

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

In the Matter of the First Amended Accusation Against:

LION PHARMACY

Pharmacy License No. PHY 52544; and

CHI MAI

Pharmacist License No. RPH 66348,

Respondents

Agency Case No. 6406

OAH No. 2019081152

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 May 6, 2020.

It is so ORDERED on April 6, 2020.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Greg M. Lippe", is written over the printed name.

By

Greg Lippe
Board President

XAVIER BECERRA
Attorney General of California
JOSHUA A. ROOM
Supervising Deputy Attorney General
CHRISTOPHER M. YOUNG
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Attorneys for Complainant

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

In the Matter of the First Amended Accusation
Against:

LION PHARMACY
2857 Senter Road, Suite A
San Jose, CA 95111
Pharmacy License No. PHY 52544

CHI MAI
1625 Hermocilla Way
San Jose, CA 95116
Pharmacist License No. RPH 66348

Respondents.

Case No. 6406

OAH No. 2019081152

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO
RESPONDENT CHI MAI ONLY**

In the interest of a prompt and speedy settlement of this matter, consistent with the public interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will be submitted to the Board for approval and adoption as the final disposition of the First Amended Accusation solely with respect to Chi Hoa Mai.

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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 Christopher M.
5 Young, Deputy Attorney General.

6 2. Respondent Chi Hoa Mai (Respondent) is represented in this proceeding by attorney
7 Ivan Petrzelka, whose address is: P.O. Box 552, Red Bluff, CA 96080

8 3. On or about October 19, 2011, the Board issued Pharmacist License No. RPH 66348
9 to Respondent Mai. The Pharmacist License was in full force and effect at all times relevant to
10 the charges brought in First Amended Accusation No. 6406, and will expire on July 31, 2021,
11 unless renewed.

12 **JURISDICTION**

13 4. Accusation No. 6406 was filed before the Board, and is currently pending against
14 Respondent. The Accusation and all other statutorily required documents were properly served
15 on Respondent on September 19, 2018. Respondent timely filed her Notice of Defense contesting
16 the Accusation. First Amended Accusation No. 6406 was filed before the Board, and is currently
17 pending against Respondent. First Amended Accusation No. 6406 and all other statutorily
18 required documents were properly served on Respondent on October 9, 2018.

19 5. A copy of First Amended Accusation No. 6406 is attached as exhibit A and
20 incorporated herein by reference.

21 **ADVISEMENT AND WAIVERS**

22 6. Respondent has carefully read, fully discussed with counsel, and understands the
23 charges and allegations in First Amended Accusation No. 6406. Respondent has also carefully
24 read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and
25 Disciplinary Order.

26 7. Respondent is fully aware of her legal rights in this matter, including the right to a
27 hearing on the charges and allegations in the First Amended Accusation; the right to confront and
28 cross-examine the witnesses against her; the right to present evidence and to testify on her own

1 behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the
2 production of documents; the right to reconsideration and court review of an adverse decision;
3 and all other rights accorded by the California Administrative Procedure Act and other applicable
4 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 First Amended
9 Accusation No. 6406, if proven at a hearing, constitute cause for imposing discipline upon her
10 Pharmacy License.

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

15 11. Respondent agrees that her Pharmacist License is subject to discipline and she agrees
16 to 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 its counsel. By signing the stipulation, Respondent understands
22 and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the
23 time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its
24 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 Pharmacist License No. RPH 66348 issued to Respondent Chi Hoa Mai is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

1. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

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

an arrest or issuance of a criminal complaint for violation of any provision of the

Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws

a plea of guilty, or nolo contendere, no contest, or similar, in any state or federal criminal proceeding to any criminal complaint, information or indictment

a conviction of any crime

the filing of a disciplinary pleading, issuance of a citation, or initiation of another administrative action filed by any state or federal agency which involves

respondent's license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

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

2. Report to the Board

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

Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the board.

3. Interview with the Board

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

4. Cooperate with Board Staff

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

1 **5. Continuing Education**

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

4 **6. Reporting of Employment and Notice to Employers**

5 During the period of probation, respondent shall notify all present and prospective
6 employers of the decision in case number 6406 and the terms, conditions and restrictions imposed
7 on respondent by the decision, as follows:

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

19 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
20 respondent undertaking any new employment, respondent shall cause (a) Entity direct supervisor,
21 (b) Entity pharmacist-in-charge, designated representative-in-charge, responsible manager, or
22 other compliance supervisor, and (c) the owner or owner representative of Entity employer, to
23 report to the board in writing acknowledging that the listed individual(s) has/have read the
24 decision in case number 6406, and terms and conditions imposed thereby. If one person serves in
25 more than one role described in (a), (b), or (c), the acknowledgment shall so state. It shall be the
26 respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the
27 board. In the event of a change in the person(s) serving the role(s) described in (a), (b), or (c)
28 during the term of probation, respondent shall cause the person(s) taking over the role(s) to report

1 to the board in writing within fifteen (15) days of the change acknowledging that he or she has
2 read the decision in case number 6406, and the terms and conditions imposed thereby.

