

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

In the Matter of the Accusation Against:

Case No. 6176

**PARTNER HEALTHCARE, INC.; HENRY HUNG  
YAT CHUNG  
2035 S. Myrtle Ave.  
Monrovia, AC 91016**

OAH No. 2017110558

**Pharmacy Permit No. PHY 51078,**

**and**

**HENRY HUNG YAT CHANG  
2035 S. Myrtle Ave.  
Monrovia, CA 91016**

**Pharmacist License No. RPH 53723,**

**and**

**NESTOR DANIEL SANCHEZ  
13728 Olive St.  
Baldwin, CA 91706**

**Pharmacy Technician Registration No. TCH  
123802,**

Respondents.

**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 December 3, 2019.

It is so ORDERED on November 4, 2019.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Greg M. Lippe", written in a cursive style.

By

Greg Lippe  
Board Vice President (Acting President)

1 XAVIER BECERRA  
Attorney General of California  
2 LINDA L. SUN  
Supervising Deputy Attorney General  
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7

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

12 In the Matter of the Accusation Against:

13 **PARTNER HEALTHCARE, INC.; HENRY**  
14 **HUNG YAT CHUNG**  
15 **2035 S. Myrtle Ave.**  
**Monrovia, CA 91016**

16 **Pharmacy Permit No. PHY 51078,**

17 **HENRY HUNG YAT CHANG**  
18 **2035 S. Myrtle Ave.**  
**Montovia, CA 91016**

19 **Pharmacist License No. RPH 53723,**

20 **NESTOR DANIEL SANCHEZ**  
21 **13728 Olive St.**  
**Baldwin, CA 91706**

22 **Pharmacy Technician Registration No. TCH**  
23 **123802,**

24 Respondents.

Case No. 6176

OAH No. 2017110558

**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER AS TO**  
**PARTNER HEALTHCARE, INC.**

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

27 ///

28 ///

1 **PARTIES**

2 1. Anne Sodergren (Complainant) is the Interim Executive Officer of the Board of  
3 Pharmacy (Board). She brought this action solely in her official capacity and is represented in  
4 this matter by Xavier Becerra, Attorney General of the State of California, by Helene E. Rouse,  
5 Deputy Attorney General.

6 2. Respondent Partner Healthcare, Inc.; Henry Hung Yat Chung (Respondent) is  
7 represented in this proceeding by attorney Tony J. Park, whose address and telephone number  
8 are: Law Offices of Tony J. Park, Inc., 49 Discovery, Suite 240, Irvine, CA 92618-6713;  
9 Telephone: (949) 336-7854.

10 3. On or about October 2, 2012, the Board issued Pharmacy Permit No. PHY 51078 to  
11 Partner Healthcare, Inc.; Henry Hung Yat Chang (Respondent). The Pharmacy Permit was in full  
12 force and effect at all times relevant to the charges brought in Accusation No. 6176, and will  
13 expire on October 1, 2019, unless renewed.

14 **JURISDICTION**

15 4. Accusation No. 6176 was filed before the Board, and is currently pending against  
16 Respondent. The Accusation and all other statutorily required documents were properly served  
17 on Respondent on October 11, 2017. Respondent timely filed its Notice of Defense contesting  
18 the Accusation. On August 16, 2019, Fourth Amended Accusation No. 6176 was filed and served  
19 on Respondent.

20 5. A copy of Fourth Amended Accusation No. 6176 (Accusation) is attached as exhibit  
21 A and incorporated herein by reference.

22 **ADVISEMENT AND WAIVERS**

23 6. Respondent has carefully read, fully discussed with counsel, and understands the  
24 charges and allegations in Accusation No. 6176. Respondent has also carefully read, fully  
25 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary  
26 Order.

27 7. Respondent is fully aware of his legal rights in this matter, including the right to a  
28 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine

1 the witnesses against him; the right to present evidence and to testify on his own behalf; the right  
2 to the issuance of subpoenas to compel the attendance of witnesses and the production of  
3 documents; the right to reconsideration and court review of an adverse decision; and all other  
4 rights accorded by the California Administrative Procedure Act and other applicable laws.

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

### 7 **CULPABILITY**

8 9. Respondent understands and agrees that the charges and allegations in Accusation  
9 No. 6176, if proven at a hearing, constitute cause for imposing discipline upon its Pharmacy  
10 Permit.

11 10. For the purpose of resolving the Accusation without the expense and uncertainty of  
12 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual  
13 basis for the charges in the Accusation, and that Respondent hereby gives up its right to contest  
14 those charges.

15 11. Respondent agrees that his Pharmacy Permit is subject to discipline and he agrees to  
16 be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

### 17 **CONTINGENCY**

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

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

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

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

## DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Pharmacy Permit No. PHY 51078 issued to Respondent Partner Healthcare, Inc.; Henry Hung Yat Chung is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

### 1. Definition: Respondent

For the purposes of these terms and conditions, “respondent” shall refer to Partner Healthcare, Inc. All terms and conditions stated herein shall bind and be applicable to the licensed premises and to all owners, managers, officers, administrators, members, directors, trustees, associates, or partners thereof. For purposes of compliance with any term or condition, any report, submission, filing, payment, or appearance required to be made by respondent to or before the board or its designee shall be made by an owner or executive officer with authority to act on behalf of and legally bind the licensed entity.

## 2. 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, no contest, or similar, in any state or federal criminal proceeding to any criminal complaint, information or indictment;
- a conviction of any crime; or
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacy permit license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling or distributing, billing, or charging for any dangerous drug, and/or dangerous device or controlled substance.

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

### **3. 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.

### **4. 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.

### **5. Cooperate with Board Staff**

Respondent shall timely cooperate with the board's inspection program and with the board's

1 monitoring and investigation of respondent's compliance with the terms and conditions of the  
2 probation, including but not limited to: timely responses to requests for information by board  
3 staff; timely compliance with directives from board staff regarding requirements of any term or  
4 condition of probation; and timely completion of documentation pertaining to a term or condition  
5 of probation. Failure to timely cooperate shall be considered a violation of probation.

6 **6. Reimbursement of Board Costs**

7 As a condition precedent to successful completion of probation, respondent shall pay to the  
8 board its costs of investigation and prosecution in the amount of \$45,168.25, jointly and severally  
9 with Henry Hung Yat Chung.

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

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

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

18 **7. Probation Monitoring Costs**

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

23 **8. Status of License**

24 Respondent shall, at all times while on probation, maintain a current pharmacy permit with  
25 the board. Failure to maintain current licensure shall be considered a violation of probation.

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



1 previously satisfied.

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

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

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

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

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

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

28 Respondent may not apply for any new license from the board for three (3) years from the

1 effective date of the surrender. Respondent shall meet all requirements applicable to the license  
2 sought as of the date the application for that license is submitted to the board.

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

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

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

14 **11. Notice to Employees**

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

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

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

2           Respondent shall provide, within thirty (30) days after the effective date of this decision,  
3 signed and dated statements from its owners, including any owner or holder of ten percent (10%)  
4 or more of the interest in respondent or respondent's stock, and all of its officer, stating under  
5 penalty of perjury that said individuals have read and are familiar with state and federal laws and  
6 regulations governing the practice of pharmacy. The failure to timely provide said statements  
7 under penalty of perjury shall be considered a violation of probation.

8           **13. Premises Open for Business**

9           Respondent shall remain open and engaged in its ordinary business as a pharmacy in  
10 California for a minimum of 120 hours per calendar month. Any month during which this  
11 minimum is not met shall toll the period of probation, i.e., the period of probation shall be  
12 extended by one month for each month during with this minimum is not met. During any such  
13 period of tolling of probation, respondent must nonetheless comply with all terms and conditions  
14 of probation, unless respondent is informed otherwise in writing by the board or its designee. If  
15 respondent is not open and engaged in its ordinary business as a pharmacy for a minimum of 120  
16 hours in any calendar month, for any reason (including vacation), respondent shall notify the  
17 board in writing within ten (10) days of the conclusion of that calendar month. This notification  
18 shall include at minimum all of the following: the date(s) and hours respondent was open; the  
19 reason(s) for the interruption or why business was not conducted; and the anticipated date(s) on  
20 which respondent will resume business as required. Respondent shall further notify the board in  
21 writing with ten (10) days following the next calendar month during which respondent is open  
22 and engaged in its ordinary business as a pharmacy in California for a minimum of 120 hours.  
23 Any failure to timely provide such notification(s) shall be considered a violation of probation.

24           **14. Posted Notice of Probation**

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

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

**15. Violation of Probation**

If a respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent, and probation shall be automatically 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.

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, 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, and the charges in Accusation No. 6176 shall be deemed true and correct.

**16. Completion of Probation**

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

**17. No Additional Ownership or Management of Licensed Premises**

Respondent shall not acquire any additional ownership, legal or beneficial interest in, nor serve as a manager, administrator, member, officer, director, associate, partner or any business, firm, partnership, or corporation currently or hereinafter licensed by the board except as approved by the board or its designee. Violations of this restriction shall be considered a violation of probation.

**18. Remedial Education for All Employees**


All pharmacy staff shall take the Board of Pharmacy's course on Drug Abuse and Diversion and provide completion certificates to the Board within 12 months of the effective date of the

1 decision. New staff hired within this 12 month period will also take the Board of Pharmacy's  
2 course on Drug Abuse and Diversion and provide completion certificates to the Board. Failure to  
3 timely submit for approval or complete the approved remedial education shall be considered a  
4 violation of probation. The period of probation will be automatically extended until such  
5 remedial education is successfully completed and written proof, in a form acceptable to the board,  
6 is provided to the board or its designee.

