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

In the Matter of the Accusation Against: **ZENAIDA BUNYI JOAQUIN** **110 N. San Marino Avenue** **Pasadena, CA 91107** **Pharmacist License No. RPH 46432,** Respondents.	Case No. 6847 OAH No. 2020050709 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about April 6, 2020, Complainant Anne Sodergren, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 6847 against Zenaida Bunyi Joaquin (Respondent) before the Board of Pharmacy. Thereafter, on or about October 6, 2020, Complainant filed First Amended Accusation No. 6847 against Respondent before the Board of Pharmacy. (First Amended Accusation attached as Exhibit A.)

2. On or about August 6, 1993, the Board of Pharmacy (Board) issued Pharmacist License Number RPH 46432 to Respondent. The License was in full force and effect at all times

relevant to the charges brought in First Amended Accusation No. 6847 and will expire on August 31, 2021, unless renewed.

3. On or about April 16, 2020, Respondent signed and returned a Notice of Defense, requesting a hearing in this matter.

4. On, October 14, 2020, a Notice of Hearing was served by mail at Respondent's address of record which was and is:

110 N. San Marino Avenue

Pasadena, CA 91107

The Notice of Hearing informed Respondent that an administrative hearing in this matter was scheduled for February 4, 2021.

5. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505(c) and/or Business and Professions Code section 124.

6. The matter was called for hearing at the date, time and location set forth in the Notice of Hearing. The assigned Administrative Law Judge found that the service of the Notice of Hearing on Respondent was proper. There was no appearance by or on behalf of Respondent. A default was declared and on motion of counsel for Complainant, the matter was remanded to the Board under Government Code section 11520.

7. Government Code section 11506(c) states, in pertinent part:

> (c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense . . . and the notice shall be deemed a specific denial of all parts of the accusation . . . not expressly admitted. Failure to file a notice of defense . . . shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

8. California Government Code section 11520(a) states, in pertinent part:

> (a) If the respondent either fails to file a notice of defense . . . or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent . . . .

9. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,

as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Board's offices regarding the allegations contained in Accusation No. 6847, finds that the charges and allegations in Accusation No. 6847, are separately and severally, found to be true and correct by clear and convincing evidence.

10. The Board finds that the apportioned actual costs for Investigation and Enforcement are $8,069.94 as of February 1, 2021.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Zenaida Bunyi Joaquin has subjected her Pharmacist License Number No. RPH 46432 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Board of Pharmacy is authorized to revoke Respondent's License Number based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Investigatory Evidence Packet in this case:

a. Business and Professions Code section 4310, subdivision (o) and section 4081, subdivisions (a) and (b) in conjunction with California Code of Regulations, title 16, section 1718 (Failure to Complete Controlled Substance Inventories);

b. Business and Professions Code section 4301, subdivisions (j) and (o) in conjunction with California Code of Regulations, title 16, section 1715.65 (Failure to Reconcile Controlled Substance Reports);

c. Business and Professions Code section 4301, subdivision (f) (Healthcare Fraud);

d. Business and Professions Code section 4301 subdivisions (j) and (o) and California Health and Safety Code section 11153 subdivision (a) in conjunction with California Code of Regulations, title 16, section 1761 and Code of Federal Regulations, title 21, part 1306, section 04, subdivision (a) (Corresponding Responsibility); and

e. Business and Professions Code section 4301, subdivisions (c) and (d) (Unprofessional Conduct).

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ORDER

IT IS SO ORDERED that Pharmacist License Number No. RPH 46432, issued to Respondent Zenaida Bunyi Joaquin, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on _____.

It is so ORDERED _____

_____
FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS

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DOJ Matter ID:LA2019505069

Attachment:
Exhibit A: Accusation

Exhibit A

First Amended Accusation

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

In the Matter of the Accusation Against**:** **TOSUNYAN INC. DBA PRESTIGE PHARMACY AND MEDICAL SUPPLIES** 1220 S. Central Avenue, No. 103 Glendale, CA 91204 **Permit Number No. PHY 44595,** **ZENAIDA BUNYI JOAQUIN** 110 N. San Marino Avenue Pasadena, CA 91107 **Pharmacist License No. RPH 46432,** **GOAR MKRTCHYAN** 13605 Gault Street Van Nuys, CA 91405 **Pharmacy Technician Registration No. TCH 21168,** **SIRANUSH MKRTCHYAN** 7722 Ventura Canyon Avenue Van Nuys, CA 91402 **Pharmacy Technician Registration No. TCH 21613**	Case No. 6847 **FIRST AMENDED ACCUSATION**

and

MICHAEL MYUNG Y. LEE
1807 Rainbow Terrace Lane
Montebello, CA 90640

Pharmacist License No. RPH 44619

Respondents.