3 If respondent works for or is employed by or through an employment service, respondent
4 must notify the person(s) described in (a), (b), and (c) above at every entity licensed by the board
5 of the decision in case number 6406, and the terms and conditions imposed thereby in advance of
6 respondent commencing work at such licensed entity. A record of this notification must be
7 provided to the board upon request.

8 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
9 (15) days of respondent undertaking any new employment by or through an employment service,
10 respondent shall cause the person(s) described in (a), (b), and (c) above at the employment service
11 to report to the board in writing acknowledging that he or she has read the decision in case
12 number, and the terms and conditions imposed thereby. It shall be respondent's responsibility to
13 ensure that these acknowledgment(s) are timely submitted to the board.

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

17 "Employment" within the meaning of this provision includes any full-time, part-time,
18 temporary, relief, or employment/management service position as a Pharmacist, or any position
19 for which a Pharmacist is a requirement or criterion for employment, whether the respondent is an
20 employee, independent contractor or volunteer.

21 **7. Notification of Change(s) in Name, Address(es), or Phone Number(s)**

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

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

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1 **8. Restrictions on Supervision and Oversight of Licensed Facilities**

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

7 **9. Reimbursement of Board Costs**

8 As a condition precedent to successful completion of probation, respondent shall pay to the
9 board its costs of investigation and prosecution in the amount of \$18,603.20.

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

13 **10. Probation Monitoring Costs**

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

18 **11. Status of License**

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

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

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1 **12. License Surrender While on Probation/Suspension**

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

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

17 **13. Practice Requirement – Extension of Probation**

18 Except during periods of suspension, respondent shall, at all times while on probation, be
19 employed as a Pharmacist in California for a minimum of 80 hours per calendar month. Any
20 month during which this minimum is not met shall extend the period of probation by one month.
21 During any such period of insufficient employment, respondent must nonetheless comply with all
22 terms and conditions of probation, unless respondent receives a waiver in writing from the board
23 or its designee.

24 If respondent does not practice as a Pharmacist in California for the minimum number of
25 hours in any calendar month, for any reason (including vacation), respondent shall notify the
26 board in writing within ten (10) days of the conclusion of that calendar month. This notification
27 shall include at least: the date(s), location(s), and hours of last practice; the reason(s) for the
28 interruption or reduction in practice; and the anticipated date(s) on which respondent will resume

1 practice at the required level. Respondent shall further notify the board in writing within ten (10)
2 days following the next calendar month during which respondent practices as a Pharmacist in
3 California for the minimum of hours. Any failure to timely provide such notification(s) shall be
4 considered a violation of probation.

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

9 **14. Violation of Probation**

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

16 If respondent violates probation in any respect, the board, after giving respondent notice
17 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
18 was stayed. If a petition to revoke probation or an accusation is filed against respondent during
19 probation, or the preparation of an accusation or petition to revoke probation is requested from
20 the Office of the Attorney General, the board shall have continuing jurisdiction and the period of
21 probation shall be automatically extended until the petition to revoke probation or accusation is
22 heard and decided, and the charges and allegations in First Amended Accusation No. 6406 shall
23 be deemed true and correct.

24 **15. Completion of Probation**

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

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1 **16. Remedial Education**

2 Within sixty (60) days of the effective date of this decision, respondent shall submit to the
3 board or its designee, for prior approval, an appropriate program of remedial education related to
4 returning prescriptions to stock if not picked up by a patient, reporting CURES data, furnishing
5 drugs without a prescription, and inventory control/pharmacy operations. The program of
6 remedial education shall consist of at least 10 hours for each year of probation, having 50% in-
7 person training not including live online classes, at respondent's own expense. All remedial
8 education shall be in addition to, and shall not be credited toward, continuing education (CE)
9 courses used for license renewal purposes for pharmacists.

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

14 Following the completion of each course, the board or its designee may require the
15 respondent, at her own expense, to take an approved examination to test the respondent's
16 knowledge of the course. If the respondent does not achieve a passing score on the examination
17 that course shall not count towards satisfaction of this term. Respondent shall take another course
18 approved by the board in the same subject area.

