circumstances are set
8 forth in paragraph 30, above.

9 **THIRD CAUSE FOR DISCIPLINE**

10 (Patient Consultation)

11 33. Respondent Chico Pharmacy is subject to disciplinary action under 16 CCR 1707.2,
12 by and through Code section 4301(o), in that they failed to provide oral consultation or provide
13 patients with notice of the right to oral consultation. The circumstances are as follows:

14 34. On or about October 25, 2016, a patient ("MP") picked up a new prescription for
15 propranolol, a heart medication. The patient had not previously taken the medication and was not
16 counseled by either of the two pharmacists on duty. Also, Respondent regularly delivered
17 medications to patients in their homes and in board and care facilities. During an inspection,
18 Respondent admitted that patients with home deliveries did not receive any notice of their right to
19 receive a pharmacist consultation by telephone. The Inspector had to explain this requirement to
20 Respondent Harris.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 (Operational Standards and Security)

23 35. Respondent Chico Pharmacy is subject to disciplinary action under 16 CCR 1714 and
24 section 1301.75 of title 21 of the Code of Federal Regulations, by and through Code sections
25 4301(j) and 4301(o), in that they failed to safely and properly secure controlled substances. The
26 circumstances are as follows:

27 36. On or about October 25, 2016, Respondent stored the following schedule II controlled
28 substances grouped together on drug stock shelves: fentanyl, methadone, morphine, oxycodone,

1 oxycodone/APAP, and OxyContin. These drugs were not stored in a substantially constructed
2 locked cabinet, nor dispersed throughout the pharmacy stock of non-controlled substances to
3 prevent theft or diversion, as required.

4 **FIFTH CAUSE FOR DISCIPLINE**

5 (Records of Dangerous Drugs)

6 37. Respondent Chico Pharmacy is subject to disciplinary action under Code section
7 4105, by and through Code section 4301(o), in that they failed to maintain records of controlled
8 substances in a readily retrievable form on the premises, and failed to provide the records when
9 requested by the Board. The circumstances are as follows:

10 38. On or about October 25, 2016, Respondent did not maintain the following original
11 prescription documents in a readily retrievable form:

- 12 a. RX 8442646 for oxycodone/APAP 10/325 mg, dated May 8, 2014.
- 13 b. RX 8442647 for temazepam 30 mg, dated May 8, 2014.
- 14 c. RX 8517579 for oxycodone 5 mg / 5 ml, dated June 20, 2016.

15 39. Respondent did not supply the original documents listed above when requested by the
16 Board Inspector. Instead, Respondent supplied copies and noted that the original was missing or
17 could not be found.

18 **SIXTH CAUSE FOR DISCIPLINE**

19 (Uncertain Prescription)

20 40. Respondent Chico Pharmacy is subject to disciplinary action under 16 CCR 1761(a)
21 and 1707.3, as it relates to California Civil Code section 56.10, by and through Code section
22 4301(o), in that on February 3, 2016, they filled a prescription for consumer ("Ms. JB") without
23 contacting prescribers. Specifically, on September 14, 2015, Norco (RX8488130 for Norco
24 10/325mg and RX8490480 for Norco 5/325mg) was written and dispensed to Ms. JB while Ms.
25 JB was on a Suboxone regimen for opioid withdrawal. Pharmacists did not call prescribers at the
26 time of dispensing to ensure the safety and subsequent risk of renewal of addiction to opioids.

27 ///

28 ///

1 **SEVENTH CAUSE FOR DISCIPLINE**

2 (Corresponding Responsibility)

3 41. Respondent Chico Pharmacy is subject to disciplinary action under California Health
4 & Safety Code section 11153(a), as it relates to California Civil Code section 56.10, by and
5 through Code section 4301(o), in that on February 3, 2016, they filled duplicate prescriptions for
6 consumer ("Ms. JB") without contacting prescribers. The circumstances are set forth in
7 paragraph 39, above.

8 **Respondent Harris (Pharmacist-in-Charge)**

9 42. Respondent Harris has been the designated pharmacist-in-charge for Chico Pharmacy
10 under Code section 4113(a) since February 26, 2013. As pharmacist-in-charge for Chico
11 Pharmacy, Respondent Harris was responsible for Chico Pharmacy's compliance with all state
12 and federal laws and regulations pertaining to the practice of pharmacy under Code section
13 4113(c).