PARTIES

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

2. On or about January 13, 2000, the Board of Pharmacy issued License Number PHY 44595 to Tosunyan Inc. dba Prestige Pharmacy and Medical Supplies (Respondents). The License Number was in full force and effect at all times relevant to the charges brought herein. On or about November 5, 2019, the above license was cancelled pursuant to a change in ownership.

3. Between on or about January 13, 2000 and November 5, 2019, the following people were listed as officers and shareholders of Tosunyan Inc. dba Prestige Pharmacy and Medical Supplies:

a. Andranik Tosynyan, President, 25% shareholder,

b. Kirakos Tosunyan, Vice President, 25% shareholder,

c. Goar Mkrtchyan, Secretary, 25% shareholder, and

d. Siranush Mkrtchyan, Treasurer, 25% shareholder.

4. On or about November 4, 2019, the Board of Pharmacy issued License Number PHY 57430 to Prestige Rx Inc. dba Prestige Care Pharmacy (Respondents). The License Number is in full force and effect until November 1, 2020, unless renewed. Since November 4, 2019, Goar Mkrtchyan and Siranush Mkrtchyan have each been 50% shareholders in Prestige Care Pharmacy.

5. On or about August 16, 1993, the Board of Pharmacy issued Pharmacist License Number RPH 46432 to Zenaida Bunyi Joaquin (Respondents). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on August

31, 2021, unless renewed. Zenaida Bunyi Joaquin was the Pharmacist-in-Charge (PIC) at Prestige Pharmacy and Medical Supply from on or about August 30, 2011 through on or about November 5, 2019. Zenaida Bunyi Joaquin has been the PIC for Prestige Care Pharmacy since the pharmacy was issued their license on or about November 4, 2019. On or about April 17, 2020, Pharmacist Joaquin disassociated as the PIC.

6. On or about August 17, 1991, the Board of Pharmacy issued Pharmacist License Number RPH 44619 to Michael Myung Y. Lee (Respondents). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2021, unless renewed.

7. On or about January 14, 1997, the Board of Pharmacy issued Pharmacy Technician Registration Number TCH 21168 to Goar Mkrtchyan (Respondents). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2020, unless renewed.

8. On or about March 10, 1997, the Board of Pharmacy issued Pharmacy Technician Registration Number TCH 21613 to Siranush Mkrtchyan (Respondents). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2021, unless renewed.

JURISDICTION

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

10. Section 4300 of the Code states:

> (a) Every license issued may be suspended or revoked.
>
> (b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:
>
> (1) Suspending judgment.
>
> (2) Placing him or her upon probation.
>
> (3) Suspending his or her right to practice for a period not exceeding one year.

(4) Revoking his or her license.

(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

…

(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

11. Section 4300.1 of the Code states:

The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a 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.

12. Section 4302 of the Code states, "The board may deny, suspend, or revoke any license where conditions exist in relation to any person holding 10 percent or more of the ownership interest or where conditions exist in relation to any officer, director, or other person with management or control of the license that would constitute grounds for disciplinary action against a licensee."

STATUTORY PROVISIONS

13. Section 4156 of the Code states, "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."

14. Section 4301 of the Code states:

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

…

(c) Gross negligence.

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

…

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

…

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

…

(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…

15. Section 4022 of the Code states

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.

16. Section 4081 of the Code states:

(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

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

(c) The pharmacist-in-charge or representative-in-charge shall not be criminally responsible for acts of the owner, officer, partner, or employee that violate this

section and of which the pharmacist-in-charge or representative-in-charge had no knowledge, or in which he or she did not knowingly participate.

17. Section 4105 of the Code states:

(a) All records or other documentation of the acquisition and disposition of dangerous drugs and dangerous devices by any entity licensed by the board shall be retained on the licensed premises in a readily retrievable form.

(b) The licensee may remove the original records or documentation from the licensed premises on a temporary basis for license-related purposes. However, a duplicate set of those records or other documentation shall be retained on the licensed premises.

(c) The records required by this section shall be retained on the licensed premises for a period of three years from the date of making.

(d) Any records that are maintained electronically shall be maintained so that the pharmacist-in-charge, the pharmacist on duty if the pharmacist-in-charge is not on duty, or, in the case of a veterinary food-animal drug retailer or wholesaler, the designated representative on duty, shall, at all times during which the licensed premises are open for business, be able to produce a hard copy and electronic copy of all records of acquisition or disposition or other drug or dispensing-related records maintained electronically.