7 **ACCEPTANCE**

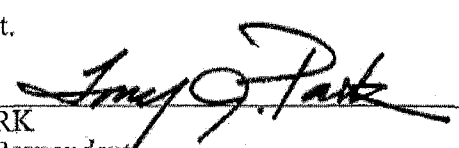
8 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
9 discussed it with my attorney, Tony J. Park. I understand the stipulation and the effect it will  
10 have on my Pharmacy Permit. I enter into this Stipulated Settlement and Disciplinary Order  
11 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the  
12 Board of Pharmacy.

13 DATED: 9/5/2019

14   
PARTNER HEALTHCARE, INC.; HENRY HUNG  
YAT CHANG, PHARMACIST IN CHARGE  
15 Respondent

16 I have read and fully discussed with Respondent Partner Healthcare, Inc.; Henry Hung Yat  
17 Chang the terms and conditions and other matters contained in the above Stipulated Settlement  
18 and Disciplinary Order. I approve its form and content.

19 DATED: 09/05/2019

20   
TONY J. PARK  
Attorney for Respondent  
21 PARTNER HEALTHCARE, INC.; HENRY HUNG  
YAT CHANG, PHARMACIST IN CHARGE  
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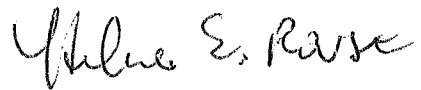
**ENDORSEMENT**

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy.

DATED: September 6, 2019

Respectfully submitted,

XAVIER BECERRA  
Attorney General of California  
LINDA L. SUN  
Supervising Deputy Attorney General

  
HELENE E. ROUSE  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**Fourth Amended Accusation No. 6176**

1 XAVIER BECERRA  
Attorney General of California  
2 LINDA L. SUN  
Supervising Deputy Attorney General  
3 HELENE E. ROUSE  
Deputy Attorney General  
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*Attorneys for Complainant*  
7

8 **BEFORE THE**  
**BOARD OF PHARMACY**  
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13 **HUNG YAT CHANG; KHANH-LONG**  
14 **THAI; AMMIE HWANG; BRIAN**  
15 **GARNER**  
16 **2035 S. Myrtle Ave.**  
17 **Monrovia, CA 91016**

**FOURTH AMENDED ACCUSATION**

**Pharmacy Permit No. PHY 51078**

18 AND

19 **PARTNER HEALTHCARE, INC.; HENRY**  
20 **HUNG YAT CHANG; KHANH-LONG**  
21 **THAI; AMMIE HWANG; BRIAN**  
22 **GARNER, OWNERS**  
23 **2035 S. Myrtle Ave.**  
24 **Monrovia, CA 91016**

25 **Licensing Sterile Compounding No. LSC**  
26 **99777**

27 AND

28 **HENRY HUNG YAT CHANG**  
**2035 S. Myrtle Ave.**  
**Monrovia, CA 91016**

**Pharmacist License No. RPH 53723**

AND



1 AND

2 **NESTOR DANIEL SANCHEZ**  
3 **13728 Olive St.**  
4 **Baldwin Park, CA 91706**

5 **Pharmacy Technician Registration No. TCH**  
6 **123802**

Respondent.

7 Complainant alleges:

8 **PARTIES**

9 1. Anne Sodergren (Complainant) brings this Fourth Amended Accusation (Accusation)  
10 solely in her official capacity as the Interim Executive Officer of the Board of Pharmacy (Board),  
11 Department of Consumer Affairs.

12 2. On or about October 2, 2012, the Board issued Pharmacy Permit Number PHY 51078  
13 to Partner Healthcare Inc.; Henry Hung Yat Chang; Khanh-Long Thai; Ammie Hwang; Brian  
14 Garner, Owners (Respondent and/or Partner Healthcare and/or the pharmacy). The Pharmacy  
15 Permit was in full force and effect at all times relevant to the charges brought herein and will  
16 expire on October 1, 2019, unless renewed.

17 3. On or about April 12, 2013, the Board issued Sterile Compounding Permit Number  
18 LSC 99777 to Partner Healthcare Inc. doing business as Partner Healthcare Inc.; Henry Hung Yat  
19 Chang; Khanh-Long Thai; Ammie Hwang; Brian Garner, Owners (Respondent). The Sterile  
20 Compounding Permit was in full force and effect at all times relevant to the charges brought  
21 herein and will expire on October 1, 2019, unless renewed.

22 4. On or about August 22, 2002, the Board issued Pharmacist License Number RPH  
23 53723 to Henry Hung Yat Chang (Respondent). The Pharmacist License was in full force and  
24 effect at all times relevant to the charges brought herein and will expire on October 31, 2019,  
25 unless renewed. Chang is and has been the Pharmacist-in-Charge (PIC) of the pharmacy since  
26 October 2, 2012.

27 5. On or about May 24, 2012, the Board issued Pharmacy Technician Registration  
28 Number TCH 123802 to Nestor Daniel Sanchez (Respondent). The Pharmacy Technician

1 Registration was in full force and effect at all times relevant to the charges brought herein and  
2 expired on December 31, 2017.

### 3 **JURISDICTION**

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

6 7. Under Section 4300, the Board may discipline any license, for any reason provided in  
7 the Pharmacy Law, (i.e., Sections 4000 et. seq.).

8 8. Section 4300.1 states:

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

13 9. Section 4402, subdivision (a) provides that any pharmacist license that is not renewed  
14 within three years following its expiration may not be renewed, restored, or reinstated and shall  
15 be canceled by operation of law at the end of the three-year period. Under Section 4402,  
16 subdivision (d), the Board has authority to proceed with an accusation that has been filed prior to  
17 the expiration of the three-year period.

### 18 **STATUTORY PROVISIONS**

19 10. Section 490 states, in pertinent part:

20 (a) In addition to any other action that a board is permitted to take against a  
21 licensee, a board may suspend or revoke a license on the ground that the licensee has  
22 been convicted of a crime, if the crime is substantially related to the qualifications,  
functions, or duties of the business or profession for which the license was issued.

23 (b) Notwithstanding any other provision of law, a board may exercise any  
24 authority to discipline a licensee for conviction of a crime that is independent of the  
25 authority granted under subdivision (a) only if the crime is substantially related to the  
26 qualifications, functions, or duties of the business or profession for which the  
licensee's license was issued.

27 (c) A conviction within the meaning of this section means a plea or verdict of  
28 guilty or a conviction following a plea of nolo contendere. An action that a board is  
permitted to take following the establishment of a conviction may be taken when the  
time for appeal has elapsed, or the judgment of conviction has been affirmed on  
appeal, or when an order granting probation is made suspending the imposition of  
sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change to, but rather are declaratory of, existing law.

11. Section 4005 allows the Board to adopt rules and regulations as may be necessary for the protection of the public, as follows:

[F]or the proper and more effective enforcement and administration of this chapter; pertaining to the practice of pharmacy; . . . pertaining to persons and establishments licensed under this chapter; pertaining to establishments wherein any drug . . . is compounded, prepared, furnished, or dispensed; providing for standards of minimum equipment for establishments licensed under this chapter. . .

12. Section 4006 provides as follows:

The board may adopt regulations consistent with this chapter and Section 111485 of the Health and Safety Code or regulations adopted thereunder, limiting or restricting the furnishing of a particular drug upon a finding that the otherwise unrestricted retail sale of the drug pursuant to Section 4057 is dangerous to the public health or safety.

13. Section 4007 provides, in relevant part, that: “(b) . . . [R]ules and regulations may require that the function be performed only under the effective supervision of a pharmacist who shall have the overall responsibility for supervising all activities that take place in the pharmacy.”

14. Section 4021 sets forth that “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.”

Section 4022 states, in pertinent part:

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

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

(b) Any device that bears the statement: “Caution: federal law restricts this device to sale by or on the order of a \_\_\_\_\_,” “Rx only,” or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

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

1           15. Section 4036.5 states that “‘Pharmacist-in-charge’ means a pharmacist proposed by a  
2 pharmacy and approved by the board as the supervisor or manager responsible for ensuring the  
3 pharmacy’s compliance with all state and federal laws and regulations pertaining to the practice  
4 of pharmacy.”

5           16. Section 4059, subdivision (a), in pertinent part, prohibits furnishing of any dangerous  
6 drug or dangerous device except upon the prescription of an authorized prescriber.

7           17. Section 4060 states, in pertinent part:

8                   No person shall possess any controlled substance, except that furnished to a  
9 person upon the prescription of a physician, dentist, podiatrist, optometrist,  
10 veterinarian, or naturopathic doctor . . . This section shall not apply to the possession  
11 of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist,  
12 physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified  
13 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers  
14 correctly labeled with the name and address of the supplier or producer.

15           18. Section 4081 provides, in relevant part, that:

16                   (a) All records of manufacture and of sale, acquisition, receipt, shipment, or  
17 disposition of dangerous drugs...

18                   (b) The owner, officer, or partner of a pharmacy ... shall be jointly responsible,  
19 with the pharmacist-in-charge, responsible manager ... for maintaining the records  
20 and inventory described in this section.

21           19. Section 4105 states, in pertinent part, that “(a) All records or other documentation of  
22 the acquisition and disposition of dangerous drugs and dangerous devices by any entity licensed  
23 by the board shall be retained on the licensed premises in a readily retrievable form.”

24           20. Section 4113 states, in pertinent part, that: “(c) The pharmacist-in-charge shall be  
25 responsible for a pharmacy’s compliance with all state and federal laws and regulations  
26 pertaining to the practice of pharmacy.”

27           21. Section 4156 states as follows:

28                   A pharmacy corporation shall not do, or fail to do, any act where doing or  
failing to do the act would constitute unprofessional conduct under any statute or  
regulation. In the conduct of its practice, a pharmacy corporation shall observe and  
be bound by the laws and regulations that apply to a person licensed under this  
chapter.

1           22.   Section 4301 of the Code states, in pertinent part:

2                   The board shall take action against any holder of a license who is guilty of  
3                   unprofessional conduct . . . Unprofessional conduct shall include, but is not limited  
4                   to, any of the following:

5                   \* \* \* \*

6                   (f) The commission of any act involving moral turpitude, dishonesty, fraud,  
7                   deceit, or corruption, whether the act is committed in the course of relations as a  
8                   licensee or otherwise, and whether the act is a felony or misdemeanor or not.

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

11                  \* \* \* \*

12                  (l) The conviction of a crime substantially related to the qualifications,  
13                  functions, and duties of a licensee under this chapter. The record of conviction of  
14                  a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United  
15                  States Code regulating controlled substances or of a violation of the statutes of this  
16                  state regulating controlled substances or dangerous drugs shall be conclusive  
17                  evidence of unprofessional conduct. In all other cases, the record of conviction  
18                  shall be conclusive evidence only of the fact that the conviction occurred. The  
19                  board may inquire into the circumstances surrounding the commission of the  
20                  crime, in order to fix the degree of discipline or, in the case of a conviction not  
21                  involving controlled substances or dangerous drugs, to determine if the conviction  
22                  is of an offense substantially related to the qualifications, functions, and duties of a  
23                  licensee under this chapter. A plea or verdict of guilty or a conviction following a  
24                  plea of nolo contendere is deemed to be a conviction within the meaning of this  
25                  provision. The board may take action when the time for appeal has elapsed, or the  
26                  judgment of conviction has been affirmed on appeal or when an order granting  
27                  probation is made suspending the imposition of sentence, irrespective of a  
28                  subsequent order under Section 1203.4 of the Penal Code allowing the person to  
                    withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside  
                    the verdict of guilty, or dismissing the accusation, information, or indictment.

                    \* \* \* \*

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

23.   Section 4302 of the Code states:

                    The board may deny, suspend, or revoke any license of a corporation where  
                    conditions exist in relation to any person holding 10 percent or more of the  
                    corporate stock of the corporation, or where conditions exist in relation to any  
                    officer or director of the corporation that would constitute grounds for disciplinary  
                    action against a licensee.

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1           24.   Section 4306.5 provides, in pertinent part, that:

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

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

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

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

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

18           25.   Section 4307 of the Code states that:

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

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

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

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

39           26.   Section 4332, subdivision (a), states, in relevant part:

40                   Any person who fails, neglects, or refuses to maintain the records required by  
41                   Section 4081 or who, when called upon by an authorized officer or a member of the  
42                   board, fails, neglects, or refuses to produce or provide the records within a reasonable

time, or who willfully produces or furnishes records that are false, is guilty of a misdemeanor.

27. Section 4342 provides, in relevant part, that:

(a) The board may institute any action or actions as may be provided by law and that, in its discretion, are necessary, to prevent the sale of pharmaceutical preparations and drugs that do not conform to the standard and tests as to quality and strength, provided in the latest edition of the United States Pharmacopoeia or the National Formulary, or that violate any provision of the Sherman Food, Drug and Cosmetic Law...

(b) Any knowing or willful violation of any regulation adopted pursuant to Section 4006 shall be subject to punishment in the same manner as is provided in Sections 4321 and 4336.

28. Health and Safety Code section 11158, subdivision (a), states:

Except as provided in Section 11159 or in subdivision (b) of this section, no controlled substance classified in Schedule II shall be dispensed without a prescription meeting the requirements of this chapter. Except as provided in Section 11159 or when dispensed directly to an ultimate user by a practitioner, other than a pharmacist or pharmacy, no controlled substance classified in Schedule III, IV, or V may be dispensed without a prescription meeting the requirements of this chapter.

29. Health and Safety Code section 11167 states, in pertinent part:

Notwithstanding subdivision (a) of Section 11164, in an emergency where failure to issue a prescription may result in loss of life or intense suffering, an order for a controlled substance may be dispensed on an oral order, an electronic data transmission order, or a written order not made on a controlled substance form as specified in Section 11162.1, subject to all of the following requirements:

(a) The order contains all information required by subdivision (a) of Section 11164.

(b) Any written order is signed and dated by the prescriber in ink, and the pharmacy reduces any oral or electronic data transmission order to hard copy form prior to dispensing the controlled substance.

(c) The prescriber provides a written prescription on a controlled substance prescription form that meets the requirements of Section 11162.1, by the seventh day following the transmission of the initial order; a postmark by the seventh day following transmission of the initial order shall constitute compliance.

(d) If the prescriber fails to comply with subdivision (c), the pharmacy shall so notify the Department of Justice in writing within 144 hours of the prescriber's failure to do so and shall make and retain a hard copy, readily retrievable record of the prescription, including the date and method of notification of the Department of Justice.

(e) This section shall become operative on January 1, 2005.

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1           30. Health and Safety Code section 11167.5 states:

2           (a) An order for a controlled substance classified in Schedule II for a patient  
3 of a licensed skilled nursing facility, a licensed intermediate care facility, a licensed  
4 home health agency, or a licensed hospice may be dispensed upon an oral or  
5 electronically transmitted prescription. If the prescription is transmitted orally, the  
6 pharmacist shall, prior to filling the prescription, reduce the prescription to writing in  
7 ink in the handwriting of the pharmacist on a form developed by the pharmacy for  
8 this purpose. If the prescription is transmitted electronically, the pharmacist shall,  
9 prior to filling the prescription, produce, sign, and date a hard copy prescription. The  
10 prescriptions shall contain the date the prescription was orally or electronically  
11 transmitted by the prescriber, the name of the person for whom the prescription was  
12 authorized, the name and address of the licensed skilled nursing facility, licensed  
13 intermediate care facility, licensed home health agency, or licensed hospice in which  
14 that person is a patient, the name and quantity of the controlled substance prescribed,  
15 the directions for use, and the name, address, category of professional licensure,  
16 license number, and federal controlled substance registration number of the  
17 prescriber. The original shall be properly endorsed by the pharmacist with the  
18 pharmacy's state license number, the name and address of the pharmacy, and the  
19 signature of the person who received the controlled substances for the licensed skilled  
20 nursing facility, licensed intermediate care facility, licensed home health agency, or  
21 licensed hospice. A licensed skilled nursing facility, a licensed intermediate care  
22 facility, a licensed home health agency, or a licensed hospice shall forward to the  
23 dispensing pharmacist a copy of any signed telephone orders, chart orders, or related  
24 documentation substantiating each oral or electronically transmitted prescription  
25 transaction under this section.

26           (b) This section shall become operative on July 1, 2004.

27           31. Health and Safety Code section 11171 provides that no person shall prescribe,  
28 administer, or furnish a controlled substance except under the conditions and in the manner  
provided by this division.

### **REGULATORY PROVISIONS**

32. California Code of Regulations, title 16, section 1707.3 sets forth that: "Prior to  
consultation as set forth in section 1707.2, a pharmacist shall review a patient's drug therapy and  
medication record before each prescription drug is delivered. The review shall include screening  
for severe potential drug therapy problems."

33. California Code of Regulations, title 16, section 1709.1 provides that: "(a) The  
pharmacist-in-charge of a pharmacy shall be employed at that location and shall have  
responsibility for the daily operation of the pharmacy."

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1           34. California Code of Regulations, title 16, section 1714, subdivisions (b) and (d)  
2 provides that:

3                   \* \* \* \*

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

8                   \* \* \* \*

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

14           35. California Code of Regulations, title 16, section 1715.6, provides that: "The  
15 owner shall report to the Board within thirty (30) days of discovery of any loss of the  
16 controlled substances, including their amounts and strengths."

17           36. California Code of Regulations, title 16, section 1716, provides that:

18                   Pharmacists shall not deviate from the requirements of a prescription except  
19 upon the prior consent of the prescriber or to select the drug product in accordance  
20 with Section 4073 of the Business and Professions Code.

21                   Nothing in this regulation is intended to prohibit a pharmacist from  
22 exercising commonly-accepted pharmaceutical practice in the compounding or  
23 dispensing of a prescription."

24           37. California Code of Regulations, title 16, section 1718, provides that:

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

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

38. California Code of Regulations section 1735 states, in part,

(a) "Compounding" means any of the following activities occurring in a  
licensed pharmacy, by or under the supervision of a licensed pharmacist, pursuant  
to a prescription:

(1) Altering the dosage form or delivery system of a drug.

1 39. California Code of Regulations, title 16, section 1735.2, subdivision (h), states:

2 Every compounded drug product shall be given an expiration date representing  
3 the date beyond which, in the professional judgment of the pharmacist performing or  
4 supervising the compounding, it should not be used. This “beyond use date” of the  
5 compounded drug product shall not exceed 180 days from preparation or the shortest  
6 expiration date of any component in the compounded drug product, unless a longer  
7 date is supported by stability studies of finished drugs or compounded drug products  
8 using the same components and packaging. Shorter dating than set forth in this  
9 subsection may be used if it is deemed appropriate in the professional judgment of the  
10 responsible pharmacist.

11 40. California Code of Regulations, title 16, section 1735.4, subdivision (b), states:

12 “A statement that the drug has been compounded by the pharmacy shall be included on the  
13 container or on the receipt provided to the patient.”

14 41. California Code of Regulations, title 16, section 1735.6, subdivision (a), states:

15 “Any pharmacy engaged in compounding shall maintain written documentation regarding  
16 the facilities and equipment necessary for safe and accurate compounded drug products. Where  
17 applicable, this shall include records of certification(s) of facilities or equipment.”

18 42. California Code of Regulations, title 16, section 1735.8, states, in pertinent part:

19 (a) Any pharmacy engaged in compounding shall maintain, as part of its written  
20 policies and procedures, a written quality assurance plan designed to monitor and  
21 ensure the integrity, potency, quality, and labeled strength of compounded drug  
22 preparations.

23 (b) The quality assurance plan shall include written procedures for verification,  
24 monitoring, and review of the adequacy of the compounding processes and shall also  
25 include written documentation of review of those processes by qualified pharmacy  
26 personnel.

27 (c) The quality assurance plan shall include written standards for qualitative and  
28 quantitative analysis of compounded drug preparations to ensure integrity, potency,  
quality, and labeled strength, including the frequency of testing. All qualitative and  
quantitative analysis reports for compounded drug preparations shall be retained by  
the pharmacy and maintained along with the compounding log and master formula  
document. The quality assurance plan shall include a schedule for routine testing and  
analysis of specified compounded drug preparations to ensure integrity, potency,  
quality, and labeled strength, on at least an annual basis.

(d) The quality assurance plan shall include a written procedure for scheduled  
action in the event any compounded drug product is ever discovered to be below  
minimum standards for integrity, potency, quality, or labeled strength.

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1 43. California Code of Regulations, title 16, section 1770, states, in pertinent part:

2 For the purpose of denial, suspension, or revocation of a personal or facility  
3 license pursuant to Division 1.5 (commencing with Section 475) of the Business and  
4 Professions Code, a crime or act shall be considered substantially related to the  
5 qualifications, functions or duties of a licensee or registrant if to a substantial degree  
6 it evidences present or potential unfitness of a licensee or registrant to perform the  
7 functions authorized by his license or registration in a manner consistent with the  
8 public health, safety, or welfare.

6 44. California Code of Regulations, title 16, section 1793.7, subdivision (d), states:

7 Any pharmacy employing or using a pharmacy technician shall develop a job  
8 description and written policies and procedures adequate to ensure compliance with  
9 the provisions of Article 11 of this Chapter, and shall maintain, for at least three years  
10 from the time of making, records adequate to establish compliance with these sections  
11 and written policies and procedures.

10 45. Code of Federal Regulations, title 21, section 1301.75 sets forth, in pertinent part:

11 \* \* \* \*

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

15 \* \* \* \*

16 46. Code of Federal Regulations, title 21, section 1304.11, subdivision (c), states:

17 "Biennial inventory date. After the initial inventory is taken, the registrant shall take a new  
18 inventory of all stocks of controlled substances on hand at least every two years. The biennial  
19 inventory may be taken on any date which is within two years of the previous biennial inventory  
20 date."

21 47. Code of Federal Regulations, title 21, section 1306.11, provides:

22 (a) A pharmacist may dispense directly a controlled substance listed in  
23 Schedule II that is a prescription drug as determined under section 503 of the Federal  
24 Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)) only pursuant to a written  
25 prescription signed by the practitioner, except as provided in paragraph (d) of this  
26 section. A paper prescription for a Schedule II controlled substance may be  
27 transmitted by the practitioner or the practitioner's agent to a pharmacy via facsimile  
28 equipment, provided that the original manually signed prescription is presented to the  
29 pharmacist for review prior to the actual dispensing of the controlled substance,  
30 except as noted in paragraph (e), (f), or (g) of this section. The original prescription  
31 shall be maintained in accordance with § 1304.04(h) of this chapter.

(b) An individual practitioner may administer or dispense directly a controlled  
substance listed in Schedule II in the course of his professional practice without a

prescription, subject to § 1306.07.

(c) An institutional practitioner may administer or dispense directly (but not prescribe) a controlled substance listed in Schedule II only pursuant to a written prescription signed by the prescribing individual practitioner or to an order for medication made by an individual practitioner that is dispensed for immediate administration to the ultimate user.

(d) In the case of an emergency situation, as defined by the Secretary in § 290.10 of this title, a pharmacist may dispense a controlled substance listed in Schedule II upon receiving oral authorization of a prescribing individual practitioner, provided that:

(1) The quantity prescribed and dispensed is limited to the amount adequate to treat the patient during the emergency period (dispensing beyond the emergency period must be pursuant to a paper or electronic prescription signed by the prescribing individual practitioner);

(2) The prescription shall be immediately reduced to writing by the pharmacist and shall contain all information required in § 1306.05, except for the signature of the prescribing individual practitioner;

(3) If the prescribing individual practitioner is not known to the pharmacist, he must make a reasonable effort to determine that the oral authorization came from a registered individual practitioner, which may include a callback to the prescribing individual practitioner using his phone number as listed in the telephone directory and/or other good faith efforts to insure his identity; and

(4) Within 7 days after authorizing an emergency oral prescription, the prescribing individual practitioner shall cause a written prescription for the emergency quantity prescribed to be delivered to the dispensing pharmacist. In addition to conforming to the requirements of § 1306.05, the prescription shall have written on its face "Authorization for Emergency Dispensing," and the date of the oral order. The paper prescription may be delivered to the pharmacist in person or by mail, but if delivered by mail it must be postmarked within the 7-day period. Upon receipt, the dispensing pharmacist must attach this paper prescription to the oral emergency prescription that had earlier been reduced to writing. For electronic prescriptions, the pharmacist must annotate the record of the electronic prescription with the original authorization and date of the oral order. The pharmacist must notify the nearest office of the Administration if the prescribing individual practitioner fails to deliver a written prescription to him; failure of the pharmacist to do so shall void the authority conferred by this paragraph to dispense without a written prescription of a prescribing individual practitioner.

(5) Central fill pharmacies shall not be authorized under this paragraph to prepare prescriptions for a controlled substance listed in Schedule II upon receiving an oral authorization from a retail pharmacist or an individual practitioner.

(e) A prescription prepared in accordance with § 1306.05 written for a Schedule II narcotic substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous or intraspinal infusion may be transmitted by the practitioner or the practitioner's agent to the pharmacy by facsimile.

The facsimile serves as the original written prescription for purposes of this paragraph (e) and it shall be maintained in accordance with § 1304.04(h) of this

chapter.

(f) A prescription prepared in accordance with § 1306.05 written for Schedule II substance for a resident of a Long Term Care Facility may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile.

The facsimile serves as the original written prescription for purposes of this paragraph (f) and it shall be maintained in accordance with § 1304.04(h).

### **COST RECOVERY**

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

### **CONTROLLED SUBSTANCES/DANGEROUS DRUGS**

49. **“Alprazolam”** (brand name – **“Xanax”**) is a depressant and a Schedule IV controlled substance, as designated by Health & Safety Code section 11057, subdivision (d)(1). It is categorized as a dangerous drug pursuant to Section 4022.

50. **“Cefazolin 1 gm Sterile injectable”** (brand name – **“Ancef”**) is a dangerous drug pursuant to Section 4022 and is an antibiotic.

51. **“Fentanyl”** is a Schedule II controlled substance pursuant to Health and Safety Code Section 11055(c)(8) and a dangerous drug pursuant to Business of Professions Code § 4022.

52. **“Norco, Vicodin, Vicodin ES, Lortab, and Lorcet”** are among the brand names for compounds of varying dosages of acetaminophen (aka **“APAP”**) and **Hydrocodone**, a Schedule II controlled substance and dangerous drug as designated by Business and Professions Code section 4022. The varying compounds are also known generically as **Hydrocodone with APAP**. These are all narcotic drugs.

53. **“Oxycodone”** (brand name – **“Oxycontin”**), is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(M) and is a dangerous drug pursuant to Code section 4022.

54. **“Promethazine with Codeine”** (brand name – **“Phenergan-Codeine”**) is a dangerous drug, and a Schedule V controlled substance, as designated by Health & Safety Code section 11058, subdivision (c)(1). Promethazine with Codeine is a prescription cough syrup.

**BOARD'S INVESTIGATION RELATED TO REPORT OF THEFT**  
**OF CONTROLLED SUBSTANCES FROM PHARMACY**

55. On or about January 4, 2016, the Board received from Respondent Chang, who was, at all times relevant to this Accusation, and is, the PIC of Partner Healthcare, his written statement with a copy of a Report of Theft or Loss of Controlled Substances (DEA 106). The DEA 106 report showed a loss/theft of 17,028 ml of Promethazine with Codeine syrup and 15,000 tablets of Alprazolam 2 mg. Respondent Chang stated the evidence “points to employee pilferage”, but there was no concrete evidence to prove that. In addition, the DEA 106 report and Chang’s written statement indicate additional security measures were instituted by the pharmacy to prevent future loss/theft, including: (1) installing additional video surveillance cameras; (2) implementing new controlled substance dispensing policies and procedures; (3) locking up all controlled substances; and (4) installing new lock(s) on narcotic cabinet(s).

56. From February 8, 2016 to February 9, 2016, an analyst with the Board’s Complaint Unit - CURES (Controlled Substance Utilization, Review and Evaluation System) communicated by email with Respondent Chang and another pharmacist employed with Partner Healthcare, Pharmacist Hwang, for the purpose of conducting an audit and records supporting the audit.

57. On February 8, 2016, the Board received an audit spreadsheet and supporting records, including a statement from Pharmacist Hwang dated February 6, 2016, with the following information:

- On 12/07/15, a pharmacy staff member reported a missing Alprazolam 2 mg container (500 tablets/container.)
- Reviewing a year of acquisition and disposition records revealed Promethazine with Codeine and Alprazolam 2 mg showed discrepancies.
- An audit period was set by a last controlled substance inventory conducted on July 2, 2014 and an inventory conducted on December 10, 2015.
- There was an ongoing investigation with a detective at the Monrovia Police Department in order to identify suspects who stole the Promethazine with Codeine and Alprazolam 2 mg.

1           58.    The audit records revealed the following information:

2           • The audit for Promethazine with Codeine showed a discrepancy of 839,440 ml (about  
3   1,775 bottles), based on records from July 2, 2014 to December 10, 2015.

4           • The audit for Alprazolam 2 mg showed a discrepancy of 76,263 tablets, based on records  
5   from July 2, 2014 to December 10, 2015.

6           • A beginning inventory was conducted on July 1, 2014 and an ending inventory was  
7   conducted on December 10, 2015.

8           • Purchasing records and a dispensing history for Alprazolam 2 mg were included.

9           • Purchasing records and a dispensing history for Promethazine with Codeine were  
10   included.

11          • The submitted supporting audit records were reconciled with the spreadsheet and the drug  
12   discrepancies.

13          59.    From March 31, 2016 to April 12, 2016, Complaint Unit Analyst T.R. and  
14   Pharmacist Hwang communicated via email about an employee's theft of drugs from Partner  
15   Healthcare. The suspect, former Pharmacy Technician Nestor Sanchez, was identified by the  
16   Monrovia Police Department and a criminal case was brought against him.

17          60.    On June 14, 2016, a Board Inspector inspected Partner Healthcare, which is a closed  
18   door, 24-hour pharmacy servicing skilled nursing facilities (SNF), board and care facilities and  
19   hospices, in the presence of Respondent Chang and Pharmacist Hwang. No additional  
20   information related to the drug losses was found by the Board's Inspector, who completed the  
21   inspection and issued an Inspection Report.

22          61.    The Board obtained police reports and court documents related to the criminal case  
23   brought against Respondent Sanchez for his theft of medications from Partner Healthcare, which  
24   indicated the following:

25          62.    On or about January 27, 2016, a law enforcement officer from the Monrovia Police  
26   Department met with Pharmacist Hwang, who reported that she discovered a large quantity of  
27   medication was missing from Partner Healthcare's drug supply inventory, on November 20, 2014.  
28   At that time, Pharmacist Hwang suspected that a Pharmacy Technician, O.B., may have stolen the

1 medications, because he abruptly resigned without providing two-weeks' notice, around the time  
2 the pharmacy was auditing its inventory.

3 63. On February 2, 2016, a law enforcement officer from the Monrovia Police  
4 Department met with Pharmacist Hwang, who told him that she recalled, in November, 2015, an  
5 on-duty pharmacist had informed her that two bottles (500 pills per bottle) of Xanax were missing  
6 from the inventory. Pharmacist Hwang began monitoring her employees and auditing the  
7 pharmacy's inventory on a weekly basis. Her audits between November 2014 and November  
8 2015 indicated that approximately \$13,278.00 of Codeine cough syrup and Xanax pills were  
9 missing from the pharmacy's inventory. Pharmacist Hwang noticed an unusual trend in  
10 purchases, in that only one or two items were ordered per purchase form during the graveyard  
11 shift, whereas the standard practice for pharmacy purchases was for the on-duty purchaser to open  
12 one purchase order at the beginning of the shift and add items to the same purchase order  
13 throughout the shift.

14 64. Furthermore, Pharmacist Hwang was informed by employees that an employee  
15 (Nestor Sanchez) was bragging about paying \$1,000 for a hotel room in Las Vegas. Pharmacist  
16 Hwang also observed that Respondent Sanchez had been coming into work late, working fewer  
17 hours each week and leaving work early. Around December 2015, Pharmacist Hwang terminated  
18 Sanchez' employment with Partner Healthcare due to his attendance issues. Moreover,  
19 Pharmacist Hwang suspected that Sanchez was responsible for the missing Codeine cough syrup  
20 and Xanax pills. At that time, Pharmacist Hwang suspected Sanchez may have had assistance  
21 from other employees to steal the drugs from Partner Healthcare. However, three employees of  
22 Partner Healthcare gave statements to the police and they were ruled out as suspects.

23 65. On or about February 10, 2016, a law enforcement officer with the Monrovia Police  
24 Department interviewed Respondent Sanchez, who told him he had worked at Partner Healthcare  
25 from April 2014 through November 2015. When Partner Healthcare moved to Monrovia in 2015,  
26 Sanchez admitted he began stealing two to three bottles of Codeine cough syrup and selling them  
27 to his friends, for around \$500 per sale. He then stole bottles of Xanax and also sold them to his  
28 friends. Sanchez stopped stealing in mid-October 2015 because he believed his employer became



1 aware of the shortage in the narcotics inventory. Sanchez told the officer he knew he made bad  
2 choices and felt embarrassed. He stole because he was in need of money and acted alone.  
3 Sanchez provided the officer with his statement in writing and wrote an apology letter to Partner  
4 Healthcare. Based upon the officer's investigation and Sanchez' confession, he believed that  
5 Sanchez committed grand theft of medications while employed by Partner Healthcare, for a six-  
6 month period of time from April 2015 through October 2015, and the case was referred for  
7 criminal prosecution of Sanchez for his crime.

8 66. Between July 2014 and December 2015, Partner Healthcare lost track of a large  
9 amount of the inventory of Xanax and Promethazine, which demonstrates that there were no  
10 meaningful measures in place during the time in question to prevent the loss, theft or diversion of  
11 drugs by employees. The Xanax and Promethazine were on a shelf, not locked up, and there were  
12 no cameras surveilling the area where they were placed in the pharmacy. Moreover, there were  
13 no adequate policies or procedures in place to prevent pharmacy technicians from ordering these  
14 controlled substances and/or taking possession of them upon delivery.

15 **FIRST CAUSE FOR DISCIPLINE**  
16 **(Respondent Partner Healthcare - Failure to Maintain**  
17 **Effective Control and Security of Dangerous Drugs)**

18 67. Respondent Partner Healthcare is subject to disciplinary action under Sections 4005,  
19 4300 and 4301, subdivisions (o) and/or (j), in that Respondent violated California Code of  
20 Regulations, title 16, section 1714, subdivision (b) and Code of Federal Regulations, title 21,  
21 section 1301.75, subdivision (b), by failing to maintain the pharmacy and its facilities, space,  
22 fixtures and/or equipment so that drugs/controlled substances were safely and properly secured,  
23 as follows:

24 a. Between on or about July 2, 2014 and December 10, 2015, Respondent failed to  
25 ensure the security of the dangerous drugs/controlled substances, Alprazolam 2 mg and  
26 Promethazine with Codeine syrup. An audit of Promethazine with Codeine showed a loss of  
27 approximately 839,440 ml (approximately 1,775 bottles) and an audit of Alprazolam 2 mg

28 ///

showed a loss of 76,263 tablets, based on records from July 2, 2014 through December 10, 2015. The allegations set forth above in Paragraphs 55-66 are incorporated by reference herein.

**SECOND CAUSE FOR DISCIPLINE**  
**(Respondent Chang – Failure to Maintain Effective Control and Security of Dangerous Drugs/Controlled Substances)**

68. Respondent Chang is subject to disciplinary action under Sections 4005, 4300 and 4301, subdivisions (o) and (j), in conjunction with Sections 4036.5, 4105, 4156 and 4113, subdivision (c) and California Code of Regulations, title 16, section 1709.1, subdivision (a), for violating California Code of Regulations, title 16, section 1714, subdivision (d), and Code of Federal Regulations, title 21, section 1301.75, in that, while employed as the PIC of Partner Healthcare, Respondent Chang failed to maintain the pharmacy and its facilities, space, fixtures and/or equipment so that drugs/controlled substances were safely and properly secured, as follows:

a. Between on or about July 2, 2014 and December 10, 2015, Respondent failed to ensure the security of the dangerous drugs/controlled substances, Alprazolam 2 mg and Promethazine with Codeine syrup. An audit of Promethazine with Codeine showed a loss of approximately 839,440 ml (approximately 1,775 bottles) and an audit of Alprazolam 2 mg showed a loss of 76,263 tablets, based on records from July 2, 2014 through December 10, 2015. The allegations set forth above in Paragraphs 55-66 are incorporated by reference herein.

**THIRD CAUSE FOR DISCIPLINE**  
**(Respondent Partner Healthcare – Failure to Maintain and/or Produce Required Records)**

69. Respondent Partner Healthcare is subject to disciplinary action under Sections 4005, 4300 and 4301, subdivisions (o) and/or (j), 4105 and 4156, in conjunction with California Code of Regulations, title 16, section 1718, in that Respondent Partner Healthcare violated Sections 4081, subdivision (a) and 4332, by failing to maintain required records and/or produce them to the Board, for Promethazine with Codeine and Alprazolam 2 mg, between July 2, 2014 and December 10, 2015. The allegations set forth above in Paragraphs 55-66 are incorporated by reference herein.

**FOURTH CAUSE FOR DISCIPLINE**  
**(Respondent Chang –Failure to Maintain and/or Produce  
Maintain Required Records)**

70. Respondent Chang is subject to disciplinary action under Sections 4005, 4300 and 4301, subdivisions (o) and/or (j), in conjunction with Section 4036.5, for violating Sections 4081, subdivisions (a) and (b), 4105 and 4332, and California Code of Regulations, title 16, section 1709.1, subdivision (a), in that, while employed as PIC of Partner Healthcare, Respondent failed to maintain required records for Partner Healthcare and/or produce them to the Board, for Promethazine with Codeine and Alprazolam 2 mg, between July 2, 2014 and December 10, 2015. The allegations set forth above in Paragraphs 55-66 are incorporated by reference herein.

**FIFTH CAUSE FOR DISCIPLINE**  
**(Respondent Sanchez - Conviction of a  
Substantially Related Crime)**

71. Respondent Sanchez is subject to disciplinary action under Section 4301, subdivision (l) and 490, in conjunction with California Code of Regulations, title 16, Section 1770, in that Respondent has been convicted of a crime substantially related to the qualifications, functions or duties of a pharmacy technician. On or about July 25, 2016, after pleading nolo contendere, Respondent was convicted of one felony count of violating Penal Code section 487, subdivision (a) [grand theft of personal property] in the criminal proceeding entitled *The People of the State of California v. Nestor Daniel Sanchez* (Super. Ct. Los Angeles County, Pasadena Courthouse, 2016, No. GA098561). The Court sentenced Respondent to serve 365 days in the Los Angeles County Jail, placed him on five years' formal probation, and ordered him to pay restitution to the victim, among other terms and conditions. The circumstances surrounding the conviction are set forth above, in Paragraphs 55-66, and are incorporated herein by reference.

**SIXTH CAUSE FOR DISCIPLINE**  
**(Respondent Sanchez - Acts Involving  
Dishonesty, Fraud, or Deceit)**

72. Respondent Sanchez is subject to disciplinary action under Section 4301, subdivision (f), in that he committed acts involving dishonesty, fraud, or deceit with the intent to substantially benefit himself, or substantially injure another, when he stole Promethazine with Codeine syrup

1 and Alprazolam 2 mg between approximately April 2015 and October 2015 from his employer, as  
2 alleged above in Paragraphs 55-66, which are incorporated herein by reference.

3 **SEVENTH CAUSE FOR DISCIPLINE**  
4 **(Respondent Sanchez - Illegal Possession of Prescription**  
5 **Drugs Without a Valid Prescription)**

6 73. Respondent Sanchez is subject to disciplinary action under Section 4301,  
7 subdivisions (j) and (o), for violating Section 4060 and Health and Safety Code sections 11158,  
8 subdivision (a), and 11171, in that, between approximately April 2015 and October 2015,  
9 Respondent was in possession of prescription drugs without a valid prescription. Complainant  
10 refers to, and by this reference incorporates, the allegations set forth above in Paragraphs 55-66.

11 **EIGHTH CAUSE FOR DISCIPLINE**  
12 **(Respondent Sanchez – Furnishing Prescription Drugs**  
13 **To Others Without a Valid Prescription)**

14 74. Respondent Sanchez is subject to disciplinary action under Section 4301,  
15 subdivisions (j) and/or (o), for violating Section 4059, subdivision (a), in that, between  
16 approximately April 2015 and October 2015, he illegally sold and/or transferred stolen  
17 prescription drugs to his friends, without a valid prescription. Complainant refers to, and by this  
18 reference incorporates, the allegations set forth above in Paragraphs 55-66.

19 **NINTH CAUSE FOR DISCIPLINE**  
20 **(Respondent Chang - Failure to Exercise or**  
21 **Implement Best Professional Judgment)**

22 75. Respondent Chang is subject to disciplinary action under Sections 4005, 4300 and  
23 4301, subdivisions (o) and/or (j), for unprofessional conduct pursuant to Sections 4036.5, 4059,  
24 4059.5, 4060, 4081, 4113, subdivision (c), 4301 and 4306.5, subdivisions (a) through (c), in that  
25 Respondent, while acting as the PIC of Partner Healthcare, failed to appropriately exercise his  
26 education, training, or experience as a pharmacist and failed to exercise or implement his best  
27 professional judgment with regard to securing, dispensing, accounting for and/or furnishing the  
28 dangerous drugs/controlled substances Alprazolam 2 mg and Promethazine with Codeine syrup  
and failed to consult appropriate patient, prescription, and other records for these drugs, as set  
forth in Paragraphs 55-66 above, which are incorporated herein by reference.

**TENTH CAUSE FOR DISCIPLINE**  
**(Respondent Partner Healthcare – Failure to Notify  
Board of Loss of Controlled Substances)**

76. Respondent Partner Healthcare is subject to disciplinary action under Sections 4005, 4300 and 4301, subdivisions (o) and/or (j), in conjunction with Sections 4156, for violating title 16, California Code of Regulations, section 1715.6, in that Respondent Partner Healthcare failed to report the loss of Alprazolam 2 mg and Promethazine with Codeine syrup to the Board within 30 days of the loss of controlled substances. The facts supporting this cause are specified in Paragraphs 55-66 above and incorporated herein by reference.

**ELEVENTH CAUSE FOR DISCIPLINE**  
**(Respondent Chang – Failure to Notify Board of Loss of Controlled Substances)**

77. Respondent Chang is subject to disciplinary action under Sections 4005, 4300 and 4301, subdivisions (o) and/or (j), in conjunction with Section 4113, subdivision (c), for violating title 16, California Code of Regulations, section 1715.6, in that Respondent failed to report the loss of Alprazolam 2 mg and Promethazine with Codeine syrup to the Board within 30 days of the loss of controlled substances. On January 4, 2016, Chang reported the loss of controlled substances to the Board; however, he knew or reasonably should have known of the loss of a large quantity of controlled substances/dangerous drugs by no later than November 20, 2015. The facts supporting this cause are specified in Paragraphs 55-66 above and incorporated herein by reference.

**FACTS RELATED TO ANNUAL RENEWAL INSPECTION**  
**OF PHARMACY ON AUGUST 1, 2017 AND INVESTIGATION**

78. On August 1, 2017, a Board Inspector conducted an annual sterile compounding renewal inspection at Partner Healthcare, located at 2035 S. Myrtle Avenue, Monrovia, CA 91016. The pharmacy is described as a very large “Closed Door” pharmacy providing both sterile compounds and non sterile medications to approximately 4,500 consumers residing in either a skilled nursing facility or assisted living home. Pharmacist Hwang was present and assisted with the inspection.

1           79. In the area where sterile compounding was conducted, the Board's Inspector opened  
2 and inspected the contents stored inside a refrigerator. On one shelf inside was a plastic tote with  
3 two dozen, previously frozen, manufacturer prepared Cefazolin 1 gm IVPB (injectable) that were  
4 thawed and in liquid form. Each Cefazolin had a sticker on it indicating the expiration date of the  
5 product was 9/30/17. However, the manufacturer expiration date on the product label clearly  
6 stated "Thawed solution is stable for 30 days under refrigeration and 48 hours at room  
7 temperature."

8           80. Hwang could not explain why each Cefazolin was given a 60-day expiration date.  
9 The Board's Inspector asked Hwang to provide a policy and procedure for thawing frozen  
10 antibiotics which she did. The policy and procedure clearly stated the Cefazolin solution was  
11 stable for 30 days under refrigeration and 48 hours at room temperature. Hwang was again asked  
12 to explain why the Cefazolin were misbranded. She summoned Pharmacy Technician D.M., who  
13 stated he placed the expiration date on the Cefazolin bags, but must have inadvertently used an  
14 incorrect date.

15           81. The Board's Inspector discussed with Hwang her findings of the inspection and areas  
16 which were noncompliant and for which corrections were issued, including but not limited to the  
17 lack of documentation that PIC Chang had reviewed the policies and procedures annually or how  
18 the staff were notified of changes to them. The Board's Inspector requested that Hwang provide  
19 her with evidence of an annual quantitative analysis ensuring integrity, potency, quality, and  
20 labeled strength. Hwang was able to locate reports from Eagle Analytical Services dated 8/07/15  
21 and 7/20/17, but was not able to locate a report indicating the quality assurance review was  
22 performed in 2016. Hwang telephoned PIC Chang, and then informed the Board's Inspector the  
23 two reports she presented were the only ones they had.

24           82. At the conclusion of her inspection on August 1, 2017, the Board's Inspector issued a  
25 written notice of noncompliance for the following violations: (1) Section 4342, for drugs which  
26 do not conform to the standard and tests as to quality and strength, for having 24 previously  
27 frozen Cefazolin 1 gm IVPB found thawed in a refrigerator with an expiration date of 9/30/17  
28 affixed, when the manufacturer states the product is only good for 30 days once thawed; and

1 (2) California Code of Regulations, title 16, section 1735.8, subdivision (c), in that documentation  
2 provided for the pharmacy indicated a compounded product had quantitative analysis performed  
3 on 8/07/15, then on 7/20/17, which showed that the quantitative analysis was not performed on at  
4 least an annual basis.

5 83. In the Inspection Report, PIC Chang was requested to fax or email additional  
6 documents, including but not limited to revised policies and procedures which reflected  
7 compliance with Sections 1735.5, subdivisions (d) & (e) and 1735.8, subdivision (d). On or  
8 about August 13, 2017, Chang emailed the Board's Inspector revisions to the pharmacy's sterile  
9 compounding policies and procedures.

10 **TWELFTH CAUSE FOR DISCIPLINE**  
11 **(Respondent Partner Healthcare – Non-Conforming**  
12 **Dangerous Drugs Lacking Quality and Strength)**

13 84. Respondent Partner Healthcare's Sterile Compounding License and Pharmacy Permit  
14 are subject to disciplinary action under Sections 4156, 4300 and 4301, subdivision (o), for violating  
15 Section 4342, subdivisions (a) and/or (b). The circumstances are that, on or about August 1, 2017,  
16 during an inspection by the Board's Inspector at Partner Healthcare there were dangerous drugs, 24  
17 previously frozen Cefazolin 1 gm IVPB in stock which were incorrectly labelled with an expiration  
18 date of September 30, 2017 (60 days) affixed, when the manufacturer of the product stated the  
19 Cefazolin 1 gm IVPB was only good for 30 days once thawed, as set forth above in greater detail  
20 in Paragraphs 78-83, which allegations are incorporated here fully by reference. The 24 thawed  
21 Cefazolin 1 gm IVPB did not conform to the standard and tests as to quality and strength, provided  
22 in the latest edition of the U.S. Pharmacopoeia or the National Formulary and/or there was a  
23 knowing or willful violation of a regulation or regulations adopted pursuant to Section 4006.

24 **THIRTEENTH CAUSE FOR DISCIPLINE**  
25 **(Respondent Chang - Non-Conforming Dangerous**  
26 **Drugs Lacking Quality and Strength)**

27 85. Respondents PIC Chang is subject to disciplinary action under Sections 4036.5, 4113,  
28 subdivision (c), 4300 and 4301, subdivision (o), for violating Section 4342, subdivision (a). The  
circumstances are that, on or about August 1, 2017, during an inspection by the Board's Inspector

1 at Partner Healthcare there were dangerous drugs, 24 previously frozen Cefazolin 1 gm IVPB in  
2 stock which were incorrectly labelled with an expiration date of September 30, 2017 (60 days)  
3 affixed, when the manufacturer of the product stated the Cefazolin 1 gm IVPB was only good for  
4 30 days once thawed, as set forth above in greater detail in Paragraphs 78-83, which allegations are  
5 incorporated here fully by reference. The 24 thawed Cefazolin 1 gm IVPB did not conform to the  
6 standard and tests as to quality and strength, provided in the latest edition of the U.S.  
7 Pharmacopoeia or the National Formulary and/or there was a knowing or willful violation of a  
8 regulation or regulations adopted pursuant to Section 4006.

9 86. Pursuant to Section 4113, subdivision (c), Respondent Chang, as the PIC during the  
10 relevant time period, is liable for his failure to adequately supervise his employees, and institute  
11 and follow adequate policies and procedures to ensure that all compounded drugs and dangerous  
12 drugs, including the 24 thawed Cefazolin 1 gm IVPB, were properly labelled, and conformed in  
13 quality and strength to the manufacturer's specifications and all applicable state and federal  
14 regulations.

15 **FOURTEENTH CAUSE FOR DISCIPLINE**  
16 **(Respondent Partner Healthcare - Compounding Quality Assurance)**

17 87. Respondent Partner Healthcare's Sterile Compounding License and Pharmacy Permit  
18 are subject to disciplinary action under Sections 4156, 4300 and 4301, subdivision (o), for violating  
19 California Code of Regulations, title 16, section 1735.8, subdivision (c), in conjunction with  
20 California Code of Regulations, title 16, sections 1735.2, subdivision (h) and 1735.6, subdivision  
21 (a). The circumstances are that, on or about August 1, 2017, during an inspection by the Board's  
22 Inspector at Partner Healthcare and investigation, it was determined that Respondent did not ensure  
23 integrity, potency, quality and labeled strength of dangerous drugs at least once annually, between  
24 8/7/15 and 7/20/17, as set forth above in greater detail in Paragraphs 78-83, which allegations are  
25 incorporated here fully by reference.

26 **FIFTEENTH CAUSE FOR DISCIPLINE**  
27 **(Respondents Chang – Compounding Quality Assurance)**

28 88. Respondent PIC Chang is subject to disciplinary action under sections 4036.5, 4113,  
4300 and 4301, subdivision (o), for violating California Code of Regulations, title 16, section



1 1735.8, subdivision (c), in conjunction with California Code of Regulations, title 16, sections  
2 1735.2, subdivision (h) and 1735.6, subdivision (a) and Section 4081, subdivision (b). The  
3 circumstances are that, on or about August 1, 2017, during an inspection by the Board's Inspector  
4 at Partner Healthcare and investigation, it was determined that Respondent did not ensure integrity,  
5 potency, quality and labeled strength of dangerous drugs (24 previously frozen Cefazolin 1 gm  
6 IVPB) at least once annually, between 8/7/15 and 7/20/17, as set forth above in greater detail in  
7 Paragraphs 78-83, which allegations are incorporated here fully by reference.

8 89. Pursuant to Section 4113, Respondent Chang, as the PIC of the pharmacy during the  
9 relevant time period, is liable for his failure and/or that of the pharmacy's employees to ensure  
10 integrity, potency, quality and labeled strength of compounded products. The pharmacy's policies  
11 and procedures shall be reviewed and such review shall be documented on an annual basis by the  
12 PIC. Respondent Chang did not document he reviewed the pharmacy's policies and procedures  
13 annually or how staff were notified of any changes to them. The allegations are set forth above in  
14 greater detail in Paragraphs 78-83, are incorporated here fully by reference.

15 **FACTS RELATED TO ANNUAL RENEWAL INSPECTION**  
16 **OF PHARMACY ON AUGUST 23, 2018 AND INVESTIGATION**

17 90. On August 23, 2018, a Board Inspector conducted an annual sterile compounding  
18 inspection, routine inspection, and complaint investigation at Partner Healthcare. The Board had  
19 received an anonymous written complaint alleging that Partner Healthcare dispensed Schedule II  
20 (CII) controlled substance prescriptions without verifying the prescription(s) with a physician.  
21 The complainant alleged the administrators at Highland Palms Healthcare and Arlington Gardens  
22 Care Center made it known that the verbal and written controlled substance prescriptions  
23 transcribed by nurses did not need to be verified. The complainant alleged this created a loophole  
24 for diversion of controlled substances.

25 91. During the inspection on August 23, 2018, Staff Pharmacist A.T., Pharmacist Hwang,  
26 and Respondent Chang indicated that the pharmacy dispensed CII controlled substance  
27 prescriptions (CII prescriptions) for the skilled nursing facilities (SNF) as follows:  
28

- The SNF faxed the patient's CII controlled substance orders to the pharmacy, and the order was typed into the computer system by pharmacy processing staff.
- The pharmacy technician reduced the CII controlled substance orders to writing onto a pharmacy generated CII controlled substance order form and the prescription was filled.
- The pharmacist verified the written order which was reduced to writing by the technician against the faxed order received by the facility. The first time the pharmacist viewed the faxed order request was during the prescription verification process which was after it had already been processed, reduced to writing, and filled.
- The pharmacist did not contact the prescriber to verify or validate the requested order before it was filled. After the prescription had been dispensed, the pharmacy-generated CII controlled substances order was faxed to the prescriber/physician, which was usually the following morning.
- The CII controlled substance prescription was dispensed to the patient prior to the pharmacy receiving the prescriber's signature for the CII controlled substance order. The pharmacy followed up with subsequent faxes, telephone calls, and text messages to the prescribers to obtain their signature.
- The pharmacy typically generated a prescription for an emergency seven-day supply, but only dispensed increments of a three day-supply.

92. During the inspection, the Inspector randomly selected and obtained some CII controlled substance orders that were waiting for prescriber signatures, as well as a copy of the facility orders used to initiate the CII controlled substance order, identity of the pharmacist who dispensed the CII controlled substance order, and the patient prescription profile for each of the respective CII controlled substance orders. The following sample of unsigned prescriber CII controlled substances prescription orders were received during the inspection:

Patient	Dispense Date	RX#	Drug	Oral/written/ electronic RX received prior to dispensing	Signed RX received within 7 days
DN	7/3/18	60675427	Hydrocodone/APAP 5/325	No	No
NG	5/15/18	60587986	Hydrocodone/APAP 10/325	No	No

JM	7/18/18	60701924	Hydrocodone/APAP 5/325	No	No
OO	8/3/18	60731152	Hydrocodone/APAP 5/325	No	No
DA	7/18/18	60701384	Hydrocodone/APAP 5/325	No	No
PB	8/4/18	60732757	Hydrocodone/APAP 5/325	No	No
RD	8/14/18	60748718	Hydrocodone/APAP 5/325	No	No
RD	8/14/18	60749311	Hydrocodone/APAP 5/325	No	No
RD	8/15/18	60750693	Hydrocodone/APAP 10/325	No	No
OM	8/3/18	60730390	Hydrocodone/APAP 10/325	No	No
JM	7/25/18	60714127	Hydrocodone/APAP 5/325	No	No
PR	8/15/18	60750545	Oxycodone/APAP 10/325	No	No

93. None of the CII controlled substance orders were signed by the prescriber, transcribed by the dispensing pharmacist, and no verbal authorization was received by the pharmacist from the prescriber prior to dispensing the CII controlled substance prescriptions. Pharmacist Hwang stated she believed the pharmacy was following the law by using the pharmacy generated CII controlled substance prescription forms for emergency and oral continuation CII orders. Pharmacist Hwang also stated the pharmacy obtained all the required information and followed up by obtaining the signature from the prescriber and signature of nurse upon delivery. Respondent Chang indicated it was difficult to get the prescribers' signatures, and that the pharmacy dispensed the prescription as an emergency to take care of the patient.