14 **EIGHTH CAUSE FOR DISCIPLINE**

15 (Failure to Maintain Accurate Patient Profiles)

16 43. Respondent Harris is subject to disciplinary action under title 16 of the California
17 Code of Regulations, section 1707.1, (16 CCR 1707.1), by and through Code section 4301(o), in
18 that she, as pharmacist-in-charge for Chico Pharmacy, failed to maintain accurate patient profiles.
19 The circumstances are set forth in paragraph 30, above.

20 **NINTH CAUSE FOR DISCIPLINE**

21 (Unauthorized Disclosure of Prescriptions)

22 44. Respondent Harris is subject to disciplinary action under 16 CCR 1764, as it relates to
23 California Civil Code section 56.10, by and through Code section 4301(o), in that she, as
24 pharmacist-in-charge for Chico Pharmacy, failed to maintain patient confidentiality regarding
25 prescriptions. The circumstances are set forth in paragraph 30, above.

26 ///

27 ///

28 ///

1 **TENTH CAUSE FOR DISCIPLINE**

2 (Patient Consultation)

3 45. Respondent Harris is subject to disciplinary action under 16 CCR 1707.2, by and
4 through Code section 4301(o), in that she, as pharmacist-in-charge for Chico Pharmacy, failed to
5 personally ensure that patients were provided with an oral consultation or failed to provide
6 patients with notice of the right to oral consultation. The circumstances are set forth in paragraph
7 33, above.

8 **ELEVENTH CAUSE FOR DISCIPLINE**

9 (Operational Standards and Security)

10 46. Respondent Harris is subject to disciplinary action under 16 CCR 1714 and section
11 1301.75 of title 21 of the Code of Federal Regulations, by and through Code sections 4301(j) and
12 4301(o), in that she, as pharmacist-in-charge for Chico Pharmacy, failed to ensure that the
13 controlled substances were safely and properly secured. The circumstances are set forth in
14 paragraph 35, above.

15 **TWELFTH CAUSE FOR DISCIPLINE**

16 (Records of Dangerous Drugs)

17 47. Respondent Harris is subject to disciplinary action under Code section 4105, by and
18 through Code section 4301(o), in that she, as pharmacist-in-charge for Chico Pharmacy, failed to
19 ensure that records of controlled substances were maintained in a readily retrievable form on the
20 premises, and failed to provide the records when requested by the Board. The circumstances are
21 set forth in paragraphs 37-38 and subparts, above.

22 **THIRTEENTH CAUSE FOR DISCIPLINE**

23 (Uncertain Prescription)

24 48. Respondent Harris is subject to disciplinary action under 16 CCR 1761(a) and 1707.3,
25 as it relates to California Civil Code section 56.10, by and through Code section 4301(o), in that
26 on February 3, 2016, she filled duplicate prescriptions for consumer ("Ms. JB") without
27 contacting prescribers. The circumstances are set forth in paragraph 39 above.

28 ///

1 **FOURTEENTH CAUSE FOR DISCIPLINE**

2 (Corresponding Responsibility)

3 49. Respondent Harris is subject to disciplinary action under Code 4306.5(b) and
4 California Health & Safety Code section 11153(a), as it relates to California Civil Code section
5 56.10, by and through Code section 4301(o), in that on February 3, 2016, she filled duplicate
6 prescriptions for consumer ("Ms. JB") without contacting prescribers. The circumstances are set
7 forth in paragraph 39 above.

8 **Respondent Balbutin (Pharmacist)**

9 50. Respondent Balbutin is a pharmacist as defined in Code section 4036, and was
10 employed as a pharmacist for Chico Pharmacy during the periods in question.

11 **FIFTEENTH CAUSE FOR DISCIPLINE**

12 (Uncertain Prescription)

13 51. Respondent Balbutin is subject to disciplinary action under 16 CCR 1761(a) and
14 1707.3, as it relates to California Civil Code section 56.10, by and through Code section 4301(o),
15 in that on February 3, 2016, she filled duplicate prescriptions for consumer ("Ms. JB") without
16 contacting prescribers. The circumstances are set forth in paragraph 39 above.