…

18. Section 11153 of the Healthy and Safety Code provides in part:

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

19. Section 4113 of the Code states:

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

(b) The proposed pharmacist-in-charge shall be subject to approval by the board. The board shall not issue or renew a pharmacy license without identification of an approved pharmacist-in-charge for the pharmacy.

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

20. Section 4306.5 of the Code states:

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

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

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

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

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

21. Section 4307 of the Code 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.

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

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

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

REGULATORY PROVISIONS

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

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

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.

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

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

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

24. California Code of Regulations, title 16, section 1707.2, states:

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

(1) upon request; or

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

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

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

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

…

25. California Code of Regulations, title 16, section 1707.3, states, "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."

26. California Code of Regulations, title 16, section 1715.65, states:

(a) Every pharmacy, and every clinic licensed under sections 4180 or 4190 of the Business and Professions Code, shall perform periodic inventory and inventory reconciliation functions to detect and prevent the loss of controlled substances.

(b) The pharmacist-in-charge of a pharmacy or consultant pharmacist for a clinic shall review all inventory and inventory reconciliation reports taken, and establish and maintain secure methods to prevent losses of controlled drugs. Written policies and procedures shall be developed for performing the inventory reconciliation reports required by this section.

(c) A pharmacy or clinic shall compile an inventory reconciliation report of all federal Schedule II controlled substances at least every three months. This compilation shall require:

(1) A physical count, not an estimate, of all quantities of federal Schedule II controlled substances. The biennial inventory of controlled substances required by federal law may serve as one of the mandated inventories under this section in the year where the federal biennial inventory is performed, provided the biennial inventory was taken no more than three months from the last inventory required by this section;

(2) A review of all acquisitions and dispositions of federal Schedule II controlled substances since the last inventory reconciliation report;

(3) A comparison of (1) and (2) to determine if there are any variances;

(4) All records used to compile each inventory reconciliation report shall be maintained in the pharmacy or clinic for at least three years in a readily retrievable form; and

(5) Possible causes of overages shall be identified in writing and incorporated into the inventory reconciliation report.

FEDERAL REGULATIONS

27. Code of Federal Regulations, title 21, part 1304, section 11, states in pertinent part:

(a) General requirements. Each inventory shall contain a complete and accurate record of all controlled substances on hand on the date the inventory is taken, and shall be maintained in written, typewritten, or printed form at the registered location. An inventory taken by use of an oral recording device must be promptly transcribed. Controlled substances shall be deemed to be "on hand" if they are in the possession of or under the control of the registrant, including substances returned by a customer, ordered by a customer but not yet invoiced, stored in a warehouse on behalf of the registrant, and substances in the possession of employees of the registrant and intended for distribution as complimentary samples. A separate inventory shall be made for each registered location and each independent activity registered, except as provided in paragraph (e)(4) of this section. In the event controlled substances in the possession or under the control of the registrant are stored at a location for which he/she is not registered, the substances shall be included in the inventory of the registered location to which they are subject to control or to which the person possessing the substance is responsible. The inventory may be taken either as of opening of business or as of the close of business on the inventory date and it shall be indicated on the inventory.

(b) Initial inventory date. Every person required to keep records shall take an inventory of all stocks of controlled substances on hand on the date he/she first engages in the manufacture, distribution, or dispensing of controlled substances, in accordance with paragraph (e) of this section as applicable. In the event a person commences business with no controlled substances on hand, he/she shall record this fact as the initial inventory.

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

28. Code of Federal Regulations, title 21, part 1306, section 04, states in pertinent part:

(a) A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. An order purporting to be a prescription issued not in the usual course of professional treatment or in legitimate and authorized research is not a prescription within the meaning and intent of section 309 of the Act and the person knowingly filling such a purported prescription, as well as the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances.

COST RECOVERY

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

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DEFINITIONS

30. **Alprazolam**, sold under the brand name Xanax, is a Schedule IV controlled substance under Health and Safety Code section 11057 and a dangerous drug under Business and Professions Code section 4022. Alprazolam is used to treat anxiety disorders and panic disorder. Alprazolam is in a class of medications called benzodiazepines. Alprazolam may heighten the euphoric effect resulting from the use of an oxycodone.