19 **17. Ethics Course**

20 Respondent enrolled in a course in ethics, at respondent's expense, titled Pharmacy Ethics
21 and Professionalism in Irvine, California, offered by PBI Education. Respondent has provided
22 proof of attendance of this course held on January 12-13, 2019, and Respondent has also provided
23 proof of a 6-month longitudinal follow up component dated July 30, 2019. In order to obtain a
24 Certificate of Completion, Respondent must complete an additional follow up in January 2020.
25 Within five (5) days of completion, if not already completed, respondent shall submit a copy of
26 the certificate of completion to the board or its designee. Failure to timely submit proof of
27 completion to the board or its designee, shall be considered a violation of probation.
28

Respondent shall not acquire any new ownership, legal or beneficial interest nor serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any additional business, firm, partnership, or corporation licensed by the board. If respondent currently owns or has any legal or beneficial interest in, or serves as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently licensed by the board, respondent may continue to serve in such capacity or hold such interest, but only to the extent of that position or interest as of the effective date of this restriction. Violation of this restriction shall be considered a violation of probation.

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Ivan Petrzelka. I understand the stipulation and the effect it will have on my Pharmacist License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

1/20/20

CHI HOA MAI
Respondent

I have read and fully discussed with Respondent Chi Hoa Mai the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

January 21, 2020

IVAN PETRZELKA
Attorney for Respondent

ENDORSEMENT

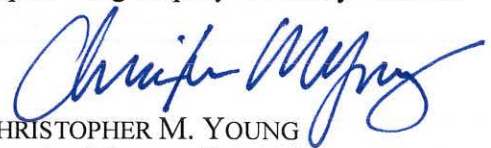
The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy.

DATED: _____

1/31/2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JOSHUA A. ROOM
Supervising Deputy Attorney General


CHRISTOPHER M. YOUNG
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

First Amended Accusation No. 6406

1 XAVIER BECERRA
Attorney General of California
2 JOSHUA A. ROOM
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3 CHRISTOPHER M. YOUNG
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7 *Attorneys for Complainant*

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

12
13 In the Matter of the First Amended Accusation
Against:

Case No. 6406

14 **LION PHARMACY**
15 **2857 Senter Road, Suite A**
San Jose, CA 95111
16 **Pharmacy License No. PHY 52544**

FIRST AMENDED ACCUSATION

17 **CHI MAI**
18 **1625 Hermocilla Way**
San Jose, CA 95116
19 **Pharmacist License No. RPH 66348**

20 Respondents.

21
22 **PARTIES**

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

26 2. On or about May 11, 2015, the Board of Pharmacy issued Pharmacy License Number
27 PHY 52544 to Lion Pharmacy Inc. (Respondent Pharmacy). Respondent Pharmacy is owned by
28 Chi Hoa Mai (Respondent Mai, RPH No. 66348) along with Phillip Thelan Pham (RPH No.

63752) and An Duy Nguyen (RPH No. 63497). The Pharmacy License was in full force and effect at all times relevant to the charges brought herein and will expire on May 1, 2019, unless renewed.

3. On or about October 19, 2011, the Board issued Pharmacist License No. RPH 66348 to Respondent Mai. The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2019, unless renewed.

JURISDICTION

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

5. Code section 4011 provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].

6. Code section 4300, subdivision (a), provides that every license issued by the Board may be suspended or revoked.

7. Code section 4300.1 provides that the expiration, cancellation, forfeiture, suspension, or voluntary surrender of a license "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."

8. Code section 4307, subdivision (a), states:

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

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

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

2 **STATUTORY PROVISIONS**

3 9. Code section 4059, subdivision (a), states:

4 (a) A person may not furnish any dangerous drug, except upon the prescription of a
5 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
6 3640.7. A person may not furnish any dangerous device, except upon the prescription of a
7 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
8 3640.7.

9 10. Code section 4113, subdivision (c), states:

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

12 11. Code section 4301 states, in pertinent part:

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

16 ...

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

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

22 ...

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

25 ...

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

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

3 12. Code section 4306.5, subdivision (a), provides, in pertinent part, that unprofessional
4 conduct for a pharmacist may include acts or omissions that involve, in whole or in part, the
5 inappropriate exercise of his or her education, training, or experience as a pharmacist, whether or
6 not the act or omission arises in the course of the practice of pharmacy or the ownership,
7 management, administration, or operation of a pharmacy or other entity licensed by the board.

8 13. Health & Safety Code section 11165, subdivision (d), states, in pertinent part:

9 (d) For each prescription for a Schedule II, Schedule III, or Schedule IV controlled
10 substance, as defined in the controlled substances schedules in federal law and regulations, the
11 dispensing pharmacy, clinic, or other dispenser shall report to the Department of Justice as soon
12 as reasonably possible, but not more than seven days after the date a controlled substance is
13 dispensed, in a format specified by the Department of Justice.

14 **REGULATORY PROVISIONS**

15 14. California Code of Regulations, title 16, section 1716, states: Pharmacists shall not
16 deviate from the requirements of a prescription except upon the prior consent of the prescriber or
17 to select the drug product in accordance with Section 4073 of the Business and Professions Code.
18 Nothing in this regulation is intended to prohibit a pharmacist from exercising commonly-
19 accepted pharmaceutical practice in the compounding or dispensing of a prescription.

20 **COST RECOVERY**

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

25 **FACTUAL BACKGROUND**

26 16. Respondent Pharmacy, located in San Jose, California, failed to return undelivered
27 inventory to its stock and failed to ensure compliance with applicable reporting laws as described
28 below. Respondent Mai, as Pharmacist in Charge (PIC) at Respondent Pharmacy from May 11,

1 2015 through the present, was responsible for ensuring compliance with all applicable laws.

2 Respondent Mai, as described below, dispensed medications without a prescription, and falsified
3 prescription information, at her job at CVS Pharmacy, which terminated her on August 3, 2015.

4 17. On or about October 25, 2016, pursuant to an inspection, inspectors discovered
5 numerous prescriptions in the pick-up area of Respondent Pharmacy dating back several months.
6 The industry standard is to reverse the billing to the third party insurance company within 14 days
7 after the prescription is billed, since the third party usually makes reimbursement payment on a
8 30-day cycle. Respondent Pharmacy's policy indicated that it would return to stock any
9 prescriptions not picked up within 10 days. Following the inspection, Respondent Pharmacy
10 electronically reversed over 123 prescriptions to insurance companies and manually reversed
11 numerous other prescriptions too old to process electronically.

12 18. On or about October 25, 2016, Respondent Pharmacy produced records of its most
13 recent CURES submission, which occurred on or about September 27, 2016. Respondent
14 Pharmacy failed to submit CURES data for three weeks from September 28, 2016. Moreover, the
15 records available indicated inconsistent transmission of CURES data.

16 19. Respondent Mai, from approximately September 2013 through August 3, 2015, while
17 employed by CVS Pharmacy, furnished dangerous drugs to patients HL and VL without a
18 legitimate prescription from a prescriber, and duplicated/overfilled dangerous drugs in unknown
19 quantities. The dangerous drugs dispensed included Voltaren gel, amlodipine, spironolactone,
20 furosemide, atorvastatin, Cialis, and triamcinolone 0.1% cream, without authorization from a
21 prescriber, and generated false records of authorization for these dangerous drugs. Respondent
22 Mai further generated false records of authorization for over-the-counter products. Respondent
23 admitted that she dispensed these drugs to HL and VL, and falsified records of authorization,
24 while employed at CVS Pharmacy.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 (Respondent Pharmacy and Respondent Mai as PIC)

3 (Unprofessional Conduct-Failure to Return Prescriptions to Stock)

4 20. Respondent Pharmacy and Respondent Mai are subject to disciplinary action under
5 Code section(s) 4113(c), 4301, and/or 4306.5, for failure to follow Pharmacy policy and industry
6 standards regarding returning to stock prescriptions not picked up by a patient after billed to
7 insurance, as described above in paragraph 17, and incorporated herein.

8 **SECOND CAUSE FOR DISCIPLINE**

9 (Respondent Pharmacy and Respondent Mai as PIC)

10 (Failure to Report CURES Data)

11 21. Respondent Pharmacy and Respondent Mai are subject to disciplinary action under
12 Code section(s) 4301(j) and/or (o), 4113(c), and/or Health and Safety Code section 11165(d), for
13 failure to transmit the dispensed controlled substance prescriptions data to CURES on a weekly
14 basis, as described above in paragraph 18, and incorporated herein.

15 **THIRD CAUSE FOR DISCIPLINE**

16 (Respondent Mai)

17 (Furnishing Drugs without Prescription)

18 22. Respondent Mai is subject to disciplinary action under Code section(s) 4301(j) and/or
19 (o), and/or 4059(a), and/or California Code of Regulations, Section 1716, for furnishing
20 dangerous drugs without a prescription from a prescriber, and duplicating/overfilling dangerous
21 drugs in unknown quantities, as described above in paragraph 19, and incorporated herein.

22 **FOURTH CAUSE FOR DISCIPLINE**

23 (Respondent Mai)

24 (Dishonest Conduct—Providing Drugs without Prescription and Falsifying Records)

25 23. Respondent Mai is subject to disciplinary action under Code section(s) 4301(f) and/or
26 (g), and/or 4306.5(a) for furnishing dangerous drugs without a prescription from a prescriber, and
27 duplicating/overfilling dangerous drugs in unknown quantities, as described above in paragraph
28 19, and incorporated herein.

1 **FIFTH CAUSE FOR DISCIPLINE**

2 (Respondent Mai)

3 **(Unprofessional Conduct—Providing Drugs without Prescription, Falsifying Records)**

4 24. Respondent Mai is subject to disciplinary action under Code section(s) 4301(f) and/or
5 (g), and/or 4306.5(a) for furnishing dangerous drugs without a prescription from a prescriber, and
6 duplicating/overfilling dangerous drugs in unknown quantities, as described above in paragraph
7 19, and incorporated herein.

8 **OTHER MATTERS**

9 25. Pursuant to Code sections 4035 and 4307, if discipline is imposed on Pharmacy
10 License Number PHY 52544 issued to Respondent Lion Pharmacy Inc., Lion Pharmacy Inc. shall
11 be prohibited from serving as a manager, administrator, owner, member, officer, director,
12 associate, or partner of a licensee for five years if Pharmacy License Number PHY 52544 is
13 placed on probation, or until reinstatement if Pharmacy License Number PHY 52544 is revoked.

14 26. Pursuant to Code section 4307, if discipline is imposed on Pharmacy License Number
15 PHY 52544 issued to Respondent Pharmacy while Respondent Mai was an owner, and had
16 knowledge of or knowingly participated in any conduct for which the licensee was disciplined,
17 Respondent Mai shall be prohibited from serving as a manager, administrator, owner, member,
18 officer, director, associate, or partner of a licensee for five years if Pharmacy License Number
19 PHY 52544 is placed on probation, or until reinstatement if Pharmacy License Number PHY
20 52544 is revoked.

21 27. Pursuant to Code section 4307, if discipline is imposed on Pharmacist License
22 Number RPH 66348 issued to Respondent Mai, Respondent Mai shall be prohibited from serving
23 as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee
24 for five years if Pharmacist License Number RPH 66348 is placed on probation, or until
25 reinstatement if Pharmacist License Number RPH 66348 is revoked.

26 **DISCIPLINARY CONSIDERATIONS**

27 28. On or about July 2, 2018, Respondent Pharmacy was issued Citation No. 2016 75374
28 for failing to ensure that customers received written notice of their right to request a consultation

1 with a pharmacist under Code of Regulations Title 16, section 1707.2, subd. (B)(2)(A), and for
2 failing to ensure pharmacy technicians were wearing appropriate identification under Code of
3 Regulations Title 16, section 1793.7, subd. (c). Respondent Pharmacy was assessed a penalty of
4 \$2,750. Respondent Pharmacy complied with the citation and paid the fine.

5 29. On or about July 2, 2018, Respondent Mai was issued Citation No. 2017 80432 for
6 failing to ensure that customers received written notice of their right to request a consultation with
7 a pharmacist under Code of Regulations Title 16, section 1707.2, subd. (B)(2)(A), and for failing
8 to ensure pharmacy technicians were wearing appropriate identification under Code of
9 Regulations Title 16, section 1793.7, subd. (c). Respondent Mai was assessed a penalty of \$750.
10 Respondent Mai complied with the citation and paid the fine.

11 **PRAYER**

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

14 1. Revoking or suspending Pharmacy License No. PHY 52544 issued to Lion Pharmacy
15 (Respondent Pharmacy);

16 2. Revoking or suspending Pharmacist License No. RPH 66348 issued to Chi Hoa Mai
17 (Respondent Mai);

18 3. Prohibiting Respondent Mai from serving as a manager, administrator, owner,
19 member, officer, director, associate, or partner of a licensee for five years if Pharmacy License
20 Number PHY 52544 is placed on probation, or until reinstatement if Pharmacy License Number
21 PHY 52544 is revoked.

22 4. Ordering Respondent Pharmacy and Respondent Mai, jointly and severally, to pay the
23 Board of Pharmacy the reasonable costs of the investigation and enforcement of this case,
24 pursuant to Business and Professions Code section 125.3; and,

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

DATED: 9/28/18 Virginia Herold

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

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