17 **SIXTEENTH CAUSE FOR DISCIPLINE**

18 (Corresponding Responsibility)

19 52. Respondent Balbutin is subject to disciplinary action under Code 4306.5(b) and
20 California Health & Safety Code section 11153(a), as it relates to California Civil Code section
21 56.10, by and through Code section 4301(o), in that on February 3, 2016, she filled duplicate
22 prescriptions for consumer ("Ms. JB") without contacting prescribers. The circumstances are set
23 forth in paragraph 39 above.

24 **OTHER MATTERS**

25 53. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number
26 PHY 46018 issued to Drug Therapy Systems Co. Inc., doing business as Chico Pharmacy, Drug
27 Therapy Systems Co. Inc., doing business as Chico Pharmacy shall be prohibited from serving as
28 a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for

1 five years if Pharmacy Permit Number PHY 46018 is placed on probation or until Pharmacy
2 Permit Number PHY 46018 is reinstated if it is revoked.

3 **MATTERS IN AGGRAVATION**

4 54. On April 12, 2016, the Board cited Respondent Chico Pharmacy (No. CI 2014 62478)
5 and Respondent Harris (No. CI 2015 69907) for violations of pharmacy law found during an
6 inspection on September 17, 2014, including: allowing unauthorized persons to order controlled
7 substances; partial filling of schedule II prescriptions; failure to complete biennial inventory;
8 failure to properly store controlled substances; failure to timely report losses of controlled
9 substances; deviation from prescription requirements without prescriber consent; failure to timely
10 complete a self-assessment; and failure to maintain a clean and orderly pharmacy.

11 55. On April 12, 2016, the Board cited Respondent Balbutin (No. CI 2015 69908) for
12 violations of pharmacy law found during an inspection on September 17, 2014, including: partial
13 filling of schedule II prescriptions beyond 72 hours.

14 **PRAYER**

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

17 1. Revoking or suspending Original Pharmacy Permit Number PHY 46018, issued to
18 Chico Pharmacy;

19 2. Revoking or suspending Original Pharmacist License Number RPH 25833, issued to
20 Janet Balbutin Harris;

21 3. Revoking or suspending Original Pharmacist License Number RPH 27228, issued to
22 Ava Balbutin;

23 4. Prohibiting Drug Therapy Systems Co. Inc., doing business as Chico Pharmacy from
24 serving as a manager, administrator, owner, member, officer, director, associate, or partner of a
25 licensee for five years if Pharmacy Permit Number PHY 46018 is placed on probation or until
26 Pharmacy Permit Number PHY 46018 is reinstated if Pharmacy Permit Number PHY 46018
27 issued to Drug Therapy Systems Co. Inc., doing business as Chico Pharmacy is revoked;
28

1 5. Prohibiting Janet Balbutin Harris from serving as a manager, administrator, owner,
2 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit
3 Number PHY 46018 is placed on probation or until Pharmacy Permit Number PHY 46018 is
4 reinstated if Pharmacy Permit Number PHY 46018 issued to Drug Therapy Systems Co. Inc.,
5 doing business as Chico Pharmacy is revoked;

6 6. Prohibiting Janet Balbutin Harris from serving as a manager, administrator, owner,
7 member, officer, director, associate, or partner of a licensee for five years if Pharmacist License
8 Number RPH 25833 is placed on probation or until Pharmacist License Number RPH 25833 is
9 reinstated if Pharmacist License Number RPH 25833 issued to Janet Balbutin Harris is revoked;

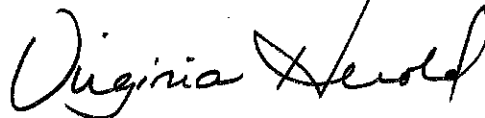
10 7. Prohibiting Ava Balbutin from serving as a manager, administrator, owner, member,
11 officer, director, associate, or partner of a licensee for five years if Pharmacist License Number
12 RPH 27228 is placed on probation or until Pharmacist License Number RPH 27228 is reinstated
13 if Pharmacist License Number RPH 27228 issued to Ava Balbutin is revoked;

14 8. Ordering Chico Pharmacy, Janet Balbutin Harris, and Ava Balbutin to pay the Board
15 of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to
16 Business and Professions Code section 125.3; and,

17 9. Taking such other and further action as deemed necessary and proper.

18
19 DATED: _____

12/12/17



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

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