31. **Oxycodone**, sold under the brand name Roxicodone, is a Schedule II controlled substance pursuant to Health and Safety Code section 11055 and is a dangerous drug pursuant to Business and Professions Code section 4022. Oxycodone is a narcotic analgesic used for moderate to severe pain and it has a high potential for abuse.

32. Buprenorphine and naloxone, sold under the brand name **Suboxone**, is a Schedule III controlled substance pursuant to Title 21 of the Code of Federal Regulations, section 1308.13 subdivision (e)(2) and a schedule V controlled substance pursuant to Health and Safety Code, section 11058, subdivision (d)(1). Suboxone is used to treat opioid addiction.

33. **Methadone** is a Schedule II controlled substance pursuant to Health and Safety Code section 11055 and is a dangerous drug pursuant to Business and Professions Code section 4022. Methadone is used to treat moderate to severe pain and is also used to treat narcotic addiction.

34. **Aripiprazole**, is a dangerous drug pursuant to Business and Professions Code section 4022, sold under the brand name Abilify, is a prescription medicine used to treat the symptoms of schizophrenia, bipolar I disorder (manic depression), and major depressive disorder. Aripiprazole belongs to the class of medications known as atypical antipsychotics or second generation anti-psychotics.

35. **Lurasidone**, is a dangerous drug pursuant to Business and Professions Code section 4022, sold under the brand name Latuda, is a prescription medication used to treat the symptoms of schizophrenia, depression, and bipolar disorder. Lurasidone is in a class of medications called atypical anti-psychotics.

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FACTUAL ALLEGATIONS

36. On or about June 5, 2019, an Investigator for the Board of Pharmacy conducted an inspection at Prestige Pharmacy. Both Respondents Goar Mkrtchyan and Siranush Mkrtchyan were present for the inspection. The Investigator requested copies of the last two completed controlled substance inventories. Respondents provided an inventory dated December 22, 2017 and stated it was the most recent inventory. The inventory was defective in part because it did not state whether it was completed before opening or after closing and it failed to document the quantities in stock for common Schedule II controlled substances such as methadone and oxycodone.

37. During the same inspection, the Investigator requested the completed controlled substance reconciliation reports for the pharmacy. Respondents did not have a controlled substance reconciliation report for the pharmacy and were not aware of ever having completed one.

Private Insurance Overbilling

38. Between on or about June 10, 2019 and July 5, 2019, Respondents sent the Investigator dispensing and purchasing records for the pharmacy for the time period of May 9, 2016 through June 5, 2019. Using the information provided, the Investigator conducted a drug audit to compare the amount of a drug being purchased by the pharmacy to the amount of the same drug being disbursed by the pharmacy. The audit found that the following drugs were dispensed in excess of what was purchased:

Drugs	Amount delivered	Amount dispensed	Returns	Total amount (OUT)	Difference (IN-OUT)	Overage amounts
colchicine 0.6 mg	5,710	7,765	0	7,765	-2,055	2,055
Colcrys 0.6 mg	8,250	11,710	210	11,920	-3,670	3,670
Creon DR 24,000 U	16,600	22,650	1,100	23,750	-7,150	7,150
Dexilant 60 mg	28,320	37,500	390	37,890	-9,570	9,570
diclofenac 1% gel	57,000	68,730	0	68,730	-11,730	11,730
Exelon 4.6 mg	870	1,830	330	2,160	-1,290	1,290
Ezetimibe 10 mg	15,300	20,390	0	20,390	-5,090	5,090
Janumet 50/500 mg	9,480	10,770	0	10,770	-1,290	1,290

Januvia 100 mg	19,080	21,690	60	21,750	-2,670	2,670
Januvia 50 mg	5,430	6,870	60	6,930	-1,500	1,500
ketoconazole 2% shampoo	22,800	30,114	120	30,234	-7,434	7,434
Myrbetriq ER 25 mg	4,500	5,910	0	5,910	-1,410	1,410
Restasis UDV	16,560	23,430	180	23,610	-7,050	7,050
Spiriva	21,900	32,190	1,950	34,140	-12,240	12,240
Vascepa 1 gm	134,880	159,330	0	159,330	-24,450	24,450
Ventolin	20,448	27,214	306	27,520	-7,072	7,072
Voltaren 1% gel	101,700	125,800	400	126,200	-24,500	24,500
Zetia 10 mg	15,000	20,620	30	20,650	-5,650	5,650
					Total Quantity	**136,181**
					Total AWP	**$883,388**

39. The total quantity listed above represents the number of drugs which were purportedly disbursed in excess of what the pharmacy actually possessed. A positive number for the total quantity of overage amounts reflects the amount which was would be billed to insurance companies. The total AWP represents the average wholesale price for the amount of drugs disbursed by the pharmacy in excess of what was ordered by the pharmacy. This also represents the approximate amount of financial gain for billing insurance companies for drugs that were not actually disbursed.