94. The Inspector requested and received the following sample of signed prescriber CII controlled substance prescription orders:

Patient	Dispense Date	RX#	Drug	Oral/ written/electronic RI (received prior to dispensing)	Signed RX Received w/in 7 days
SA	7/13/18	60693477	Hydrocodone/APAP 5/325	No	Yes
MA	8/7/18	60736457	Oxycodone 15 mg	No	Yes
TA	8/7/18	60738118	Hydrocodone/APAP 10/325	No	Yes
ED	7/16/18	60696251	Hydrocodone/APAP 10/325	No	Yes
KE	7/23/18	60708719	Hydrocodone/APAP 5/325	No	Yes
LG	7/18/18	60701879	Hydrocodone/APAP 7.5/325	No	Yes
MG	7/19/18	60703802	Hydrocodone/APAP 5/325	No	Yes
SL	7/3/18	60673728	Hydrocodone/APAP 5/325	No	Yes
CM	7/18/18	60702003	Oxycodone 10 mg	No	Yes
AM	7/18/18	60702228	Hydrocodone/APAP 10/325	No	.Yes

AS	7/19/18	60703214	Hydrocodone/APAP 5/325	No	Yes
TT	7/20/18	60706146	Hydrocodone/APAP 5/325	No	Yes
JV	7/21/18	60706467	Hydrocodone/APAP 5/325	No	Yes
TG	8/13/18	60748487	Fentanyl IOO mcg	No	Yes
TG	8/14/18	60749232	Oxycodone 5 mg	No	Yes
HM	8/15/18	60750524	Fentanyl IOO mcg	No	Yes
MM	8/13/18	60747546	Hydrocodone/APAP 5/325	No	Yes

95. None of the CII controlled substance orders were signed by the prescriber or transcribed by the dispensing pharmacist and no verbal authorization was received by the pharmacist from the prescriber before the CII controlled substance prescription was dispensed. Pharmacist Hwang acknowledged during the inspection that the pharmacy serviced the two SNFs, Highland Palms and Arlington Gardens, mentioned in the anonymous complaint to the Board.

96. The Inspector requested Respondent Chang's written statement regarding her written notices of non-compliance with Health and Safety Code section 11167.5, subdivision (a), as it relates to Code of Federal Regulation 1306.11, subdivision (f), for dispensing CII controlled substance prescriptions without first obtaining a verbal or written order from the prescriber and for not obtaining a signed order within seven days. In addition, the Inspector requested that Respondent Chang provide information about the pharmacy's policies, procedures and protocols.

97. In response, on September 13, 2018, Respondent Chang e-mailed the Inspector his written statement, which is summarized as follows:

- Partner Healthcare provided prescription service to several SNFs, which included regularly filling around 3,500 prescriptions daily, of which 250-300 are new and refill orders for CII controlled substance medications. Most of these orders were for patients recently discharged from hospitals after surgery and transferred to SNFs for recovery and rehabilitation and under pain management therapy.
- Partner Healthcare's standard procedure was to receive authorization from the facility/attending prescriber before dispensing CII controlled substances, either through a signed order or verbal order. However, the pharmacy had an outstanding verbal authorization from the SNF medical directors allowing the pharmacy to dispense a reasonable amount of medications, including controlled substances, to patients discharged from hospitals into the SNF. This arrangement was due to the practical difficulty of contacting prescribers after hours, which was when these transactions mainly occurred.

- The current protocol required the pharmacy to reach out to the SNFs to get a copy of the patient's discharge order. The pharmacist reviewed the order and it served as the basis in determining the patient's need for continuity of care and the appropriateness of the drug, strength, dose, and quantity to be given to the patient. The pharmacy always followed these procedures for SNF patients and never dispensed any controlled substance or any prescription without the prescriber's (or medical director's) consent.

**SIXTEENTH CAUSE FOR DISCIPLINE**  
**(Respondents Partner Healthcare and Chang -  
Dispensed Emergency Prescriptions For CII Controlled  
Substances Without A Physician's Order)**

98. Respondent Partner Healthcare and Respondent Chang are subject to disciplinary action under Sections 4301, subdivisions (o) and/or (j) and 4113, subdivision (c), in conjunction with California Code of Regulations, title 16, section 1709.1, subdivision (a), in that, while Respondent Chang was employed as the PIC of Partner Healthcare, Respondents violated Health and Safety Code section 11167, subdivisions (a)-(d), by dispensing emergency prescriptions for CII controlled substances to patients at SNFs without a valid written electronic or oral order from the physician prior to dispensing, and by failing to obtain a signed written order from the physician within seven days of dispensing the CII controlled substances, in 2018, as set forth above in Paragraphs 90-97, which are incorporated by reference.

**SEVENTEENTH CAUSE FOR DISCIPLINE**  
**(Respondents Partner Healthcare and Chang -  
Dispensed CII Controlled Substance  
Without A Physician's Order)**

99. Respondent Partner Healthcare and Respondent Chang are subject to disciplinary action under Sections 4301, subdivisions (o) and/or (j), and 4113, subdivision (c), in conjunction with California Code of Regulations, title 16, section 1709.1, subdivision (a), in that, while Respondent Chang was employed as the PIC of Partner Healthcare, Respondents violated Code of Federal Regulations, title 21, section 1306.11, subdivisions (c)-(f) and Health and Safety Code section 11167.5, subdivision (a), by dispensing prescriptions for CII controlled substances to patients at SNFs without first obtaining a valid electronic or written order from the physician, as set forth above in Paragraphs 90-97, which are incorporated by reference.

1 **OTHER MATTERS**

2 100. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit  
3 Number PHY 51078 issued to Partner Healthcare Inc., Partner Healthcare Inc. shall be prohibited  
4 from serving as a manager, administrator, owner, member, officer, director, associate, or partner  
5 of a licensee for five years if Pharmacy Permit Number PHY 51078 is placed on probation or  
6 until Pharmacy Permit Number PHY 51078 is reinstated if it is revoked.

7 **DISCIPLINE CONSIDERATIONS**

8 101. To determine the degree of discipline, Complainant alleges as follows:

9 a. On or about February 24, 2016, the Board issued administrative Citation No. CI 2014  
10 63965 against Respondent Partner Healthcare for failing to ensure that it did not exceed the  
11 pharmacist to pharmacy technician ratio of 2:1 between June 14, 2015 and June 20, 2015, in  
12 violation of Section 4115, subdivision (f)(1). A fine in the amount of \$5,000 was issued with the  
13 citation. The citation was paid in full and became the final order.

14 b. On or about June 2, 2016, the Board issued administrative Citation No. CI 2014  
15 65972 against Respondent Partner Healthcare for failing to prevent the sale of drugs lacking in  
16 quality and for taking back medications from assisted living facilities and placing them into  
17 containers to be dispensed to other patients, in violation of Section 4342, subdivision (a) and  
18 Health and Safety Code section 111440. A fine in the amount of \$2,000 was issued with the  
19 citation. The citation was paid in full and became the final order.

20 c. On or about February 24, 2016, the Board issued administrative Citation No. CI 2015  
21 69197 against Respondent Henry Hung Yat Chang for failing to ensure that he, as PIC for Partner  
22 Healthcare, did not exceed the pharmacist to pharmacy technician ratio of 2:1 between June 14,  
23 2015 and June 20, 2015, in violation of Section 4115, subdivision (f)(1). A fine in the amount of  
24 \$5,000 was issued with the citation. The citation was paid in full and became the final order.

25 d. On or about June 2, 2016, the Board issued administrative Citation No. CI 2014  
26 65972 against Respondent Henry Hung Yat Chang for failing to prevent the sale of drugs lacking

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1 in quality and for taking back medications from assisted living facilities and placing them into  
2 containers to be dispensed to other patients, while he was PIC for Partner Healthcare, in violation  
3 of Section 4342, subdivision (a) and Health and Safety Code section 111440. A fine in the  
4 amount of \$2,000 was issued with the citation. The citation was paid in full and became the final  
5 order.

6 **PRAYER**

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

9 1. Revoking or suspending Pharmacy Permit Number PHY 51078, issued to Partner  
10 Healthcare, Inc.; Henry Hung Yat Chang; Khanh-Long Thai; Ammie Hwang; Brian Garner;

11 2. Revoking or suspending Pharmacist Permit Number RPH 53723, issued to Henry  
12 Hung Yat Chang;

13 3. Revoking or suspending Pharmacy Technician Registration Number TCH 123802,  
14 issued to Nestor Daniel Sanchez;

15 4. Prohibiting Partner Healthcare, Inc from serving as a manager, administrator, owner,  
16 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit  
17 Number PHY 51078 is placed on probation or until Pharmacy Permit Number PHY 51078 is  
18 reinstated if Pharmacy Permit Number PHY 51078 issued to Partner Healthcare, Inc. is revoked.

19 5. Ordering Partner Healthcare Inc., Henry Hung Yat Chang, and Nestor Sanchez,  
20 jointly and severally, to pay the Board of Pharmacy the reasonable costs of the investigation and  
21 enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

22 6. Taking such other and further action as deemed necessary and proper.

23  
24 DATED: August 16, 2019



25 ANNE SODERGREN  
26 Interim Executive Officer  
27 Board of Pharmacy  
28 Department of Consumer Affairs  
State of California  
Complainant

LA2017604797; 53657287