40. On or about May 14, 2019, Humana Insurance, Fraud and Waste Department, reported to the Board that they had conducted a similar audit for the time period of June 1, 2017 through May 31, 2018. The Humana audit compared total amounts of a drug purchased by Respondents to the amounts billed just to Humana. The audit revealed discrepancies in 19 cases resulting in $152,000 billed to Humana beyond the actual quantity of the drug purchased by Respondents. The Humana audit was as follows:

MEDICATION NAME	QUANTITY PURCHASED	QUANTITY BILLED	DIFFERENCE
COLCRYS 0.6 MG TABLET	3,960.00	5,580.00	-1,380.00
CREON PR 24,000 UNITS CAPSULE.	4,000.00	5,960.00	-1,960.00
DEXILANT DR GO MG CAPSULE	9,180.00	11,400.00	-2,220.00
EXELON 4.6 MG/24HR PATCH	360.00	720.00	-360.00
EZETIMIBE 10 MG TABLET	5,990.00	7,170.00	-1,180.00
JANUMET 50·500 MG TABLET	2,400.00	2,760.00	-360.00
KETOCONAZOLE 2% SHAMPOO	9,240.00	10,200.00	-960.00
LINZESS 145 MCG CAPSULE	2,070.00	2,220.00	-90.00
MEMANTINE HCL ER28 MG CAPSULE	840.00	1,050.00	-210.00

MYRBETRIQ. ER 25 MG TABLET	1,590.00	1,980.00	-390.00
NAMENDA XR 28 MG CAPSULE	2,130.00	3,090.00	-960.00
RESTASIS 0.05% EYE EMULSION	6,300.00	7,380.00	-1,080.00
SPIRIVA 18 MCG CP-HANDIHALER	7,320.00	9,450.00	-2,130.00
SYMBICORT 160·4.5 MCG INHALER	1,206.00	1,346.40	-7.80
TRULICITY 0.75 MG/0.5 ML PEN	76.00	82.00	-6.00
VALSARTAN 160 MG TABLET	7,740.00	8,850.00	-660.00
VASCEPA 1 GM CAPSULE	47,160.00	54,330.00	-7,170.00
VOLTAREN 1% GEL	42,100.00	53,100.00	-11,000.00
ZETIA 10 MG TABLET	2,610.00	4,680.00	-2,250.00

41. Effective April 24, 2019, Humana terminated Respondents from its pharmacy networks for billing Humana for drugs in excess of the amount of drugs actually purchased.

Red-Flags of Illegitimate Prescriptions

42. Using just the dispensing records provided by Respondents, the Investigator determined the number and percentage of prescriptions purchased with cash payment[1] from the period of May 9, 2016 through June 5, 2019. The investigation determined the following:

Drug Class	Number of Prescriptions	Number with Cash Payment	Percent with Cash Payment
non-controlled	164,232	8,819	5.4%
C-II	**939**	**415**	**44.2%**
C-III	985	34	3.5%
C-IV	7,654	459	6.0%
C-V	788	209	26.5%
Total	174,598	9,936	5.7%

43. The data shows that a much larger percentage of controlled substance prescriptions were paid with cash compared to non-controlled substance prescriptions; particularly schedule II controlled substances.

[1] In cases of drug diversion, most of the medications purchased from a pharmacy are purchased without the use of insurance to avoid tracking of activity. If the patients are fictitious persons, there is no insurance to bill. The bypassing of insurance is commonly referred to as "paying cash." Frequently, the medications are purchased with actual money but "paying cash" could also mean using a debit or credit card. The use of electronic payment is rare for the same reason drug diverters avoid using insurance.

44. During further investigation, the Investigator evaluated the top ten prescribers of controlled substances filled by Respondent. One doctor in particular, Dr. M.N.[2] stood out as having prescribed more schedule II controlled substances than all of the other top ten prescribers combined. Over 93% of the prescriptions from Dr. M.N. were for controlled substances. This is a pattern not consistent with the overall pattern of dispensing for Respondents. This is a red flag of illegitimacy.

45. Of the 37 patients dispensed prescriptions pursuant to Dr. M.N.'s prescriptions, 19 received concurrent treatment with an opioid, methadone or oxycodone, and alprazolam. A boxed warning exists for this combination of drugs warning of possible severe adverse reactions. This is a red flag of illegitimacy.

46. In typical prescribing, there is variability among patients which require different doses, and especially upward titration before reaching the highest available doses of opioids. Normal use would typically involve starting at a lower dose and titrating the dose upwards based on specific patients' needs. Only the highest available strengths for opioids were prescribed by Dr. M.N. There was no adjustment in the prescribing pattern from Dr. M.N. for age, weight, renal or hepatic function, diagnosis, or other patient related factors. This type of uniformity of dosing and at the highest strengths is very irregular, and indicative of illegitimacy and abuse.

47. Methadone specifically cautions to dose each patient individually, due to the high interpatient variability in absorption, metabolism, and relative analgesic potency. Methadone exposure accumulates with repeated dosing, resulting in increased methadone potency. This was the opposite pattern seen with the prescriptions dispensed by Respondents from Dr. M.N. Almost all patients prescribed methadone were dosed the same, with directions to take three tablets twice daily. Furthermore, 98% of the methadone 10 mg (highest strength) prescriptions dispensed by Respondents during the reviewed time period came from Dr. M.N. This type of uniformity of dosing and volume of prescriptions is very irregular, and indicative of illegitimacy and abuse.

[2] Dr. M.N.'s full name has been omitted to protect his privacy. At present, there are no public criminal charges or licensing actions pending against Dr. M.N.

48. Using the Prestige Pharmacy dispensing data, and selected patient CURES[3] reports, the Investigator found Respondents dispensed opioids, especially methadone, to patients who were being treated with Suboxone. Approximately 33 times, patients presented opioid prescriptions to Respondents, and most often for cash payment, while they were receiving opioid addiction treatment from other prescribers. These contradictory methadone prescriptions were from Dr. M.N. and Respondents repeatedly dispensed these contradictory prescriptions. This type of repeated contradictory prescribing to patients by a single prescriber is a red flag of illegitimacy.

49. Respondent PIC Joaquin personally approved the following prescriptions to be dispensed:

(a.) 140 controlled substances prescriptions to 28 patients from one prescriber;

(b.) 29 instances of dispensing interacting drugs together (such as methadone or oxycodone with alprazolam);

(c.) 23 instances of dispensing high starting doses of methadone, oxycodone and/or alprazolam; and

(d.) 9 instances of dispensing opioids to patients being treated for opioid addiction by another prescriber.

50. Respondent Lee personally approved the following prescriptions to be dispensed:

(a.) 143 controlled substances prescriptions to 29 patients from one prescriber with numerous irregularities including disproportionate use of cash to pay for controlled substances, uniformity in prescribing trends and a high percentage of controlled substances to non-controlled substances;

(b.) 32 instances of dispensing interacting drugs together (such as methadone or oxycodone with alprazolam);

[3] Controlled Substances Utilization Review and Evaluation System (CURES) is a Department of Justice program to electronically collect, monitor, and allow Internet access to its information regarding the prescribing and dispensing of Schedule II-IV controlled substances by all practitioners authorized to prescribe, order, administer, furnish or dispense these controlled substances. Patient Activity Reports (PARs) are provided and reflect all controlled substances dispensed to an individual. CURES herein refers to CURES in general and PARs. Pharmacies are required to report to the California Department of Justice every schedule II, II and IV drug prescription under Health and Safety Code section 11165, subdivision (d).

(c.) 15 instances of dispensing high starting doses of methadone, oxycodone and/or alprazolam; and

(d.) 24 instances of dispensing opioids to patients being treated for opioid addiction by another prescriber.

51. In total, Respondents dispensed at least 300 prescriptions, amounting to over 35,000 dosage units, for controlled substances with irregularities and red flag, including, but not limited to those discussed in paragraphs 35 through 49, as well as the following additional red flags:

(a) Many patients were dispensed the same or similar controlled substance prescriptions on the same day;

(b) The non-controlled substance pain treatments commonly used in conjunction with controlled substances to treat chronic pain were absent; and

(c) 19 out of 37 reviewed patients received concurrent treatment with an opioid and alprazolam, for which there is a potentially dangerous drug interaction.

Medi-Cal Overbilling

52. On or about June 16, 2020, the State of California Department of Healthcare Services (DHCS), reported to the Board that they had conducted a field audit in which Respondents were found to have billed Medi-Cal for more Abilify and Latuda than could be supported by purchase invoices.

53. Using the dispensing and purchasing records for the pharmacy for the time period of May 7, 2016 through June 5, 2019 provided by Respondents, the Investigator conducted a drug audit to compare the amount of a drug being purchased by the pharmacy to the amount of the same drug being disbursed by the pharmacy. The audit found that the following drugs were dispensed in excess of what was purchased:

Drugs	Amount purchased	Amount dispensed	Returns	Total amount (OUT)	Overage amounts
Abilify 10 mg	2,310	2,670	0	2,670	360
Abilify 2 mg	690	780	120	900	210

Abilify 20 mg	1,320	1,500	30	1,530	210
Abilify 30 mg	1,140	1,110	0	1,110	-30
Abilify 5 mg	600	1,290	360	1,650	1,050
Latuda 20 mg	990	1,440	0	1,440	450
Latuda 40 mg	8,130	9,660	90	9,750	1,620
Latuda 60 mg	3,810	4,350	90	4,440	630
Latuda 80 mg	2,130	2,190	0	2,190	60

54. The overage amounts listed above represent the number of drugs which were purportedly disbursed in excess of what the pharmacy actually possessed. A positive number for the total quantity of overage amounts reflects the amount which would be billed to insurance companies.

55. To determine the dollar amount in which Respondent Prestige Pharmacy benefited from this practice, the investigator used the AWP from the records provided. The total AWP represents the average wholesale price for the amount of drugs disbursed by the pharmacy in excess of what was ordered by the pharmacy. This also represents the approximate amount of financial gain for billing insurance companies for drugs that were not actually disbursed.

Drugs	**Overage Amounts**	**AWP/Unit**	**Amount Overbilled**
Abilify 10 mg	360	$42	$15,120
Abilify 2 mg	210	$42	$8,820
Abilify 20 mg	210	$54	$11,340
Abilify 5 mg	1,050	$36	$37,800
Latuda 20 mg	450	$42	$18,900
Latuda 40 mg	1,620	$45	$72,900
Latuda 60 mg	630	$44	$27,720
			$192, 600

FIRST CAUSE FOR DISCIPLINE

(Failure to Complete Controlled Substance Inventories)

56. Respondent Prestige Pharmacy and Medical Supplies and Respondent Zenaida Bunyi Joaquin are subject to disciplinary action under Code sections 4310, subdivision (o) and 4081, subdivisions (a) and (b) in conjunction with California Code of Regulations, title 16, section 1718

in that Respondents failed to conduct and complete accurate, current inventories of dangerous drugs and maintain those inventories for three years. Complainant refers to, and by this reference incorporates paragraphs 35 through 54, as though set forth in full.

SECOND CAUSE FOR DISCIPLINE

(Failure to Reconcile Controlled Substance Reports)

57. Respondent Prestige Pharmacy and Medical Supplies and Respondent Zenaida Bunyi Joaquin are subject to disciplinary action under Code sections 4301 subdivisions (j) and (o) in conjunction with California Code of Regulations, title 16, section 1715.65 in that Respondents failed to conduct period reconciliation reports of all Schedule II controlled substances at least every three months to prevent the loss of controlled substances. Complainant refers to, and by this reference incorporates paragraphs 35 through 54, as though set forth in full.

THIRD CAUSE FOR DISCIPLINE

(Healthcare Fraud)

58. Respondents Prestige Pharmacy and Medical Supplies, Zenaida Bunyi Joaquin, Goar Mkrtchyan and Siranush Mkrtchyan are subject to disciplinary action under Code section 4301 subdivision (f) in that they billed both private insurance companies and Medi-Cal for dispensing more drugs than they actually purchased which constitutes healthcare fraud. Complainant refers to, and by this reference incorporates paragraphs 35 through 54, as though set forth in full.

FOURTH CAUSE FOR DISCIPLINE

(Corresponding Responsibility)

59. Respondent Prestige Pharmacy and Medical Supplies, Respondent Zenaida Bunyi Joaquin and Respondent Michael Myung Y. Lee are subject to disciplinary action under Code section 4301 subdivisions (j) and (o) and California Health and Safety Code section 11153 subdivision (a) in conjunction with California Code of Regulations, title 16, section 1761 and Code of Federal Regulations, title 21, part 1306, section 04, subdivision (a) in that Respondents failed to fulfil their corresponding responsibility by repeatedly failing to resolve irregularities and red flags of illegitimacy and dispensing approximately 300 prescriptions, amounting to over 35,000 dosage units, of schedule II-IV controlled substances pursuant to these prescriptions.

Complainant refers to, and by this reference incorporates paragraphs 35 through 54, as though set forth in full.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

60. Respondent Prestige Pharmacy and Medical Supplies, Respondent Zenaida Bunyi Joaquin and Respondent Michael Myung Y. Lee are subject to disciplinary action under Code sections 4301 subdivisions (c) and (d) in that:

(a) Prestige Pharmacy and Medical Supplies was grossly negligent by ignoring, or not being aware of, objective factors which were irregular from medically legitimate prescriptions and dispensing over 35,000 tablets of schedule II-IV controlled substances pursuant to these prescriptions. The pharmacy operated in a manner that was a gross deviation from the standard of safe pharmacy practice, and which could cause harm to patients or other persons. Complainant refers to, and by this reference incorporates paragraphs 35 through 54, as though set forth in full.

(b) PIC Joaquin was grossly negligent by deviating from the standard of safe pharmacy practice and inappropriately exercising her training, education and experience by: dispensing over 35,000 tablets of Schedule II-IV controlled substances and ignoring, or not being aware of, objective signs of irregularity and abuse, dispensing controlled substance prescriptions without the ensuring they were issued for a legitimate medical purpose and in the usual course of professional practice and failing to reference readily available patient and prescription records to identify trends and patterns of illegitimacy. Complainant refers to, and by this reference incorporates paragraphs 35 through 54, as though set forth in full.

(c) Respondent pharmacist Lee was grossly negligent by deviating from the standard of safe pharmacy practice and inappropriately exercising his education, training and experience by: dispensing Schedule II-IV controlled substances and ignoring or not being aware of object signs of irregularity and abuse, dispensing controlled substance prescriptions without the ensuring they were issued for a legitimate medical purpose and in the usual course of professional practice and failing to reference readily available patient and prescription records to identify trends and

patterns of illegitimacy. Complainant refers to, and by this reference incorporates paragraphs 35 through 54, as though set forth in full.

DISCIPLINE CONSIDERATIONS

61. To determine the degree of discipline, if any, to be imposed on Respondent Michael Myung Y. Lee, Complainant alleges that on or about March 9, 2012, in a prior disciplinary action titled *In the Matter of the Accusation Against Michael Myung Y. Lee before the Board of Pharmacy*, in Case Number 3823. Respondent's license was placed on probation for three years for the following violations:

a. Failure to Maintain Complete and Accurate Records for Controlled Substances;

b. Failure to Maintain Complete Acquisition/Disposition Records and Inventory of Controlled Substances;

c. Failure to Properly Supervise Pharmacy Staff;

d. Failure to Maintain Security of Pharmacy;

e. Failure to Maintain Security of Controlled Substances;

f. Purchase and/or Sale of Controlled Substances from an Unlicensed Entity;

g. Purchase and/or Sale of Non-Compliant, Misbranded Foreign Drugs; and

h. Failure to Report Filing of a Licensed Pharmacy Technician for Theft of Drugs.

62. The above decision is now final.

OTHER MATTERS

63. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number PHY 44595 issued to Tosunyan, Inc., dba Prestige Pharmacy and Medical Supplies shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 44595 is placed on probation or until Pharmacy Permit Number PHY 44595 is reinstated if it is revoked.

64. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number PHY 44595 issued to Tosunyan, Inc., dba Prestige Pharmacy and Medical Supplies while Goar Mkrtchyan and/or Siranush Mkrtchyan have been an officer and owner and had knowledge of or knowingly participated in any conduct for which the licensee was disciplined, Goar Mkrtchyan

and Siranush Mkrtchyan shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 44595 is placed on probation or until Pharmacy Permit Number PHY 44595 is reinstated if it is revoked.

PRAYER

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

1. Revoking or suspending Permit Number Number PHY 44595, issued to Tosunyan Inc. dba Prestige Pharmacy and Medical Supplies;

2. Revoking or suspending Pharmacist License Number RPH 46432, issued to Zenaida Bunyi Joaquin;

3. Revoking or suspending Pharmacy Technician Registration Number TCH 21168, issued to Goar Mkrtchyan;

4. Revoking or suspending Pharmacy Technician Registration Number TCH 21613, issued to Siranush Mkrtchyan;

5. Revoking or suspending Pharmacist License Number RPH 44619, issued to Michael Myung Y. Lee;

6. Ordering Prestige Pharmacy and Medical Supplies, Zenaida Bunyi Joaquin, Goar Mkrtchyan, Siranush Mkrtchyan and Michael Myung Y. Lee to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: 10/6/2020

Signature on File

ANNE SODERGREN
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant