

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

In the Matter of the Accusation Against:

**THRIVE PHARMACY CARE, INC., d.b.a. CALAVERAS
PHARMACY, Sze Huay Lim and Fong-Chun Wang, Owners,**

Original Pharmacy Permit No. PHY 54659

and

FONG-CHUN WANG,

Original Pharmacist License No. RPH 58435,

Respondents.

Case No. 6967

OAH No. 2021050378

DECISION AFTER REJECTION

Administrative Law Judge (ALJ) Michael C. Starkey, State of California, Office of Administrative Hearings, heard this matter on December 6 through 10, 2021, via telephone and videoconference.

Deputy Attorney General Aspasia A. Papavassiliou represented complainant Anne Sodergren, Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

Attorneys Armond Marcarian and Kristina N. Markarian represented respondents Thrive Pharmacy Care, Inc., and Fong-Chun Wang, who was present.

An order sealing Exhibits 5, 6, D, G and H was issued to protect the personal identifying information of patients. The record closed and the matter was submitted on December 10, 2021.

The ALJ issued a Proposed Decision on January 10, 2022. On February 2, 2022, pursuant to section 11517 of the Government Code, the Board issued an Order rejecting the Proposed Decision and informing the parties that the Board would decide the case upon the record, including the transcripts of the hearing, and upon such written argument as the parties may wish to submit. Shortly thereafter, the Board ordered the administrative record (including transcripts) of the five-day hearing.

The Board received the administrative record (without transcripts) in April 2022. However, the Board encountered a significant delay in obtaining the transcripts from the certified shorthand reporter of record for the hearing in this matter. After making repeated requests to the court reporter, and despite having received assurances from him that the transcripts would be produced, the Board learned that the court reporter had a disciplinary matter pending against him before the Court Reporters Board of California for failing to deliver transcripts and for repeatedly and inexcusably failing to transcribe notes of a proceeding.¹

¹ The Board had filed a complaint against the court reporter with the Court Reporters Board in early 2023, and in late

Due to the above-described circumstances, which were wholly outside of the Board's control, the Board determined that the transcripts of the hearing were unavailable and unable to be obtained. The Board further determined that the most expeditious way to bring this matter to a conclusion was for the Board to decide the case upon the record (without including the transcripts), and upon such written argument as the parties may wish to submit. On December 26, 2023, the Board informed the parties accordingly, and set January 25, 2024, as the date for submission of written argument. No new evidence was permitted.

Both parties timely submitted written argument. In its submission, respondent argued that the Board's December 26, 2023 Order was time barred; that the January 10, 2022 Proposed Decision was deemed adopted by operation of law under section 11517, subdivision (c)(2) because the Board failed to act within 100 days of receipt of the Proposed Decision; and that the three-year probationary period ordered by the ALJ began to run as of April 10, 2022. As explained below, the Board disagrees with respondent's claims, and finds that it is authorized and empowered to now issue this Decision After Rejection.

Respondent cites Government Code section 11517, subdivision (c)(2)² and contends that the Board failed to act as prescribed in subparagraphs (A) to (E) of subdivision (c)(2) within the required timeframe. The Board finds this argument wholly without merit. This is because on February 2, 2022, less than one month after

2023 the Board was formally advised by the Court Reporters Board that its complaint, along with complaints filed by others, had been included in an accusation filed against the court reporter.

² This subdivision provides, in pertinent part:

"Within 100 days of receipt by the agency of the administrative law judge's proposed decision, the agency may act as prescribed in subparagraphs (A) to (E), inclusive. If the agency fails to act as prescribed in subparagraphs (A) to (E), inclusive, within 100 days of receipt of the proposed decision, the proposed decision shall be deemed adopted by the agency..."

the Proposed Decision was issued and well before the 100 day deadline, the Board *did* act as prescribed in subdivision (c)(2), by issuing an Order rejecting the Proposed Decision pursuant to Government Code section 11517(c)(2)(E). Shortly thereafter, the Board ordered the administrative record and transcripts. Through no fault of the Board, the transcripts were never produced – but this does not have the effect of retroactively reinstating the Proposed Decision and “deeming” that the three-year probationary period had already begun. The Proposed Decision was timely rejected, and the Board acted diligently to try to obtain the transcripts of the hearing.

Having now considered the matter based on the available evidence and the arguments of the parties, and in a good-faith effort to conclude this matter while minimizing additional delay, administrative burden, and expense for all parties, the Board now issues this Decision After Rejection. The Board notes that in this Decision After Rejection, the Board largely adopts the Proposed Decision without substantive change, subject to a correction to Additional Term 1 of the Order.³

FACTUAL FINDINGS

Jurisdictional Matters

1. On December 27, 2016, the Board of Pharmacy issued Original Pharmacy Permit Number PHY 54659 to respondent Thrive Pharmacy Care, Inc., doing business as Calaveras Pharmacy (Calaveras). At all relevant times, Calaveras was owned by respondent Fong-Chun Wang (Wang) and Sze Huay Lim (Lim). This pharmacy permit

³ The change to Additional Term 1 of the Order clarifies that the Business and Professions Code section 4307 prohibitions apply only to new ownership or management of *another* pharmacy permit, such that the respondent pharmacy can continue to own and manage itself while on probation.

was in full force and effect at all relevant times and is scheduled to expire on December 1, 2024, unless renewed.

2. On July 28, 2006, the Board issued Pharmacist License Number RPH 58435 to Wang. This license was in full force and effect at all relevant times and will expire on September 30, 2025, unless renewed. At all relevant times, Wang was Calaveras's Pharmacist-in-Charge ("PIC").

3. On January 28, 2021, complainant Anne Sodergren issued the accusation solely in her capacity as Executive Officer of the Board. Complainant alleges that cause exists to discipline respondents' permit and license because they: (1) reused prescription vials; (2) failed to provide delivery clients a required notice of the right to consultation with a pharmacist; (3) dispensed more than the prescribed number of doses of a controlled substance; (4) dispensed 15 controlled substances where the prescription form lacked required security features; and (5) failed to exercise a pharmacist's corresponding responsibility to confirm the validity of controlled substances prescriptions where there were numerous "red flags" that the prescriptions were not for a legitimate medical purpose. Respondents timely submitted a notice of defense and this proceeding followed.

Standard of Proof

4. Complainant is required to prove cause for discipline of a professional license, permit, or registration by "clear and convincing proof to a reasonable certainty." (Cf. *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856; see Bus. & Prof. Code, § 23.7 [all subsequent statutory references are to the Business and Professions Code, unless otherwise stated].) If respondents contend mitigation or rehabilitation, it is their burden to prove those contentions by a

preponderance of the evidence. (Evid. Code, §§ 115, 500.)

Corresponding Responsibility

5. A prescription for a controlled substance shall be issued only for a legitimate medical purpose. (Health & Saf. Code, § 11153.) The prescriber is responsible for properly prescribing and dispensing controlled substances, but the pharmacist filling the prescription has a "corresponding responsibility" to ensure the prescription is legal and for a legitimate medical purpose. (*Ibid.*) A "pharmacist does not meet the standard of care simply by selecting the proper pharmaceutical product, accurately labeling that product for use, and counseling the patient. Reasonable inquiry is required." (*In the Matter of the Accusation Against Pacifica Pharmacy; Thang Tran* (Agency No. 3802; OAH No. 2011010644; Precedential Decision No. 2013-01) (*Pacifica*) at p.14.)

6. The Board has identified numerous "red flags" to alert a pharmacist that a prescription may be illegitimate, including:

PRESCRIPTION RED FLAGS:

- Irregularities on the face of the prescription itself
- Prescriptions written for an unusually large quantity of drugs
- The same diagnosis codes for many patients
- The same combinations of drugs prescribed for multiple patients
- Prescriptions written for potentially duplicative drug therapy
- Initial prescriptions written for strong opiates

PATIENT RED FLAGS:

- Nervous patient demeanor
- Age or presentation of patient (*e.g.*, youthful patients seeking chronic pain medications)
- Multiple prescribers and/or pharmacies for the same patient for duplicate therapy (known as “doctor shopping” or “pharmacy shopping”)
- Cash payments
- Long distances traveled from the patient's home to the pharmacy (minimum 5 mile radius)
- Prescriptions for medications with no logical connection to an illness or condition
- Multiple patients all with the same address
- Requests for early refills of prescriptions
- Excessively celebratory patient demeanor
- Patients coming to the pharmacy in groups, especially if their home addresses are outside of the pharmacy's local trade area (5 miles), each with the same prescriptions issued by the same prescriber

PRESCRIBER RED FLAGS:

- Long distances traveled from the patient's home to the prescriber's office
- Prescriptions that are written outside of the prescriber's medical specialty

- Irregularities in the prescriber's qualifications in relation to the type of medication(s) prescribed

7. If red flags are present—in other words, if the totality of the circumstances surrounding a prescription suggest that it may not be for a legitimate medical purpose—the pharmacist has a duty to make reasonable inquiries to attempt to resolve the red flags. If the pharmacist is unable to resolve the red flags—determine that the prescription is for a legitimate medical purpose—the pharmacist must refuse to fill the prescription.

CURES/PDMP

8. The Controlled Substance Utilization Review and Evaluation System (CURES) was initiated in 1997 and requires pharmacies regularly to report the dispensation of schedule II controlled substances. Since 2005, pharmacies are also required to report the dispensation of schedule II through VI controlled substances. The data can be used by healthcare professionals such as pharmacists and prescribers to help evaluate whether patients are utilizing controlled substances safely and appropriately. The component of CURES accessible to pharmacists and prescribers is called the Prescription Drug Monitoring Program (PDMP). Registration for access to PDMP has been available since 2009 and has been mandatory for pharmacists since July 1, 2016.

Background and the August 2, 2018 Inspection

9. Calaveras is a small community retail pharmacy located in Milpitas. At all times prior to this hearing, Wang was the PIC and the only pharmacist working at Calaveras.

10. On August 2, 2018, Board Inspector Hilda Nip conducted a routine

inspection of Calaveras. Wang was fully cooperative throughout the inspection. During the inspection Nip reviewed a sample of Calaveras prescription documents and discussed the required security features for controlled substance prescriptions set forth in Health and Safety Code section 11162.1. Nip also asked Wang about several prescriptions written by a dentist for large quantities of narcotics for Patient EA (initials are used to protect patients' privacy). Wang stated that she had spoken with the dentist, who reported that she prescribed opiate pain medication because she had damaged the patient's nerve, causing severe pain. Inspector Nip had a lengthy discussion with Wang about a pharmacist's duty of corresponding responsibility when asked to dispense controlled substances, as well as red flags, a dentist's scope of practice, and chronic pain management. She recommended that Wang read about these issues in *The Script*, a newsletter periodically published by the Board. Nip noted that Wang was registered to access CURES/PDMP. Together, Nip and Wang reviewed a CURES report that showed that Patient EA was doctor and pharmacy shopping. Nip also counseled Wang about numerous other issues, but did not issue any citation or initiate an investigation.

11. At hearing, Nip explained that after reviewing Patient EA's CURES report she believed that Wang may have violated her duty to exercise corresponding responsibility, but instead of investigating further, she took the opportunity to educate Wang about this duty.

The Complaint and March 2, 2020 Inspection

12. On March 22, 2019, the Board received a complaint from pharmacist Joanna Chow. Chow alleged that Calaveras dispensed zolpidem (brand name: Ambien) and eszopiclone (brand name: Lunesta) to Patient LO, who frequented multiple doctors and pharmacies to obtain and fill prescriptions.

13. Zolpidem and eszopiclone are both controlled substances primarily prescribed to treat insomnia. They are sedative hypnotics, of which long-term use can result in dependence, abuse, or tolerance. They have similar mechanisms of action and eszopiclone may enhance the central nervous system depressive effects of zolpidem.

14. Chow became suspicious when she observed Patient LO filling controlled substances prescriptions at multiple pharmacy locations, asking for early refills, and paying with cash or discount cards. Chow reviewed CURES data and noticed that Patient LO was filling multiple prescriptions for zolpidem and eszopiclone from multiple prescribers and at multiple pharmacies, including Calaveras. Chow refused to fill such a prescription for Patient LO and filed the complaint.

15. Irina Top has been a Board Inspector since 2014. Top investigates consumer and Board complaints, conducts inspections, collects evidence, writes investigation reports, and attempts to ensure compliance with federal and state laws and regulations applicable to Board licensees. Top estimates that by March 2, 2020, she had conducted more than 200 investigations, and more than 250 inspections of retail pharmacies.

16. In 2009, Top earned a doctor of pharmacy degree with an emphasis in pharmaceutical health policy and management and was licensed as a pharmacist in California. Prior to working for the Board, she worked for two to three months in a retail pharmacy and then for approximately five years in a hospital pharmacy. She created the hospital pharmacy's training manual for new pharmacists.

17. Top investigated Chow's complaint.

18. On March 2, 2020, Top conducted an inspection of Calaveras. Wang was fully cooperative throughout the inspection and subsequent investigation. She

promptly provided documents requested by Top.

Reusing Prescription Vials, Failing to Provide Notice of Right to Consultation, and Dispensing More Valium than Prescribed

19. During the inspection, Top discovered that respondents: (1) were soaking two prescription vials with the intention of reusing them; (2) were failing to provide delivery clients a required notice of the right to consultation with a pharmacist; and (3) on March 30, 2018, dispensed 70 doses of diazepam (brand name: Valium) 10 mg, a controlled substance, pursuant to a prescription for 40 doses.

20. Respondents do not dispute these facts or contest that they constitute cause for discipline. However, Wang provided the following testimony in mitigation:

- Wang reports that the two vials Top observed soaking in a sink were from a prescription that a patient never picked up. Wang decided to wash and reuse the vials to be environmentally friendly. She never did this on any other occasion. She did not at the time understand the requirement that all medications be dispensed in brand-new vials or containers, but now she does understand that rule and complies with it. She is sorry for the mistake.
- Wang admits that Calaveras sometimes did not print out or give the required notice of patient's right to consultation with a pharmacist to delivery patients. However, she reports that Calaveras now has a comprehensive notice in English, Chinese, and Vietnamese (the primary languages of its patients) and ensures that the notice is attached to every prescription delivery.
- Wang admits that the diazepam prescription was for 40 doses, but

respondents dispensed 70 doses due to a “mistake.”

21. After the inspection, Top analyzed the documents and data provided by Wang as well as data from CURES, in an effort to determine whether respondents had (1) dispensed controlled substance prescriptions written on forms lacking multiple required security features, and (2) failed to exercise corresponding responsibility to confirm the validity of controlled substances prescriptions where there were numerous red flags that the prescriptions were not for a legitimate medical purpose.

Dispensing Controlled Substance Prescriptions Written on Forms Lacking Multiple Required Security Features

22. Pursuant to Health and Safety Code section 11162.1, subdivision (a), prescription forms for controlled substances shall be printed with the following security features:

(1) A latent, repetitive “void” pattern shall be printed across the entire front of the prescription blank; if a prescription is scanned or photocopied, the word “void” shall appear in a pattern across the entire front of the prescription.

(2) A watermark shall be printed on the backside of the prescription blank; the watermark shall consist of the words “California Security Prescription.”

(3) A chemical void protection that prevents alteration by chemical washing.

(4) A feature printed in thermochromic ink.

(5) An area of opaque writing so that the writing disappears

if the prescription is lightened.

(6) A description of the security features included on each prescription form.

(7)(A) Six quantity check off boxes shall be printed on the form so that the prescriber may indicate the quantity by checking the applicable box where the following quantities shall appear:

1-24

25-49

50-74

75-100

101-150

151 and over.

(B) In conjunction with the quantity boxes, a space shall be provided to designate the units referenced in the quantity boxes when the drug is not in tablet or capsule form.

(8) Prescription blanks shall contain a statement printed on the bottom of the prescription blank that the "Prescription is void if the number of drugs prescribed is not noted."

(9) The preprinted name, category of licensure, license number, federal controlled substance registration number,

and address of the prescribing practitioner.

(10) Check boxes shall be printed on the form so that the prescriber may indicate the number of refills ordered.

(11) The date of origin of the prescription.

(12) A check box indicating the prescriber's order not to substitute.

(13) An identifying number assigned to the approved security printer by the Department of Justice.

(14)(A) A check box by the name of each prescriber when a prescription form lists multiple prescribers.

(B) Each prescriber who signs the prescription form shall identify themselves as the prescriber by checking the box by the prescriber's name.

(15) A uniquely serialized number, in a manner prescribed by the Department of Justice in accordance with Section 11162.2.

(Health & Saf. Code, § 11162.1, subd. (a) [This statute was amended twice during the relevant period of time, but the portion quoted above was in effect at all relevant times.])

23. During Top's March 2, 2020 investigation, she discovered that respondents dispensed 15 controlled substance prescriptions that were written on forms that each lacked multiple security features required by Health and Safety Code

section 11162.1, subdivision (a). These dispensed prescriptions totaled 463 tablets and 2,033 ml of controlled substances including opiates and benzodiazepines. Ten of the prescriptions were dispensed after Nip addressed this issue with Wang during the August 2, 2018 inspection.

24. Examples of the missing or invalid security features at issue include controlled substance prescription forms that:

- have a repetitive background pattern that states "Illegal" instead of "Void";
- have a background watermark that states "mediscripts" instead of "California Security Prescription";
- are missing the required statement printed on the bottom of the prescription blank that the "Prescription is void if the number of drugs prescribed is not noted";
- are missing the identifying number assigned to the approved security printer by the Department of Justice;
- are missing the required "quantity check off boxes";
- contain quantity check off boxes with numerical ranges different than specified by statute (*i.e.*, "25-50" and "51-74" instead of "25-49" and "50-74"); and
- are missing a check box to indicate the prescriber's order not to substitute.

25. At hearing, Top opined that a prescription written for a controlled substance is invalid if even one required security feature is missing from the prescription form. She further opined that all of the 15 prescriptions at issue in this

case were invalid because each form was missing multiple required security features.

26. At hearing, respondents presented the expert testimony of Afrouz Nikmanesh. Nikmanesh earned a doctor of pharmacy degree in 1996 and has been licensed as a pharmacist in California since that year. Nikmanesh has primarily worked as a pharmacist, chief pharmacist, or managing pharmacist for several large chain retail pharmacies. She estimates that she has worked alongside thousands other pharmacists in her career. Additionally, for about 13 months beginning in 2014, Nikmanesh worked as an inspector for the Board.

27. Nikmanesh agrees that the 15 prescription forms at issue are missing required security features. However, she reports that this is common and she receives such prescriptions every day in her work as a retail pharmacist. She reports that the forms are expensive, the Board keeps adding new security features, many prescribers are still using outdated forms, and also that some publishers have sold noncompliant forms to prescribers.

28. Nikmanesh opines that a prescription for controlled substances that is not signed or dated by the prescriber is invalid and cannot be dispensed. She also opined that a prescription for a schedule II controlled substance that is missing required security features is also invalid and cannot be dispensed.

29. However, Nikmanesh opines that a pharmacist is authorized by the Board to use his or her professional judgment to "take care of the patient." She opines that other technical flaws in the form for a schedule III through V controlled substance can be remedied by one of two processes: "clarification" or "verification." She opines that a pharmacist could verify the source of the prescription, seek any missing information, or verify that the patient had previously taken other pain medications. However, at

hearing she was unable to delineate between the two processes and ultimately testified that the differences are “not so black and white” and that they are “interchangeable terms.” Nikmanesh opines that for schedule III through V controlled substances, a pharmacist may call and “verify” a prescription that is missing required security features. Nikmanesh cites no authority for these opinions and they were not persuasive in light of the text of Health and Safety Code section 11162.1, subdivision (a), set forth in Factual Finding 22, and the testimony of Inspector Top.

30. Nikmanesh also opines that a pharmacist presented with a controlled substances prescription written on a form lacking required security features can convert the written prescription into an oral prescription by: (1) reading it to the prescriber’s office, (2) getting written confirmation from the prescriber, and (3) documenting this procedure. Nikmanesh reports that there is no regulation as to what documentation is required, but her practice is to staple the original non-compliant written prescription to the writing regarding the oral prescription. However, respondents do not contend that any of the 15 written controlled substance prescriptions at issue were converted into oral prescriptions.

31. Nikmanesh also reports that some mandatory security features for controlled substance prescriptions are impossible for a pharmacist to verify. For example, she reports that she has asked verified prescription printers and checked many sources, but is unaware of a method for a pharmacist to verify that a form has the “chemical void protection that prevents alteration by chemical washing” specified in subdivision (a)(3) of Health and Safety Code section 11162.1 without destroying the written prescription. She also reports that it might require making a copy of a prescription to verify the “area of opaque writing so that the writing disappears if the prescription is lightened” specified in subdivision (a)(5). Nikmanesh opines that this is

impractical for a pharmacist. However, Nikmanesh does not claim that any of the security features at issue in this case are impractical or impossible to verify.

32. Respondents also presented at hearing the expert testimony of Jeb Sydejko. Sydejko earned a doctor of pharmacy degree in 1985 and has been licensed as a pharmacist in California since that year. Sydejko also earned a juris doctorate degree in 1993 and was licensed to practice law in California from 1995 to 2005 and since 2010.

33. Sydejko has approximately 28 years of experience working as a pharmacist, mostly for retail pharmacies. Since 2010, he has primarily worked as a pharmacy and drug wholesaler regulatory consultant. He estimates that he has filled millions of prescriptions over his career. Sydejko also served as a consultant for the Board at some unspecified time in the past and as a probationary consultant for three or four pharmacies prior to 2020.

34. Sydejko opines that a pharmacist's duty to verify controlled substance prescription security features is difficult primarily due to a lack of uniformity and because the security features can be located in various different parts of the form.

35. Regarding the discipline appropriate for dispensing a controlled substance prescription written on a noncompliant form, Sydejko points to a November 28, 2017 email from the Board to all licensees about required security features in which the Board stated:

The board's response upon identification of noncompliant forms having been used to dispense controlled drugs is to educate the licensee, and to cite and fine the pharmacy/pharmacists involved.

Failure to Exercise Corresponding Responsibility to Confirm the Validity of Controlled Substance Prescriptions

36. Top's examination of CURES data and other records shows that between March 1, 2017, and March 2, 2020, respondents repeatedly failed to exercise their "corresponding responsibility" to ensure the prescriptions for controlled substances were legal and for a legitimate medical purpose, regarding 12 patients. For each of these patients, multiple "red flags" suggesting illegitimate use existed, including:

- obtaining controlled substance prescriptions from multiple prescribers;
- predominantly cash payment for controlled substance prescriptions;
- long distances (often more than 40 miles) traveled from the patient's home to the prescriber's office and/or pharmacy;
- pharmacy located a great distance from the prescriber's medical office;
- requests for early fills of controlled substances (five or more days prior to scheduled completion of previous prescription);
- controlled substance prescriptions written outside of the prescriber's medical specialty; or
- controlled substance prescriptions lacking multiple security features as required by Health and Safety Code section 11162.1.

37. As a result of respondents' failure to exercise their corresponding responsibility, they dispensed controlled substances to patients who were egregious doctor and pharmacy shoppers, sought early fills of medication, and traveled long distances to various prescribers and pharmacies. Respondents also dispensed

high-dose opioids and benzodiazepines to patients who were naïve to medications from both drug classes. In total, respondents improperly dispensed approximately 529 irregular prescriptions for 95,775 units of controlled substances to these 12 patients. Top opines that these patients exhibited “drug-seeking” behaviors and some of the prescriptions were not for a legitimate medical purpose.

38. Respondents last dispensed controlled substances to 11 of the 12 patients at issue before Top’s March 2, 2020, inspection. Wang testified that she refused to continue dispensing controlled substances to several of these patients due to concerns that the prescriptions were not for a for a legitimate medical purpose. Wang reports that she believes that she did access CURES information for some of the patients. However, she admits that she did not understand that she was required to be alert for signs of doctor or pharmacy shopping, such as multiple prescribers and large distances between patient, pharmacy, or prescriber. Wang took some steps to resolve some of the red flags. For instance, she asked the patients questions about requests for early refills, why the patient needed the prescription, why the patient was paying cash for the prescription, or why the patient and a family member had been prescribed the same controlled substance. Wang also verified that many of the prescriptions were issued by the named prescriber and sometimes resolved ambiguities in the text of the prescription.

39. In relation to Patient EA, Wang contacted the dentist who had prescribed significant dosages of opiate pain relievers over a long period of time to ask about the need for and dosage of the medication. Wang reports that in addition to being told that the dentist had damaged a nerve in one of the patient’s teeth, she observed Patient EA with bloody cotton balls in her mouth and in apparent pain multiple times. However, Calaveras dispensed controlled substances to this patient from May 3, 2017,

through February 24, 2020. During this period, Patient EA obtained 105 prescriptions for controlled substances from 47 different prescribers. Patient EA traveled great distances between home, prescribers, and pharmacies. She primarily paid in cash. The dentist prescribed, concurrently with opiates, 40 tablets of diazepam 10mg (the highest strength) which is a benzodiazepine and commonly abused controlled substance. Patient EA was naïve to this class of drug. Additionally, diazepam is contraindicated for (and is labeled with a boxed warning against) use with opiates as the combination may result in respiratory depression and even death. Patient EA requested and received from respondents eight early refills. The first documented sign that Wang inquired about the necessity of the controlled substances prescribed for Patient EA was approximately a year after Calaveras had been regularly dispensing these drugs. Respondents continued to dispense controlled substances to this patient for approximately 18 months after Inspector Nip specifically discussed red flags in the patient's CURES report. In total, respondents dispensed 3,799 tablets of controlled substances to Patient EA.

40. Promethazine-codeine syrup (brand name: Chemergan-Codeine) was one of the primary controlled substances dispensed to several of the other patients at issue. It is a combination of an antihistamine drug and an opiate drug, primarily intended for suppressing coughs. It is a drug of abuse with street value and also known as "purple drank," "sizzurp," and "lean." Wang reports that she did not know it was a drug of abuse during the relevant period.

41. Top reports that, pursuant to reference materials, promethazine-codeine is indicated for the temporary relief of cough and upper respiratory symptoms and should be used for the shortest period of time possible. She opines that the prescription of this drug to multiple Calaveras patients for a year or more was a red

flag that required the exercise of corresponding responsibility. Both Nikmanesh and Sydejko opine that promethazine-codeine is the “gold standard” for treating coughs and it is not uncommon for it to be prescribed for extended periods to treat chronic conditions.

42. Wang also reports that she spoke with the primary prescriber of controlled substance prescriptions dispensed by Calaveras regarding concerns over a prescription for promethazine-codeine. His practice was in San Francisco, a great distance from Calaveras. Instead of discussing the merits of the issue, he told Wang that if she did not feel comfortable dispensing the prescription, she should tell the patient to go to another pharmacy. She was shocked, but did not feel qualified to question his judgment. The patient shouted and cried and in response Wang filled a small portion of the prescription. Wang reports that she now knows to stand firm, regardless of any patient pressure. Wang also reports that looking back, she now realizes that she also should have intervened regarding patients who were regularly filling controlled substance prescriptions but not filling corresponding antibiotic prescriptions, which she now views as a red flag.

43. Respondents submitted credible evidence that, especially during the first several years it was available, many pharmacists regularly experienced technical difficulties accessing the CURES database information and that these problems gradually improved but persisted during the period relevant in this matter. However, respondents do not claim that such technological problems prevented them from accessing CURES database information regarding the patients at issue in this proceeding.

44. Neither Nikmanesh nor Sydejko were asked to form, or rendered, an opinion on whether respondents failed to exercise corresponding responsibility as

alleged by complainant. Both emphasized that licensees must consider the totality of circumstances when exercising corresponding responsibility and that a red flag does not necessarily mean a prescription for a controlled substance should not be dispensed. Both opined that it can be difficult and time-consuming for a pharmacist to obtain the information from a prescriber necessary to resolve red flags regarding a controlled substance prescription. Obstacles include busy physicians and an outdated but still prevalent attitude that the inquiring pharmacist is meddling into the prescriber's domain. Both opined that many licensed pharmacists do not understand this duty.

45. Since 2010, Sydejko has published a handbook to aid pharmacy licensees in regulatory compliance. This handbook did not mention corresponding responsibility until after the *Pacifica* decision was made precedential in 2013. It now contains an entire chapter devoted to the subject. Sydejko contends that there has been little information to educate licensees about this duty until recently, but concedes that the Board's newsletter contained articles about it in July 2001 and February 2010, both prior to the *Pacifica* decision. Sydejko also concedes that the Board's biennial mandatory self-assessment for pharmacies contains two questions confirming pharmacists' understanding of corresponding responsibility.

46. Although Wang took some steps to resolve some of the many red flags, her efforts were insufficient to fulfill her corresponding responsibility to ensure that the controlled substances prescriptions for these 12 patients were for a legitimate purpose. Top's opinion in this regard was un rebutted and persuasive. The difficulties in fulfilling this responsibility described by Nikmanesh and Sydejko do not constitute an excuse for these failures.

47. It was not proven that Lim had knowledge of, or knowingly participated

in, any conduct for which discipline is sought in this matter.

48. There is no evidence or contention that any patient was harmed by respondents' actions or inaction.

Respondents' Additional Evidence

49. Wang is 52 years old. She was born and raised in Taiwan. She graduated from pharmacy school in Taiwan in 1991. She married Lim, her husband and co-owner of Calaveras, in approximately 2000 and at some point thereafter emigrated to the United States. First as an intern, then as a licensed pharmacist, Wang worked for a busy retail pharmacy associated with a hospital from 2005 through 2012. Then she worked for another four years for a pharmacy inside the Palo Alto Medical Foundation. In March of 2017, she began operating Calaveras. Neither her license nor the pharmacy permit has been previously disciplined.

50. Wang's testimony at hearing demonstrates that she now understands corresponding responsibility. She reports that she gained this knowledge after Top's March 2, 2020 inspection. Wang then visited the Board's website, carefully read a brochure and the *Pacifica* decision, and watched a video training about corresponding responsibility presented by a deputy attorney general. In April 2020, she engaged Sydejko's compliance services. Wang also reviewed approximately 50 pages of Centers for Disease Control guidelines for prescribers of opiate pain medications, explaining when to initiate, what medications, what dosages, when to discontinue, and how to assess the risk and harms of long-term opiate use. She has also taken a continuing education course in opiate use safety.

51. Wang reports that she now documents all of her efforts to exercise corresponding responsibility, including reviewing and retaining copies of CURES

reports, confirming that the purported prescriber actually prescribed the medication, confirming that paper prescriptions have all required security features. She also obtains and documents a diagnosis code from the prescribing physician. Wang reports that since the March 2, 2020 inspection she has refused to fill multiple prescriptions for controlled substances after she was unable to resolve red flags such as multiple prescribers.

52. On September 25, 2021, Nikmanesh performed a thorough on-site inspection of Calaveras and issued a report dated October 12, 2021. Nikmanesh followed her standard template for such inspections, based on the Board's self-assessment document. She also reviewed a random sample of controlled substance prescriptions dispensed by Calaveras. Nikmanesh found Calaveras compliant with all pharmacy laws and regulations. She reports that it was extremely neat and organized, and very well run. She observed careful documentation of the exercise of corresponding responsibility.

53. Wang submitted the testimony and letters of support of two Calaveras employees, a former coworker, and an individual who worked for Wang as a contractor and is also familiar with Calaveras because it fills his mother's prescriptions. She also submitted character reference letters from a patient and former coworker. These witnesses are aware of the allegations in the accusation. They describe Wang as hardworking, honest, conscientious, friendly, and caring. They regard her as a safe pharmacist who is passionate about her patients and an asset to the local community.

54. Lim testified at hearing. In addition to being part owner of Calaveras and Wang's husband, he performs bookkeeping and administrative work for the pharmacy. Lim had a career as a software engineer but quit his job in 2019 to help Wang full time at Calaveras. Lim reports that Wang is very kind, sometimes naïve, but Calaveras is her

passion. It is a small pharmacy and yields limited income, but allows Wang to serve the local community.

55. Sydejko reports that a pharmacy placed on probation faces financial impact, including possible cancellation of insurance contracts or cancellation of affiliation with a pharmacy service administration organization (which handles third party contracting for pharmacies).

Costs

56. In connection with the investigation and enforcement of this accusation, complainant requests an award of costs in the total amount of \$36,400.75, for investigation costs in the amount of \$18,832, and attorney and paralegal services provided by the Department of Justice and billed to the Board in the amount of \$17,568.75. This request is supported by declarations. The investigative costs are reported as 152.75 hours of Top's time at a rate of \$121 per hour, comprised of 51 hours of investigation, 3 hours of travel, and 98.75 hours preparing her 41-page investigative report, plus 2.75 hours of supervisor time at \$127 per hour. The ALJ found that complainant's requested costs in the total amount of \$36,400.75 were reasonable.

57. Regarding complainant's request for costs, Wang reports that it would be difficult for respondents to pay a cost award that size, but easier if they were allowed to make installment payments. She reports that she had to ask her mother for money to pay her attorney's fees.

LEGAL CONCLUSIONS

First Cause for Discipline (Reusing Medication Vials)

1. The Board may discipline the license of a licensee who commits unprofessional conduct, which includes any violations of California's Pharmacy Law (§§ 4000, et seq.) or the applicable state and federal laws and regulations governing the practice of pharmacy (§ 4301, subd. (o)). Additionally, the PIC is responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy. (§ 4113, subd. (c).) "No medication shall be dispensed on prescription except in a new container....." (Cal. Code Regs., tit. 16, § 1717, subd. (a).) Respondents admit that Wang was washing two prescription vials for reuse. (Factual Findings 19 & 20.) Cause exists to discipline Calaveras's pharmacy permit and Wang's pharmacist license under section 4301, subdivision (o), and California Code of Regulations, title 16, section 1717, subdivision (a).

Second Cause for Discipline (Failure to Provide Notice of Right to Consult Pharmacist)

2. The Board may discipline the license of a licensee who fails to ensure that when a patient is not present, the patient receives written notice of his or her right to request consultation and a telephone number from which the patient may obtain oral consultation from a pharmacist who has ready access to the patient's record. (§ 4301, subd. (o); Cal. Code Regs., tit. 16, § 1707.2, subd. (b)(1).) Cause exists to discipline Calaveras's pharmacy permit and Wang's pharmacist license under section 4301, subdivision (o), and California Code of Regulations, title 16, section 1707.2, subdivision (b)(1), in light of the matters set forth in Factual Findings 19 and 20.

Third Cause for Discipline (Variation from Prescription)

3. Except in circumstances inapplicable here, pharmacists shall not deviate from the requirements of a prescription. (Cal. Code Regs., tit. 16, § 1716.) On March 30, 2018, respondents dispensed 70 doses of diazepam 10 mg, a controlled substance, pursuant to a prescription for 40 doses. (Factual Findings 19 & 20.) Cause exists to discipline Calaveras's pharmacy permit and Wang's pharmacist license under section 4301, subdivision (o), and California Code of Regulations, title 16, section 1716.

Fourth Cause for Discipline (Controlled Substances Prescription Requirements)

4. The Board may discipline the license of a licensee who violates any state or federal statute regulating controlled substances and dangerous drugs. (§ 4301, subd. (j)). Prescription forms for controlled substances shall be printed with numerous specified security features. (Health & Saf. Code, § 11162.1, subd. (a); see Factual Finding 22.) Respondents dispensed 15 controlled substance prescriptions that were written on forms that each lacked multiple security features required by Health and Safety Code section 11162.1, subdivision (a). (Factual Findings 23 & 24.) Cause exists to discipline Calaveras's pharmacy permit and Wang's pharmacist license under section 4301, subdivision (j), and Health & Safety Code section 11162.1, subdivision (a).

Fifth Cause for Discipline (Failure to Exercise Corresponding Responsibility)

5. The Board may discipline the license of a licensee who fails to exercise the requisite corresponding responsibility to ensure that a prescription for a controlled substance is legal and for a legitimate medical purpose. (§ 4301, subds. (d), (j), & (o);

Health & Saf. Code, § 11153; Cal. Code Regs., tit. 16, § 1761, subd. (a).) Although Wang took some steps to resolve some of the many discernable red flags, her efforts were insufficient to fulfill her corresponding responsibility to ensure that the controlled substances prescriptions Calaveras filled for 12 patients were for a legitimate purpose. (Factual Findings 36, 37, & 46.) Cause exists to discipline Calaveras's pharmacy permit and Wang's pharmacist license under section 4301, subdivisions (d), (j), and (o), Health and Safety Code section 11153, and California Code of Regulations, title 16, section 1761, subdivision (a).

Determination of Discipline

6. Cause for discipline having been established, the remaining issue is what level of discipline is required to protect the public. Protection of the public "shall be paramount." (§ 4001.1.) For failure to exercise corresponding responsibility to ensure the proper dispensing of controlled substances (the most serious cause for discipline in this matter), the Board's disciplinary guidelines recommend a minimum discipline of revocation, stayed; 90 days actual suspension, and three to five years of probation, with standard and optional conditions of probation as appropriate; and a maximum discipline of revocation. (Disciplinary Guidelines, A Manual of Disciplinary Guidelines and Model Disciplinary Orders (Feb. 2017 Rev.) (Disciplinary Guidelines), at pp. 11–12; Cal. Code Regs., tit. 16, § 1760.) In determining whether the minimum, maximum, or an intermediate penalty is to be imposed in a given case, the relevant factors include: nature and severity of the acts; actual or potential harm to the public; actual or potential harm to any consumer; time passed since the act(s); aggravating and mitigating evidence; and rehabilitation evidence. (Disciplinary Guidelines at p. 4.) Complainant argues for outright revocation of the permit and license and respondent argues for public reproof.

7. Respondents' violations of the pharmacy law are numerous and the failure to exercise requisite corresponding responsibility in connection with the dispensation of controlled substances is serious misconduct. In aggravation, Inspector Nip counseled respondents regarding corresponding responsibility in August 2018, but the misconduct persisted. However, neither respondent has been previously disciplined. Wang fully cooperated with the Board's inspections and investigations. During her September 2021 inspection, Nikmanesh found Calaveras compliant with all pharmacy laws and regulations and observed careful documentation of the exercise of corresponding responsibility. Respondents submitted testimony and letters regarding Wang's good character and honesty. Wang accepts full responsibility for the misconduct. She demonstrated insight and remorse. She now fully understands her duty to exercise corresponding responsibility. She has implemented new procedures to prevent future violations. No actual harm to the public was shown. Respondents appear to be good candidates for probation and have proven sufficient rehabilitation to deviate from the Disciplinary Guidelines in one respect only, no actual suspension is necessary. The public will be adequately protected by revocation of Calaveras's pharmacy permit and Wang's pharmacist license, stayed with a three-year term of probation, with standard conditions. Respondents failed to prove mitigation or rehabilitation sufficient to justify further deviation from the Disciplinary Guidelines.

Other Matters

8. Pursuant to section 4307, if discipline is imposed on Original Pharmacy Permit Number PHY 54659, issued to respondent Calaveras, it shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for up to five years if Original Pharmacy Permit Number PHY 54659 is placed on probation or until reinstated if it is revoked. Original Pharmacy

Permit Number PHY 54659 will be placed on probation for three years, therefore respondent Calaveras shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of another licensee for the term of its probation, not to exceed five years.

9. Pursuant to section 4307, if discipline is imposed on Original Pharmacy Permit Number PHY 54659, issued to respondent Calaveras while Wang and/or Lim have been an officer or owner and had knowledge of or knowingly participated in any conduct for which the license was disciplined, Wang and/or Lim shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for up to five years if Original Pharmacy Permit Number PHY 54659 is placed on probation or until reinstated if it is revoked. Original Pharmacy Permit Number PHY 54659 will be placed on probation for three years. Wang knowingly participated in conduct for which the license was disciplined. It was not proven that Lim had knowledge of, or knowingly participated in, any conduct for which the license was disciplined. (Factual Finding 47.) Accordingly, Wang shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee other than Calaveras for the term of her probation, not to exceed five years, but this prohibition shall not apply to Lim.

10. Pursuant to section 4307 of the Code, if discipline is imposed on Original Pharmacist License Number RPH 58435 issued to Wang, she shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for up to five years if Original Pharmacist License Number RPH 58435 is placed on probation or until reinstated if it is revoked. Original Pharmacist License Number RPH 58435 will be placed on probation for three years and therefore Wang shall be prohibited from serving as a manager, administrator, owner, member,

officer, director, associate, or partner of a licensee other than Calaveras for the term of her probation, not to exceed five years.

Costs

11. A licensee who is found to have committed a violation of the licensing act may be ordered by the ALJ to pay a sum not to exceed the reasonable costs of investigation and enforcement. (§ 125.3.) The ALJ determined that cause existed to order respondents to pay the Board's costs in the amount of \$36,400.75. (Factual Finding 56 and Legal Conclusions 1–5.)

12. Cost awards must not deter licensees with potentially meritorious claims from exercising their right to an administrative hearing. (*Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45.) Cost awards must be reduced where a licensee has been successful at hearing in getting the charges dismissed or reduced; a licensee is unable to pay; or where the scope of the investigation was disproportionate to the alleged misconduct. (*Ibid.*) The agency must also consider whether the licensee has raised a colorable challenge to the proposed discipline, and a licensee's good faith belief in the merits of his or her position. (*Ibid.*) Here, the ALJ determined that no basis to reduce the award of costs was shown, but respondents will be permitted to pay the cost award in installments.

ORDER

As to Respondent Thrive Pharmacy Care, Inc., dba Calaveras Pharmacy

Original Pharmacy Permit Number PHY 54659, issued to respondent Thrive

Pharmacy Care, Inc., doing business as Calaveras Pharmacy, is revoked; however, the revocation is stayed and respondent Calaveras is placed on probation for three years upon the following terms and conditions:

1. Definition: Respondent Calaveras

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

2. Obey All Laws

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

Respondent Calaveras shall report any of the following occurrences to the Board, in writing, within 72 hours of such occurrence:

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

- a conviction of any crime; or
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent Calaveras's pharmacy permit 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.

3. Report to the Board

Respondent Calaveras 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 Calaveras shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the Board.

4. Interview with the Board

Upon receipt of reasonable prior notice, respondent Calaveras 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 or more scheduled interviews with the Board or its designee during the period of probation,

shall be considered a violation of probation.

5. Cooperate with Board Staff

Respondent Calaveras 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 the 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.

6. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, respondent Calaveras, shall (jointly and severally with respondent Wang), pay to the Board its costs of investigation and prosecution in the amount of \$36,400.75. Respondent shall make said payments as follows:

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

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

7. Probation Monitoring Costs

Respondent Calaveras shall pay any costs associated with probation monitoring as determined by the Board each and every year of probation. Such costs shall be

payable to the Board on a schedule as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

8. Status of License

Respondent Calaveras shall, at all times while on probation, maintain an active, current original pharmacy permit with the Board. Failure to maintain an active, current pharmacy permit shall be considered a violation of probation.

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

9. License Surrender While on Probation/Suspension

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

Respondent Calaveras may not apply for any new license from the Board for three years from the effective date of the surrender. Respondent Calaveras shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

Respondent Calaveras shall reimburse the Board for its costs of investigation and prosecution prior to the acceptance of the surrender.

10. Sale or Discontinuance of Business

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

11. Notice to Employees

Respondent Calaveras shall, upon or before the effective date of this decision, ensure that all employees involved in permit operations are made aware of all the terms and conditions of probation, either by posting a notice of the terms and conditions, circulating such notice, or both. If the notice required by this provision is posted, it shall be posted in a prominent place and shall remain posted throughout the probation period. Respondent Calaveras shall ensure that any employees hired or used after the effective date of this decision are made aware of the terms and conditions of probation by posting a notice, circulating a notice, or both. Additionally, respondent Calaveras shall submit written notification to the Board, within 15 days of the effective date of this decision, that this term has been satisfied. Failure to timely

provide such notification to employees, or to timely submit such notification to the Board shall be considered a violation of probation.

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

12. Owners and Officers: Knowledge of the Law

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

13. Premises Open for Business

Respondent Calaveras shall remain open and engaged in its ordinary business as a pharmacy in California for a minimum of 120 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent Calaveras must nonetheless comply with all terms and conditions of probation, unless respondent is informed otherwise in writing by the Board or its designee. If respondent Calaveras is not open and engaged in its ordinary business as a pharmacy for a minimum of 120 hours in any calendar month, for any reason (including vacation), respondent Calaveras shall notify the Board in writing within 10 days of the

conclusion of that calendar month. This notification shall include at minimum all of the following: the date(s) and hours respondent Calaveras was open; the reason(s) for the interruption or why business was not conducted; and the anticipated date(s) on which respondent Calaveras will resume business as required. Respondent Calaveras shall further notify the Board in writing with 10 days following the next calendar month during which respondent Calaveras is open and engaged in its ordinary business as a pharmacy in California for a minimum of 120 hours. Any failure to timely provide such notification(s) shall be considered a violation of probation.

14. Posted Notice of Probation

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

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

15. Violation of Probation

If a respondent Calaveras has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over respondent, and probation shall be automatically extended, until all terms and conditions have been satisfied or the Board has taken other action as deemed appropriate to treat the failure to comply

as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If respondent Calaveras violates probation in any respect, the Board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation or an accusation is filed against respondent Calaveras during probation, the Board shall have continuing jurisdiction and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

16. Completion of Probation

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

As to Respondent Fong-Chun Wang

Pharmacist License Number RPH 58435, issued to respondent Fong-Chun Wang (respondent Wang), is revoked; however, the revocation is stayed and respondent Wang is placed on probation for three years upon the following terms and conditions:

1. Obey All Laws

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

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

5. Continuing Education

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

6. Reporting of Employment and Notice to Employers

During the period of probation, respondent Wang shall notify all present and prospective employers of the decision in case number 6967 and the terms, conditions and restrictions imposed on respondent Wang by the decision, as follows:

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

Within 30 days of the effective date of this decision, and within 15 days of respondent Wang undertaking any new employment, respondent shall cause (a) her direct supervisor, (b) her pharmacist-in-charge, designated representative-in-charge, responsible manager, or other compliance supervisor, and (c) the owner or owner representative of her employer, to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in case number 6967, and terms and conditions imposed thereby. If one person serves in more than one role described in (a), (b), or (c), the acknowledgment shall so state. It shall be the respondent Wang's responsibility to ensure that these acknowledgment(s) are timely submitted to the Board. In the event of a change in the person(s) serving the role(s) described in (a), (b), or (c) during the term of probation, respondent Wang shall cause the person(s) taking over the role(s) to report to the Board in writing within 15 days of the change

acknowledging that he or she has read the decision in case number 6967, and the terms and conditions imposed thereby.

If respondent Wang works for or is employed by or through an employment service, respondent must notify the person(s) described in (a), (b), and (c) above at every entity licensed by the Board of the decision in case number 6967, and the terms and conditions imposed thereby in advance of respondent commencing work at such licensed entity. A record of this notification must be provided to the Board upon request.

Furthermore, within 30 days of the effective date of this decision, and within 15 days of respondent undertaking any new employment by or through an employment service, respondent Wang shall cause the person(s) described in (a), (b), and (c) above at the employment service to report to the Board in writing acknowledging that he or she has read the decision in case number 6967, and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the Board.

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

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

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

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

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

8. Restrictions on Supervision and Oversight of Licensed Facilities

During the period of probation, respondent Wang shall not supervise any intern pharmacist or serve as a consultant to any entity licensed by the Board. Respondent Wang may be a pharmacist-in-charge, designated representative-in-charge, responsible manager or other compliance supervisor of any single entity licensed by the Board, but only if respondent Wang or that entity retains, at her expense, an independent consultant who shall be responsible for reviewing the operations of the entity on a quarterly basis for compliance by respondent and the entity with state and federal laws and regulations governing the practice of the entity, and compliance by respondent with the obligations of her supervisory position. Respondent Wang may serve in such a position at only one entity licensed by the Board, only upon approval by the Board or its designee. Any such approval shall be site specific. The consultant shall be a pharmacist licensed by and not on probation with the Board, who has been approved by the Board or its designee to serve in this position. Respondent Wang shall submit the name of the proposed consultant to the Board or its designee for approval within 30 days of the effective date of the decision or prior to assumption of duties allowed in this term. Assumption of any unauthorized supervision responsibilities shall be considered a violation of probation. In addition, failure to

timely seek approval for, timely retain, or ensure timely reporting by the consultant shall be considered a violation of probation.

9. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, respondent Wang shall (jointly and severally with respondent Calaveras), pay to the Board its costs of investigation and prosecution in the amount of \$36,400.75. Respondent Wang shall make said payments as follows:

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

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

10. Probation Monitoring Costs

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

11. Status of License

Respondent Wang shall, at all times while on probation, maintain an active, current pharmacist license with the Board, including any period during which suspension or probation is tolled.

Failure to maintain an active, current pharmacist license shall be considered a violation of probation.

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

12. License Surrender While on Probation/Suspension

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

Upon acceptance of the surrender, respondent shall relinquish her pocket and/or wall license, including any indicia of licensure not previously provided to the

Board within 10 days of notification by the Board that the surrender is accepted if not already provided. Respondent Wang may not reapply for any license from the Board for three years from the effective date of the surrender. Respondent Wang shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board, including any outstanding costs.

13. Practice Requirement – Extension of Probation

Except during periods of suspension, respondent Wang shall, at all times while on probation, be employed as a pharmacist in California for a minimum of 100 hours per calendar month. Any month during which this minimum is not met shall extend the period of probation by one month. During any such period of insufficient employment, respondent must nonetheless comply with all terms and conditions of probation, unless respondent Wang receives a waiver in writing from the Board or its designee.

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

It is a violation of probation for respondent Wang's probation to be extended pursuant to the provisions of this condition for a total period, counting consecutive

and non-consecutive months, exceeding 36 months. The Board or its designee may post a notice of the extended probation period on its website.

14. Violation of Probation

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

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

15. Completion of Probation

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

Additional Terms of the Order

1. Thrive Pharmacy Care, Inc., doing business as Calaveras Pharmacy, is prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of another licensee for the term of its probation, not to exceed five years.

2. Fong-Chun Wang is prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee other than Thrive Pharmacy Care, Inc., doing business as Calaveras Pharmacy, for the term of her probation, not to exceed five years.

This Decision shall become effective at 5:00 p.m. on March 29, 2024.

It is so ORDERED on February 28, 2024.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

A handwritten signature in black ink, appearing to read "Seung W. Oh". The signature is fluid and cursive, with a large initial "S" and "O".

Seung W. Oh, Pharm.D.
Board President

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

In the Matter of the Accusation Against:

**THRIVE PHARMACY CARE, INC., d.b.a. CALAVERAS
PHARMACY, Sze Huay Lim and Fong-Chun Wang Owners,**

Original Pharmacy Permit No. PHY 54659

and

FONG-CHUN WANG,

Original Pharmacist License No. RPH 58435

Respondents.

Agency Case No. 6967

OAH No. 2021050378

ORDER SETTING DATE FOR SUBMISSION OF WRITTEN ARGUMENT

The parties are hereby notified of the opportunity to submit written argument in accordance with the Order Rejecting Proposed Decision dated February 2, 2022. The California State Board of Pharmacy will decide the case upon the administrative record of the hearing (not including the transcripts) and upon such written argument as the parties may wish to submit. No new evidence may be submitted.

Written argument shall be filed with the Board of Pharmacy, Attn. Susan Cappello, 2720 Gateway Oaks Drive, Suite 100, Sacramento, California, 95833, or susan.cappello@dca.ca.gov on or before **January 25, 2024**.

It is so ORDERED on December 26, 2023.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

A handwritten signature in black ink, appearing to read "Seung W. Oh".

Seung W. Oh, Pharm.D.
Board President

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

In the Matter of the Accusation Against:

**THRIVE PHARMACY CARE, INC., d.b.a. CALAVERAS
PHARMACY, Sze Huay Lim and Fong-Chun Wang Owners,**

Original Pharmacy Permit No. PHY 54659

and

FONG-CHUN WANG,

Original Pharmacist License No. RPH 58435

Respondents.

Agency Case No. 6967

OAH No. 2021050378

ORDER REJECTING PROPOSED DECISION

Pursuant to section 11517 of the Government Code, the Proposed Decision of the Administrative Law Judge in the above-entitled matter is rejected. The California State Board of Pharmacy (hereinafter "board") will decide the case upon the record, including the transcript(s) of the hearing, and upon such written argument as the parties may wish to submit. No new evidence may be submitted.

Although the right of the parties to submit written argument is not limited, the board is particularly interested in arguments directed to the question whether the discipline and probationary conditions is appropriate. The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

It is so ORDERED on February 2, 2022.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Seung W. Oh". The signature is fluid and cursive, with the first name "Seung" and last name "Oh" being clearly legible.

Seung W. Oh, Pharm.D.
Board President

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

In the Matter of the Accusation Against:

**THRIVE PHARMACY CARE, INC., d.b.a. CALAVERAS
PHARMACY, Sze Huay Lim and Fong-Chun Wang, Owners,**

Original Pharmacy Permit No. PHY 54659

and

FONG-CHUN WANG,

Original Pharmacist License No. RPH 58435,

Respondents.

Case No. 6967

OAH No. 2021050378

PROPOSED DECISION

Administrative Law Judge Michael C. Starkey, State of California, Office of Administrative Hearings, heard this matter on December 6 through 10, 2021, via telephone and videoconference.

Deputy Attorney General Aspasia A. Papavassiliou represented complainant Anne Sodergren, Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

Attorneys Armond Marcarian and Kristina N. Markarian represented respondents Thrive Pharmacy Care, Inc., and Fong-Chun Wang, who was present.

An order sealing Exhibits 5, 6, D, G and H was issued to protect the personal identifying information of patients. The record closed and the matter was submitted on December 10, 2021.

FACTUAL FINDINGS

Jurisdictional Matters

1. On December 27, 2016, the Board of Pharmacy (Board) issued Original Pharmacy Permit Number PHY 54659 to respondent Thrive Pharmacy Care, Inc., doing business as Calaveras Pharmacy (Calaveras). At all relevant times, Calaveras was owned by respondent Fong-Chun Wang (Wang) and Sze Huay Lim (Lim). This pharmacy permit was in full force and effect at all relevant times and is scheduled to expire on December 1, 2022, unless renewed.

2. On July 28, 2006, the Board issued Pharmacist License Number RPH 58435 to Wang. This license was in full force and effect at all relevant times and will expire on September 30, 2023, unless renewed. At all relevant times, Wang was Calaveras's Pharmacist-in-Charge ("PIC").

3. On April 14, 2020, complainant Anne Sodergren issued the accusation solely in her capacity as Executive Officer of the Board. Complainant alleges that cause

exists to discipline respondents' permit and license because they: (1) reused prescription vials; (2) failed to provide delivery clients a required notice of the right to consultation with a pharmacist; (3) dispensed more than the prescribed number of doses of a controlled substance; (4) dispensed 15 controlled substances where the prescription form lacked required security features; and (5) failed to exercise a pharmacist's corresponding responsibility to confirm the validity of controlled substances prescriptions where there were numerous "red flags" that the prescriptions were not for a legitimate medical purpose. Respondents timely submitted a notice of defense and this proceeding followed.

Standard of Proof

4. Complainant is required to prove cause for discipline of a professional license, permit, or registration by "clear and convincing proof to a reasonable certainty." (Cf. *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856; see Bus. & Prof. Code, § 23.7 [all statutory references are to the Business and Professions Code, unless otherwise stated].) If respondents contend mitigation or rehabilitation, it is their burden to prove those contentions by a preponderance of the evidence. (Evid. Code, §§ 115, 500.)

Corresponding Responsibility

5. A prescription for a controlled substance shall be issued only for a legitimate medical purpose. (Health & Saf. Code, § 11153.) The prescriber is responsible for properly prescribing and dispensing controlled substances, but the pharmacist filling the prescription has a "corresponding responsibility" to ensure the prescription is legal and for a legitimate medical purpose. (*Ibid.*) A "pharmacist does not meet the standard of care simply by selecting the proper pharmaceutical product,

accurately labeling that product for use, and counseling the patient. Reasonable inquiry is required." (*In the Matter of the Accusation Against Pacifica Pharmacy; Thang Tran* (Agency No. 3802; OAH No. 2011010644; Precedential Decision No. 2013-01) (*Pacifica*) at p.14.)

6. The Board has identified numerous "red flags" to alert a pharmacist that a prescription may be illegitimate, including:

PRESCRIPTION RED FLAGS:

- Irregularities on the face of the prescription itself
- Prescriptions written for an unusually large quantity of drugs
- The same diagnosis codes for many patients
- The same combinations of drugs prescribed for multiple patients
- Prescriptions written for potentially duplicative drug therapy
- Initial prescriptions written for strong opiates

PATIENT RED FLAGS:

- Nervous patient demeanor
- Age or presentation of patient (e.g., youthful patients seeking chronic pain medications)
- Multiple prescribers and/or pharmacies for the same patient for duplicate therapy (known as "doctor shopping" or "pharmacy shopping")
- Cash payments

- Long distances traveled from the patient's home to the pharmacy (minimum 5 mile radius)
- Prescriptions for medications with no logical connection to an illness or condition
- Multiple patients all with the same address
- Requests for early refills of prescriptions
- Excessively celebratory patient demeanor
- Patients coming to the pharmacy in groups, especially if their home addresses are outside of the pharmacy's local trade area (5 miles), each with the same prescriptions issued by the same prescriber

PRESCRIBER RED FLAGS:

- Long distances traveled from the patient's home to the prescriber's office
- Prescriptions that are written outside of the prescriber's medical specialty
- Irregularities in the prescriber's qualifications in relation to the type of medication(s) prescribed

7. If red flags are present—in other words, if the totality of the circumstances surrounding a prescription suggest that it may not be for a legitimate medical purpose—the pharmacist has a duty to make reasonable inquiries to attempt to resolve the red flags. If the pharmacist is unable to resolve the red flags—determine that the prescription is for a legitimate medical purpose—the pharmacist must refuse to fill the prescription.

CURES/PDMP

8. The Controlled Substance Utilization Review and Evaluation System (CURES) was initiated in 1997 and requires pharmacies regularly to report the dispensation of schedule II controlled substances. Since 2005, pharmacies are also required to report the dispensation of schedule II through VI controlled substances. The data can be used by healthcare professionals such as pharmacists and prescribers to help evaluate whether patients are utilizing controlled substances safely and appropriately. The component of CURES accessible to pharmacists and prescribers is called the Prescription Drug Monitoring Program (PDMP). Registration for access to PDMP has been available since 2009 and has been mandatory for pharmacists since July 1, 2016.

Background and the August 2, 2018 Inspection

9. Calaveras is a small community retail pharmacy located in Milpitas. At all times prior to this hearing, Wang was the PIC and the only pharmacist working at Calaveras.

10. On August 2, 2018, Board Inspector Hilda Nip conducted a routine inspection of Calaveras. Wang was fully cooperative throughout the inspection. During the inspection Nip reviewed a sample of Calaveras prescription documents and discussed the required security features for controlled substance prescriptions set forth in Health and Safety Code section 11162.1. Nip also asked Wang about several prescriptions written by a dentist for large quantities of narcotics for Patient EA (initials are used to protect patients' privacy). Wang stated that she had spoken with the dentist, who reported that she prescribed opiate pain medication because she had damaged the patient's nerve, causing severe pain. Inspector Nip had a lengthy

discussion with Wang about a pharmacist's duty of corresponding responsibility when asked to dispense controlled substances, as well as red flags, a dentist's scope of practice, and chronic pain management. She recommended that Wang read about these issues in *The Script*, a newsletter periodically published by the Board. Nip noted that Wang was registered to access CURES/PDMP. Together, Nip and Wang reviewed a CURES report that showed that Patient EA was doctor and pharmacy shopping. Nip also counseled Wang about numerous other issues, but did not issue any citation or initiate an investigation.

11. At hearing, Nip explained that after reviewing Patient EA's CURES report she believed that Wang may have violated her duty to exercise corresponding responsibility, but instead of investigating further, she took the opportunity to educate Wang about this duty.

The Complaint and March 2, 2020 Inspection

12. On March 22, 2019, the Board received a complaint from pharmacist Joanna Chow. Chow alleged that Calaveras dispensed zolpidem (brand name: Ambien) and eszopiclone (brand name: Lunesta) to Patient LO, who frequented multiple doctors and pharmacies to obtain and fill prescriptions.

13. Zolpidem and eszopiclone are both controlled substances primarily prescribed to treat insomnia. They are sedative hypnotics, of which long-term use can result in dependence, abuse, or tolerance. They have similar mechanisms of action and eszopiclone may enhance the central nervous system depressive effects of zolpidem.

14. Chow became suspicious when she observed Patient LO filling controlled substances prescriptions at multiple pharmacy locations, asking for early refills, and paying with cash or discount cards. Chow reviewed CURES data and noticed that

Patient LO was filling multiple prescriptions for zolpidem and eszopiclone from multiple prescribers and at multiple pharmacies, including Calaveras. Chow refused to fill such a prescription for Patient LO and filed the complaint.

15. Irina Top has been a Board Inspector since 2014. Top investigates consumer and Board complaints, conducts inspections, collects evidence, writes investigation reports, and attempts to ensure compliance with federal and state laws and regulations applicable to Board licensees. Top estimates that by March 2, 2020, she had conducted more than 200 investigations, and more than 250 inspections of retail pharmacies.

16. In 2009, Top earned a doctor of pharmacy degree with an emphasis in pharmaceutical health policy and management and was licensed as a pharmacist in California. Prior to working for the Board, she worked for two to three months in a retail pharmacy and then for approximately five years in a hospital pharmacy. She created the hospital pharmacy's training manual for new pharmacists.

17. Top investigated Chow's complaint.

18. On March 2, 2020, Top conducted an inspection of Calaveras. Wang was fully cooperative throughout the inspection and subsequent investigation. She promptly provided documents requested by Top.

Reusing Prescription Vials, Failing to Provide Notice of Right to Consultation, and Dispensing More Valium than Prescribed

19. During the inspection, Top discovered that respondents: (1) were soaking two prescription vials with the intention of reusing them; (2) were failing to provide delivery clients a required notice of the right to consultation with a pharmacist; and

(3) on March 30, 2018, dispensed 70 doses of diazepam (brand name: Valium) 10 mg, a controlled substance, pursuant to a prescription for 40 doses.

20. Respondents do not dispute these facts or contest that they constitute cause for discipline. However, Wang provided the following testimony in mitigation:

- Wang reports that the two vials Top observed soaking in a sink were from a prescription that a patient never picked up. Wang decided to wash and reuse the vials to be environmentally friendly. She never did this on any other occasion. She did not at the time understand the requirement that all medications be dispensed in brand-new vials or containers, but now she does understand that rule and complies with it. She is sorry for the mistake.
- Wang admits that Calaveras sometimes did not print out or give the required notice of patient's right to consultation with a pharmacist to delivery patients. However, she reports that Calaveras now has a comprehensive notice in English, Chinese, and Vietnamese (the primary languages of its patients) and ensures that the notice is attached to every prescription delivery.
- Wang admits that the diazepam prescription was for 40 doses, but respondents dispensed 70 doses due to a "mistake."

21. After the inspection, Top analyzed the documents and data provided by Wang as well as data from CURES, in an effort to determine whether respondents had (1) dispensed controlled substance prescriptions written on forms lacking multiple required security features, and (2) failed to exercise corresponding responsibility to confirm the validity of controlled substances prescriptions where there were numerous red flags that the prescriptions were not for a legitimate medical purposes.

Dispensing Controlled Substance Prescriptions Written on Forms Lacking Multiple Required Security Features

22. Pursuant to Health and Safety Code section 11162.1, subdivision (a), prescription forms for controlled substances shall be printed with the following security features:

- (1) A latent, repetitive "void" pattern shall be printed across the entire front of the prescription blank; if a prescription is scanned or photocopied, the word "void" shall appear in a pattern across the entire front of the prescription.
- (2) A watermark shall be printed on the backside of the prescription blank; the watermark shall consist of the words "California Security Prescription."
- (3) A chemical void protection that prevents alteration by chemical washing.
- (4) A feature printed in thermochromic ink.
- (5) An area of opaque writing so that the writing disappears if the prescription is lightened.
- (6) A description of the security features included on each prescription form.
- (7)(A) Six quantity check off boxes shall be printed on the form so that the prescriber may indicate the quantity by

checking the applicable box where the following quantities shall appear:

1-24

25-49

50-74

75-100

101-150

151 and over.

(B) In conjunction with the quantity boxes, a space shall be provided to designate the units referenced in the quantity boxes when the drug is not in tablet or capsule form.

(8) Prescription blanks shall contain a statement printed on the bottom of the prescription blank that the "Prescription is void if the number of drugs prescribed is not noted."

(9) The preprinted name, category of licensure, license number, federal controlled substance registration number, and address of the prescribing practitioner.

(10) Check boxes shall be printed on the form so that the prescriber may indicate the number of refills ordered.

(11) The date of origin of the prescription.

(12) A check box indicating the prescriber's order not to substitute.

(13) An identifying number assigned to the approved security printer by the Department of Justice.

(14)(A) A check box by the name of each prescriber when a prescription form lists multiple prescribers.

(B) Each prescriber who signs the prescription form shall identify themselves as the prescriber by checking the box by the prescriber's name.

(15) A uniquely serialized number, in a manner prescribed by the Department of Justice in accordance with Section 11162.2.

(Health & Saf. Code, § 11162.1, subd. (a) [This statute was amended twice during the relevant period of time, but the portion quoted above was in effect at all relevant times.])

23. During Top's March 2, 2020 investigation, she discovered that respondents dispensed 15 controlled substance prescriptions that were written on forms that each lacked multiple security features required by Health and Safety Code section 11162.1, subdivision (a). These dispensed prescriptions totaled 463 tablets and 2,033 ml of controlled substances including opiates and benzodiazepines. Ten of the prescriptions were dispensed after Nip addressed this issue with Wang during the August 2, 2018 inspection.

24. Examples of the missing or invalid security features at issue include controlled substance prescription forms that:

- have a repetitive background pattern that states "Illegal" instead of "Void";
- have a background watermark that states "mediscripts" instead of "California Security Prescription";
- are missing the required statement printed on the bottom of the prescription blank that the "Prescription is void if the number of drugs prescribed is not noted";
- are missing the identifying number assigned to the approved security printer by the Department of Justice;
- are missing the required "quantity check off boxes";
- contain quantity check off boxes with numerical ranges different than specified by statute (i.e. "25-50" and "51-74" instead of "25-49" and "50-74"); and
- are missing a check box to indicate the prescriber's order not to substitute.

25. At hearing, Top opined that a prescription written for a controlled substance is invalid if even one required security feature is missing from the prescription form. She further opined that all of the 15 prescriptions at issue in this case were invalid because each form was missing multiple required security features.

26. At hearing, respondents presented the expert testimony of Afrouz Nikmanesh. Nikmanesh earned a doctor of pharmacy degree in 1996 and has been licensed as a pharmacist in California since that year. Nikmanesh has primarily worked

as a pharmacist, chief pharmacist, or managing pharmacist for several large chain retail pharmacies. She estimates that she has worked alongside thousands other pharmacists in her career. Additionally, for about 13 months beginning in 2014, Nikmanesh worked as an inspector for the Board.

27. Nikmanesh agrees that the 15 prescription forms at issue are missing required security features. However, she reports that this is common and she receives such prescriptions every day in her work as a retail pharmacist. She reports that the forms are expensive, the Board keeps adding new security features, many prescribers are still using outdated forms, and also that some publishers have sold noncompliant forms to prescribers.

28. Nikmanesh opines that a prescription for controlled substances that is not signed or dated by the prescriber is invalid and cannot be dispensed. She also opined that a prescription for a schedule II controlled substance that is missing required security features is also invalid and cannot be dispensed.

29. However, Nikmanesh opines that a pharmacist is authorized by the Board to use his or her professional judgment to "take care of the patient." She opines that other technical flaws in the form for a schedule III through V controlled substance can be remedied by one of two processes: "clarification" or "verification." She opines that a pharmacist could verify the source of the prescription, seek any missing information, or verify that the patient had previously taken other pain medications. However, at hearing she was unable to delineate between the two processes and ultimately testified that the differences are "not so black and white" and that they are "interchangeable terms." Nikmanesh opines that for schedule III through V controlled substances, a pharmacist may call and "verify" a prescription that is missing required security features. Nikmanesh cites no authority for these opinions and they were not

persuasive in light of the text of Health and Safety Code section 11162.1, subdivision (a), set forth in Factual Finding 22, and the testimony of Inspector Top.

30. Nikmanesh also opines that a pharmacist presented with a controlled substances prescription written on a form lacking required security features can convert the written prescription into an oral prescription by: (1) reading it to the prescriber's office, (2) getting written confirmation from the prescriber, and (3) documenting this procedure. Nikmanesh reports that there is no regulation as to what documentation is required, but her practice is to staple the original non-compliant written prescription to the writing regarding the oral prescription. However, respondents do not contend that any of the 15 written controlled substance prescriptions at issue were converted into oral prescriptions.

31. Nikmanesh also reports that some mandatory security features for controlled substance prescriptions are impossible for a pharmacist to verify. For example, she reports that she has asked verified prescription printers and checked many sources, but is unaware of a method for a pharmacist to verify that a form has the "chemical void protection that prevents alteration by chemical washing" specified in subdivision (a)(3) of Health and Safety Code section 11162.1 without destroying the written prescription. She also reports that it might require making a copy of a prescription to verify the "area of opaque writing so that the writing disappears if the prescription is lightened" specified in subdivision (a)(5). Nikmanesh opines that this is impractical for a pharmacist. However, Nikmanesh does not claim that any of the security features at issue in this case are impractical or impossible to verify.

32. Respondents also presented at hearing the expert testimony of Jeb Sydejko. Sydejko earned a doctor of pharmacy degree in 1985 and has been licensed as a pharmacist in California since that year. Sydejko also earned a juris doctorate

degree in 1993 and was licensed to practice law in California from 1995 to 2005 and since 2010.

33. Sydejko has approximately 28 years of experience working as a pharmacist, mostly for retail pharmacies. Since 2010, he has primarily worked as a pharmacy and drug wholesaler regulatory consultant. He estimates that he has filled millions of prescriptions over his career. Sydejko also served as a consultant for the Board at some unspecified time in the past and as a probationary consultant for three or four pharmacies prior to 2020.

34. Sydejko opines that a pharmacist's duty to verify controlled substance prescription security features is difficult primarily due to a lack of uniformity and because the security features can be located in various different parts of the form.

35. Regarding the discipline appropriate for dispensing a controlled substance prescription written on a noncompliant form, Sydejko points to a November 28, 2017 email from the Board to all licensees about required security features in which the Board stated:

The board's response upon identification of noncompliant forms having been used to dispense controlled drugs is to educate the licensee, and to cite and fine the pharmacy/pharmacists involved.

Failure to Exercise Corresponding Responsibility to Confirm the Validity of Controlled Substance Prescriptions

36. Top's examination of CURES data and other records shows that between March 1, 2017, and March 2, 2020, respondents repeatedly failed to exercise their

“corresponding responsibility” to ensure the prescriptions for controlled substances were legal and for a legitimate medical purpose, regarding 12 patients. For each of these patients, multiple “red flags” suggesting illegitimate use existed, including:

- obtaining controlled substance prescriptions from multiple prescribers;
- predominantly cash payment for controlled substance prescriptions;
- long distances (often more than 40 miles) traveled from the patient's home to the prescriber's office and/or pharmacy;
- pharmacy located a great distance from the prescriber's medical office;
- requests for early fills of controlled substances (five or more days prior to scheduled completion of previous prescription);
- controlled substance prescriptions written outside of the prescriber's medical specialty; or
- controlled substance prescriptions lacking multiple security features as required by Health and Safety Code section 11162.1.

37. As a result of respondents’ failure to exercise their corresponding responsibility, they dispensed controlled substances to patients who were egregious doctor and pharmacy shoppers, sought early fills of medication, and traveled long distances to various prescribers and pharmacies. Respondents also dispensed high-dose opioids and benzodiazepines to patients who were naïve to medications from both drug classes. In total, respondents improperly dispensed approximately 529 irregular prescriptions for 95,775 units of controlled substances to these 12 patients.

Top opines that these patients exhibited “drug-seeking” behaviors and some of the prescriptions were not for a legitimate medical purpose.

38. Respondents last dispensed controlled substances to 11 of the 12 patients at issue before Top’s March 2, 2020, inspection. Wang testified that she refused to continue dispensing controlled substances to several of these patients due to concerns that the prescriptions were not for a for a legitimate medical purpose. Wang reports that she believes that she did access CURES information for some of the patients. However, she admits that she did not understand that she was required to be alert for signs of doctor or pharmacy shopping, such as multiple prescribers and large distances between patient, pharmacy, or prescriber. Wang took some steps to resolve some of the red flags. For instance, she asked the patients questions about requests for early refills, why the patient needed the prescription, why the patient was paying cash for the prescription, or why the patient and a family member had been prescribed the same controlled substance. Wang also verified that many of the prescriptions were issued by the named prescriber and sometimes resolved ambiguities in the text of the prescription.

39. In relation to Patient EA, Wang contacted the dentist who had prescribed significant dosages of opiate pain relievers over a long period of time to ask about the need for and dosage of the medication. Wang reports that in addition to being told that the dentist had damaged a nerve in one of the patient’s teeth, she observed Patient EA with bloody cotton balls in her mouth and in apparent pain multiple times. However, Calaveras dispensed controlled substances to this patient from May 3, 2017, through February 24, 2020. During this period, Patient EA obtained 105 prescriptions for controlled substances from 47 different prescribers. Patient EA traveled great distances between home, prescribers, and pharmacies. She primarily paid in cash. The

dentist prescribed, concurrently with opiates, 40 tablets of diazepam 10mg (the highest strength) which is a benzodiazepine and commonly abused controlled substance. Patient EA was naïve to this class of drug. Additionally, diazepam is contraindicated for (and is labeled with a boxed warning against) use with opiates as the combination may result in respiratory depression and even death. Patient EA requested and received from respondents eight early refills. The first documented sign that Wang inquired about the necessity of the controlled substances prescribed for Patient EA was approximately a year after Calaveras had been regularly dispensing these drugs. Respondents continued to dispense controlled substances to this patient for approximately 18 months after Inspector Nip specifically discussed red flags in the patient's CURES report. In total, respondents dispensed 3,799 tablets of controlled substances to Patient EA.

40. Promethazine-codeine syrup (brand name: Chemergan-Codeine) was one of the primary controlled substances dispensed to several of the other patients at issue. It is a combination of an antihistamine drug and an opiate drug, primarily intended for suppressing coughs. It is a drug of abuse with street value and also known as "purple drank," "sizzurp," and "lean." Wang reports that she did not know it was a drug of abuse during the relevant period.

41. Top reports that, pursuant to reference materials, promethazine-codeine is indicated for the temporary relief of cough and upper respiratory symptoms and should be used for the shortest period of time possible. She opines that the prescription of this drug to multiple Calaveras patients for a year or more was a red flag that required the exercise of corresponding responsibility. Both Nikmanesh and Sydejko opine that promethazine-codeine is the "gold standard" for treating coughs

and it is not uncommon for it to be prescribed for extended periods to treat chronic conditions.

42. Wang also reports that she spoke with the primary prescriber of controlled substance prescriptions dispensed by Calaveras regarding concerns over a prescription for promethazine-codeine. His practice was in San Francisco, a great distance from Calaveras. Instead of discussing the merits of the issue, he told Wang that if she did not feel comfortable dispensing the prescription, she should tell the patient to go to another pharmacy. She was shocked, but did not feel qualified to question his judgment. The patient shouted and cried and in response Wang filled a small portion of the prescription. Wang reports that she now knows to stand firm, regardless of any patient pressure. Wang also reports that looking back, she now realizes that she also should have intervened regarding patients who were regularly filling controlled substance prescriptions but not filling corresponding antibiotic prescriptions, which she now views as a red flag.

43. Respondents submitted credible evidence that, especially during the first several years it was available, many pharmacists regularly experienced technical difficulties accessing the CURES database information and that these problems gradually improved but persisted during the period relevant in this matter. However, respondents do not claim that such technological problems prevented them from accessing CURES database information regarding the patients at issue in this proceeding.

44. Neither Nikmanesh nor Sydejko were asked to form, or rendered, an opinion on whether respondents failed to exercise corresponding responsibility as alleged by complainant. Both emphasized that licensees must consider the totality of circumstances when exercising corresponding responsibility and that a red flag does

not necessarily mean a prescription for a controlled substance should not be dispensed. Both opined that it can be difficult and time-consuming for a pharmacist to obtain the information from a prescriber necessary to resolve red flags regarding a controlled substance prescription. Obstacles include busy physicians and an outdated but still prevalent attitude that the inquiring pharmacist is meddling into the prescriber's domain. Both opined that many licensed pharmacists do not understand this duty.

45. Since 2010, Sydejko has published a handbook to aid pharmacy licensees in regulatory compliance. This handbook did not mention corresponding responsibility until after the *Pacifica* decision was made precedential in 2013. It now contains an entire chapter devoted to the subject. Sydejko contends that there has been little information to educate licensees about this duty until recently, but concedes that the Board's newsletter contained articles about it in July 2001 and February 2010, both prior to the *Pacifica* decision. Sydejko also concedes that the Board's biennial mandatory self-assessment for pharmacies contains two questions confirming pharmacists' understanding of corresponding responsibility.

46. Although Wang took some steps to resolve some of the many red flags, her efforts were insufficient to fulfill her corresponding responsibility to ensure that the controlled substances prescriptions for these 12 patients were for a legitimate purpose. Top's opinion in this regard was un rebutted and persuasive. The difficulties in fulfilling this responsibility described by Nikmanesh and Sydejko do not constitute an excuse for these failures.

47. It was not proven that Lim had knowledge of, or knowingly participated in, any conduct for which discipline is sought in this matter.

48. There is no evidence or contention that any patient was harmed by respondents' actions or inaction.

Respondents' Additional Evidence

49. Wang is 52 years old. She was born and raised in Taiwan. She graduated from pharmacy school in Taiwan in 1991. She married Lim, her husband and co-owner of Calaveras, in approximately 2000 and at some point thereafter emigrated to the United States. First as an intern, then as a licensed pharmacist, Wang worked for a busy retail pharmacy associated with a hospital from 2005 through 2012. Then she worked for another four years for a pharmacy inside the Palo Alto Medical Foundation. In March of 2017, she began operating Calaveras. Neither her license nor the pharmacy permit has been previously disciplined.

50. Wang's testimony at hearing demonstrates that she now understands corresponding responsibility. She reports that she gained this knowledge after Top's March 2, 2020 inspection. Wang then visited the Board's website, carefully read a brochure and the *Pacifica* decision, and watched a video training about corresponding responsibility presented by a deputy attorney general. In April 2020, she engaged Sydejko's compliance services. Wang also reviewed approximately 50 pages of Centers for Disease Control guidelines for prescribers of opiate pain medications, explaining when to initiate, what medications, what dosages, when to discontinue, and how to assess the risk and harms of long-term opiate use. She has also taken a continuing education course in opiate use safety.

51. Wang reports that she now documents all of her efforts to exercise corresponding responsibility, including reviewing and retaining copies of CURES reports, confirming that the purported prescriber actually prescribed the medication,

confirming that paper prescriptions have all required security features. She also obtains and documents a diagnosis code from the prescribing physician. Wang reports that since the March 2, 2020 inspection she has refused to fill multiple prescriptions for controlled substances after she was unable to resolve red flags such as multiple prescribers.

52. On September 25, 2021, Nikmanesh performed a thorough on-site inspection of Calaveras and issued a report dated October 12, 2021. Nikmanesh followed her standard template for such inspections, based on the Board's self-assessment document. She also reviewed a random sample of controlled substance prescriptions dispensed by Calaveras. Nikmanesh found Calaveras compliant with all pharmacy laws and regulations. She reports that it was extremely neat and organized, and very well run. She observed careful documentation of the exercise of corresponding responsibility.

53. Wang submitted the testimony and letters of support of two Calaveras employees, a former coworker, and an individual who worked for Wang as a contractor and is also familiar with Calaveras because it fills his mother's prescriptions. She also submitted character reference letters from a patient and former coworker. These witnesses are aware of the allegations in the accusation. They describe Wang as hardworking, honest, conscientious, friendly and caring. They regard her as a safe pharmacist who is passionate about her patients and an asset to the local community.

54. Lim testified at hearing. In addition to being part owner of Calaveras and Wang's husband, he performs bookkeeping and administrative work for the pharmacy. Lim had a career as a software engineer but quit his job in 2019 to help Wang full time at Calaveras. Lim reports that Wang is very kind, sometimes naïve, but Calaveras is her

passion. It is a small pharmacy and yields limited income, but allows Wang to serve the local community.

55. Sydejko reports that a pharmacy placed on probation faces financial impact, including possible cancellation of insurance contracts or cancellation of affiliation with a pharmacy service administration organization (which handles third party contracting for pharmacies).

Costs

56. In connection with the investigation and enforcement of this accusation, complainant requests an award of costs in the total amount of \$36,400.75, for investigation costs in the amount of \$18,832, and attorney and paralegal services provided by the Department of Justice and billed to the Board in the amount of \$17,568.75. This request is supported by declarations. The investigative costs are reported as 152.75 hours of Top's time at a rate of \$121 per hour, comprised of 51 hours of investigation, 3 hours of travel, and 98.75 hours preparing her 41-page investigative report, plus 2.75 hours of supervisor time at \$127 per hour. Complainant's requested costs in the total amount of \$36,400.75 are found to be reasonable.

57. Regarding complainant's request for costs, Wang reports that it would be difficult for respondents to pay a cost award that size, but easier if they were allowed to make installment payments. She reports that she had to ask her mother for money to pay her attorney's fees.

LEGAL CONCLUSIONS

First Cause for Discipline (Reusing Medication Vials)

1. The Board may discipline the license of a licensee who commits unprofessional conduct, which includes any violations of California's Pharmacy Law (§§ 4000, et seq.) or the applicable state and federal laws and regulations governing the practice of pharmacy (§ 4301, subd. (o)). Additionally, the PIC is responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy. (§ 4113, subd. (c).) "No medication shall be dispensed on prescription except in a new container" (Cal. Code Regs., tit. 16, § 1717, subd. (a).) Respondents admit that Wang was washing two prescription vials for reuse. (Factual Findings 19 & 20.) Cause exists to discipline Calaveras's pharmacy permit and Wang's pharmacist license under section 4301, subdivision (o), and California Code of Regulations, title 16, section 1717, subdivision (a).

Second Cause for Discipline (Failure to Provide Notice of Right to Consult Pharmacist)

2. The Board may discipline the license of a licensee who fails to ensure that when a patient is not present, the patient receives written notice of his or her right to request consultation and a telephone number from which the patient may obtain oral consultation from a pharmacist who has ready access to the patient's record. (§ 4301, subd. (o); Cal. Code Regs., tit. 16, § 1707.2, subd. (b)(1).) Cause exists to discipline Calaveras's pharmacy permit and Wang's pharmacist license under section 4301, subdivision (o), and California Code of Regulations, title 16, section 1707.2, subdivision (b)(1), in light of the matters set forth in Factual Findings 19 and 20.

Third Cause for Discipline (Variation from Prescription)

3. Except in circumstances inapplicable here, pharmacists shall not deviate from the requirements of a prescription. (Cal. Code Regs., tit. 16, § 1716.) On March 30, 2018, respondents dispensed 70 doses of diazepam 10 mg, a controlled substance, pursuant to a prescription for 40 doses. (Factual Findings 19 & 20.) Cause exists to discipline Calaveras's pharmacy permit and Wang's pharmacist license under section 4301, subdivision (o), and California Code of Regulations, title 16, section 1716.

Fourth Cause for Discipline (Controlled Substances Prescription Requirements)

4. The Board may discipline the license of a licensee who violates any state or federal statute regulating controlled substances and dangerous drugs. (§ 4301, subd. (j)). Prescription forms for controlled substances shall be printed with numerous specified security features. (Health & Saf. Code, § 11162.1, subd. (a); see Factual Finding 22.) Respondents dispensed 15 controlled substance prescriptions that were written on forms that each lacked multiple security features required by Health and Safety Code section 11162.1, subdivision (a). (Factual Findings 23 & 24.) Cause exists to discipline Calaveras's pharmacy permit and Wang's pharmacist license under section 4301, subdivision (j), and Health & Safety Code section 11162.1, subdivision (a).

Fifth Cause for Discipline (Failure to Exercise Corresponding Responsibility)

5. The Board may discipline the license of a licensee who fails to exercise the requisite corresponding responsibility to ensure that a prescription for a controlled substance is legal and for a legitimate medical purpose. (§ 4301, subds. (d), (j) & (o);

Health & Saf. Code, § 11153; Cal. Code Regs., tit. 16, § 1761, subd. (a).) Although Wang took some steps to resolve some of the many discernable red flags, her efforts were insufficient to fulfill her corresponding responsibility to ensure that the controlled substances prescriptions Calaveras filled for 12 patients were for a legitimate purpose. (Factual Findings 36, 37 & 46.) Cause exists to discipline Calaveras's pharmacy permit and Wang's pharmacist license under section 4301, subdivisions (d), (j) and (o), Health and Safety Code section 11153, and California Code of Regulations, title 16, section 1761, subdivision (a).

Determination of Discipline

6. Cause for discipline having been established, the remaining issue is what level of discipline is required to protect the public. Protection of the public "shall be paramount." (§ 4001.1.) For failure to exercise corresponding responsibility to ensure the proper dispensing of controlled substances (the most serious cause for discipline in this matter), the Board's disciplinary guidelines recommend a minimum discipline of revocation, stayed; 90 days actual suspension, and three to five years of probation, with standard and optional conditions of probation as appropriate; and a maximum discipline of revocation. (Disciplinary Guidelines, A Manual of Disciplinary Guidelines and Model Disciplinary Orders (Feb. 2017 Rev.) (Disciplinary Guidelines), at pp. 11–12; Cal. Code Regs., tit. 16, § 1760.) In determining whether the minimum, maximum, or an intermediate penalty is to be imposed in a given case, the relevant factors include: nature and severity of the acts; actual or potential harm to the public; actual or potential harm to any consumer; time passed since the act(s); aggravating and mitigating evidence; and rehabilitation evidence. (Disciplinary Guidelines at p. 4.) Complainant argues for outright revocation of the permit and license and respondent argues for public reproof.

7. Respondents' violations of the pharmacy law are numerous and the failure to exercise requisite corresponding responsibility in connection with the dispensation of controlled substances is serious misconduct. In aggravation, Inspector Nip counseled respondents regarding corresponding responsibility in August 2018, but the misconduct persisted. However, neither respondent has been previously disciplined. Wang fully cooperated with the Board's inspections and investigations. During her September 2021 inspection, Nikmanesh found Calaveras compliant with all pharmacy laws and regulations and observed careful documentation of the exercise of corresponding responsibility. Respondents submitted testimony and letters regarding Wang's good character and honesty. Wang accepts full responsibility for the misconduct. She demonstrated insight and remorse. She now fully understands her duty to exercise corresponding responsibility. She has implemented new procedures to prevent future violations. No actual harm to the public was shown. Respondents appear to be good candidates for probation and have proven sufficient rehabilitation to deviate from the Disciplinary Guidelines in one respect only, no actual suspension is necessary. The public will be adequately protected by revocation of Calaveras's pharmacy permit and Wang's pharmacist license, stayed with a three-year term of probation, with standard conditions. Respondents failed to prove mitigation or rehabilitation sufficient to justify further deviation from the Disciplinary Guidelines.

Other Matters

8. Pursuant to section 4307, if discipline is imposed on Original Pharmacy Permit Number PHY 54659, issued to respondent Calaveras, it shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for up to five years if Original Pharmacy Permit Number PHY 54659 is placed on probation or until reinstated if it is revoked. Original Pharmacy

Permit Number PHY 54659 will be placed on probation for three years, therefore respondent Calaveras shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of another licensee for the term of its probation, not to exceed five years.

9. Pursuant to section 4307, if discipline is imposed on Original Pharmacy Permit Number PHY 54659, issued to respondent Calaveras while Wang and/or Lim have been an officer or owner and had knowledge of or knowingly participated in any conduct for which the license was disciplined, Wang and/or Lim shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for up to five years if Original Pharmacy Permit Number PHY 54659 is placed on probation or until reinstated if it is revoked. Original Pharmacy Permit Number PHY 54659 will be placed on probation for three years. Wang knowingly participated in conduct for which the license was disciplined. It was not proven that Lim had knowledge of, or knowingly participated in, any conduct for which the license was disciplined. (Factual Finding 47.) Accordingly, Wang shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee other than Calaveras for the term of her probation, not to exceed five years, but this prohibition shall not apply to Lim.

10. Pursuant to section 4307 of the Code, if discipline is imposed on Original Pharmacist License Number RPH 58435 issued to Wang, she shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for up to five years if Original Pharmacist License Number RPH 58435 is placed on probation or until reinstated if it is revoked. Original Pharmacist License Number RPH 58435 will be placed on probation for three years and therefore Wang shall be prohibited from serving as a manager, administrator, owner, member,

officer, director, associate, or partner of a licensee other than Calaveras for the term of her probation, not to exceed five years.

Costs

11. A licensee who is found to have committed a violation of the licensing act may be ordered to pay a sum not to exceed the reasonable costs of investigation and enforcement. (§ 125.3.) Cause exists to order respondents to pay the Board's costs in the amount of \$36,400.75. (Factual Finding 56 and Legal Conclusions 1–5.)

12. Cost awards must not deter licensees with potentially meritorious claims from exercising their right to an administrative hearing. (*Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45.) Cost awards must be reduced where a licensee has been successful at hearing in getting the charges dismissed or reduced; a licensee is unable to pay; or where the scope of the investigation was disproportionate to the alleged misconduct. (*Ibid.*) The agency must also consider whether the licensee has raised a colorable challenge to the proposed discipline, and a licensee's good faith belief in the merits of his or her position. (*Ibid.*) Here, no basis to reduce the award of costs was shown, but respondents will be permitted to pay the cost award in installments.

ORDER

As to Respondent Thrive Pharmacy Care, Inc., dba Calaveras Pharmacy

Original Pharmacy Permit Number PHY 54659, issued to respondent Thrive Pharmacy Care, Inc., doing business as Calaveras Pharmacy, is revoked; however, the

revocation is stayed and respondent Calaveras is placed on probation for three years upon the following terms and conditions:

1. Definition: Respondent Calaveras

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

2. Obey All Laws

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

Respondent Calaveras shall report any of the following occurrences to the Board, in writing, within 72 hours of such occurrence:

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

- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent Calaveras's pharmacy permit 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.

3. Report to the Board

Respondent Calaveras 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 Calaveras shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the Board.

4. Interview with the Board

Upon receipt of reasonable prior notice, respondent Calaveras 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 or more scheduled interviews with the Board or its designee during the period of probation, shall be considered a violation of probation.

5. Cooperate with Board Staff

Respondent Calaveras 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 the 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.

6. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, respondent Calaveras, shall (jointly and severally with respondent Wang), pay to the Board its costs of investigation and prosecution in the amount of \$36,400.75. Respondent shall make said payments as follows:

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

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

7. Probation Monitoring Costs

Respondent Calaveras shall pay any costs associated with probation monitoring as determined by the Board each and every year of probation. Such costs shall be payable to the Board on a schedule as directed by the Board or its designee. Failure to

pay such costs by the deadline(s) as directed shall be considered a violation of probation.

8. Status of License

Respondent Calaveras shall, at all times while on probation, maintain an active, current original pharmacy permit with the Board. Failure to maintain an active, current pharmacy permit shall be considered a violation of probation.

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

9. License Surrender While on Probation/Suspension

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

Respondent Calaveras may not apply for any new license from the Board for three years from the effective date of the surrender. Respondent Calaveras shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

Respondent Calaveras shall reimburse the Board for its costs of investigation and prosecution prior to the acceptance of the surrender.

10. Sale or Discontinuance of Business

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

11. Notice to Employees

Respondent Calaveras shall, upon or before the effective date of this decision, ensure that all employees involved in permit operations are made aware of all the terms and conditions of probation, either by posting a notice of the terms and conditions, circulating such notice, or both. If the notice required by this provision is posted, it shall be posted in a prominent place and shall remain posted throughout the probation period. Respondent Calaveras shall ensure that any employees hired or used after the effective date of this decision are made aware of the terms and conditions of probation by posting a notice, circulating a notice, or both. Additionally, respondent Calaveras shall submit written notification to the Board, within 15 days of the effective date of this decision, that this term has been satisfied. Failure to timely

provide such notification to employees, or to timely submit such notification to the Board shall be considered a violation of probation.

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

12. Owners and Officers: Knowledge of the Law

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

13. Premises Open for Business

Respondent Calaveras shall remain open and engaged in its ordinary business as a pharmacy in California for a minimum of 120 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent Calaveras must nonetheless comply with all terms and conditions of probation, unless respondent is informed otherwise in writing by the Board or its designee. If respondent Calaveras is not open and engaged in its ordinary business as a pharmacy for a minimum of 120 hours in any calendar month, for any reason (including vacation), respondent Calaveras shall notify the Board in writing within 10 days of the

conclusion of that calendar month. This notification shall include at minimum all of the following: the date(s) and hours respondent Calaveras was open; the reason(s) for the interruption or why business was not conducted; and the anticipated date(s) on which respondent Calaveras will resume business as required. Respondent Calaveras shall further notify the Board in writing with 10 days following the next calendar month during which respondent Calaveras is open and engaged in its ordinary business as a pharmacy in California for a minimum of 120 hours. Any failure to timely provide such notification(s) shall be considered a violation of probation.

14. Posted Notice of Probation

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

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

15. Violation of Probation

If a respondent Calaveras has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over respondent, and probation shall be automatically extended, until all terms and conditions have been satisfied or the Board has taken other action as deemed appropriate to treat the failure to comply

as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If respondent Calaveras violates probation in any respect, the Board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation or an accusation is filed against respondent Calaveras during probation, the Board shall have continuing jurisdiction and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

16. Completion of Probation

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

As to Respondent Fong-Chun Wang

Pharmacist License Number RPH 58435, issued to respondent Fong-Chun Wang (respondent Wang), is revoked; however, the revocation is stayed and respondent Wang is placed on probation for three years upon the following terms and conditions:

1. Obey All Laws

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

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

5. Continuing Education

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

6. Reporting of Employment and Notice to Employers

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

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

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

acknowledging that he or she has read the decision in case number 6967, and the terms and conditions imposed thereby.

If respondent Wang works for or is employed by or through an employment service, respondent must notify the person(s) described in (a), (b), and (c) above at every entity licensed by the Board of the decision in case number 6967, and the terms and conditions imposed thereby in advance of respondent commencing work at such licensed entity. A record of this notification must be provided to the Board upon request.

Furthermore, within 30 days of the effective date of this decision, and within 15 days of respondent undertaking any new employment by or through an employment service, respondent Wang shall cause the person(s) described in (a), (b), and (c) above at the employment service to report to the Board in writing acknowledging that he or she has read the decision in case number 6967, and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the Board.

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

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

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

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

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

8. Restrictions on Supervision and Oversight of Licensed Facilities

During the period of probation, respondent Wang shall not supervise any intern pharmacist or serve as a consultant to any entity licensed by the Board. Respondent Wang may be a pharmacist-in-charge, designated representative-in-charge, responsible manager or other compliance supervisor of any single entity licensed by the Board, but only if respondent Wang or that entity retains, at her expense, an independent consultant who shall be responsible for reviewing the operations of the entity on a quarterly basis for compliance by respondent and the entity with state and federal laws and regulations governing the practice of the entity, and compliance by respondent with the obligations of her supervisory position. Respondent Wang may serve in such a position at only one entity licensed by the Board, only upon approval by the Board or its designee. Any such approval shall be site specific. The consultant shall be a pharmacist licensed by and not on probation with the Board, who has been approved by the Board or its designee to serve in this position. Respondent Wang shall submit the name of the proposed consultant to the Board or its designee for approval within 30 days of the effective date of the decision or prior to assumption of duties allowed in this term. Assumption of any unauthorized supervision responsibilities shall be considered a violation of probation. In addition, failure to

timely seek approval for, timely retain, or ensure timely reporting by the consultant shall be considered a violation of probation.

9. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, respondent Wang shall (jointly and severally with respondent Calaveras), pay to the Board its costs of investigation and prosecution in the amount of \$36,400.75. Respondent Wang shall make said payments as follows:

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

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

10. Probation Monitoring Costs

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

11. Status of License

Respondent Wang shall, at all times while on probation, maintain an active, current pharmacist license with the Board, including any period during which suspension or probation is tolled.

Failure to maintain an active, current pharmacist license shall be considered a violation of probation.

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

12. License Surrender While on Probation/Suspension

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

Upon acceptance of the surrender, respondent shall relinquish her pocket and/or wall license, including any indicia of licensure not previously provided to the

Board within 10 days of notification by the Board that the surrender is accepted if not already provided. Respondent Wang may not reapply for any license from the Board for three years from the effective date of the surrender. Respondent Wang shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board, including any outstanding costs.

13. Practice Requirement – Extension of Probation

Except during periods of suspension, respondent Wang shall, at all times while on probation, be employed as a pharmacist in California for a minimum of 100 hours per calendar month. Any month during which this minimum is not met shall extend the period of probation by one month. During any such period of insufficient employment, respondent must nonetheless comply with all terms and conditions of probation, unless respondent Wang receives a waiver in writing from the Board or its designee.

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

It is a violation of probation for respondent Wang's probation to be extended pursuant to the provisions of this condition for a total period, counting consecutive

and non-consecutive months, exceeding 36 months. The Board or its designee may post a notice of the extended probation period on its website.

14. Violation of Probation

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

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

15. Completion of Probation

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

Additional Terms of the Order

1. Thrive Pharmacy Care, Inc., doing business as Calaveras Pharmacy, is prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for the term of its probation, not to exceed five years.

2. Fong-Chun Wang is prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee other than Thrive Pharmacy Care, Inc., doing business as Calaveras Pharmacy, for the term of her probation, not to exceed five years.

DATE: 01/10/2022



MICHAEL C. STARKEY

Administrative Law Judge

Office of Administrative Hearings

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

13 In the Matter of the Accusation Against:

Case No. 6967

14 **THRIVE PHARMACY CARE INC. dba**
15 **CALAVERAS PHARMACY; SZE-HUAY**
16 **LIM and FONG-CHUN WANG, Owners**
114 S. Park Victoria Dr.
Milpitas, CA 95035

ACCUSATION

17 **Original Pharmacy Permit No. PHY 54659,**

18 **and**

19 **FONG-CHUN WANG**
20 **1009 Belford Dr.**
San Jose, CA 95132

21 **Original Pharmacist License No. RPH 58435**

22 Respondents.

23
24 **PARTIES**

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

27 2. On or about December 27, 2016, the Board of Pharmacy issued Original Pharmacy
28 Permit Number PHY 54659 to Thrive Pharmacy Care Inc. doing business as Calaveras Pharmacy,

1 with Sze-Huay Lim and Fong-Chun Wang as Owners (Respondent Pharmacy). The permit was
2 in full force and effect at all times relevant to the charges brought in this Accusation and will
3 expire on December 1, 2021, unless renewed.

4 3. On or about July 28, 2006, the Board of Pharmacy issued Original Pharmacist
5 License Number RPH 58435 to Fong-Chun Wang (Respondent Pharmacist). The license was in
6 full force and effect at all times relevant to the charges brought in this Accusation and will expire
7 on September 30, 2021, unless renewed.

8 **JURISDICTION**

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

12 5. Section 4300.1 of the Code states:

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

17 6. Section 4307 of the Code states:

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

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

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

14 6. Section 4113, subdivision (c), of the Code states that the pharmacist-in-charge shall
15 be responsible for a pharmacy's compliance with all state and federal laws and regulations
16 pertaining to the practice of pharmacy.

17 **STATUTORY PROVISIONS**

18 7. Section 4301 of the Code states, in pertinent part:

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

22 ...

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

25 ...

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

28 ...

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

...

8. Section 4306.5, subdivision (b), of the Code, states that unprofessional conduct for a
pharmacist may include any of the following:

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

5 9. Section 11153, subdivision (a), of the Health and Safety Code states:

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

18 10. Section 11164 of the Health and Safety Code states, in pertinent part:

19 Except as provided in Section 11167, no person shall prescribe a controlled
20 substance, nor shall any person fill, compound, or dispense a prescription for a
21 controlled substance, unless it complies with the requirements of this section.

22 (a) Each prescription for a controlled substance classified in Schedule II, III,
23 IV, or V, except as authorized by subdivision (b), shall be made on a controlled
24 substance prescription form as specified in Section 11162.1 and shall meet the
25 following requirements:

26 (1) The prescription shall be signed and dated by the prescriber in ink and shall
27 contain the prescriber's address and telephone number; the name of the ultimate user
28 or research subject, or contact information as determined by the Secretary of the
United States Department of Health and Human Services; refill information, such as
the number of refills ordered and whether the prescription is a first-time request or a
refill; and the name, quantity, strength, and directions for use of the controlled
substance prescribed.

(2) The prescription shall also contain the address of the person for whom the
controlled substance is prescribed. If the prescriber does not specify this address on
the prescription, the pharmacist filling the prescription or an employee acting under
the direction of the pharmacist shall write or type the address on the prescription or
maintain this information in a readily retrievable form in the pharmacy.

REGULATORY PROVISIONS

11. California Code of Regulations, title 16, section 1707.2, subdivision (b)(1); states:

When the patient or patient's agent is not present (including, but not limited to,
a prescription drug that was shipped by mail or delivery), a pharmacy shall ensure
that:

1 (A) the patient receives written notice of his or her right to request consultation;

2 (B) the patient receives written notice of the hours of availability and the
3 telephone number from which the patient may obtain oral consultation from a
pharmacist who has ready access to the patient's record; and

4 (C) a pharmacist shall be available (i) to speak to the patient or patient's agent
5 during any regular hours of operation, within an average of ten (10) minutes or less,
6 unless a return call is scheduled to occur within one business hour, (ii) for no less
than six days per week, and (iii) for a minimum of 40 hours per week.

7 (2) A pharmacist is not required by this subsection to provide oral consultation
8 to an inpatient of a health care facility licensed pursuant to section 1250 of the Health
9 and Safety Code, or to an inmate of an adult correctional facility or a juvenile
10 detention facility, except upon the patient's discharge. A pharmacist is not obligated
to consult about discharge medications if a health facility licensed pursuant to
subdivision (a) or (b) of Health and Safety Code Section 1250 has implemented a
written policy about discharge medications which meets the requirements of Business
and Professions Code Section 4074.

11 12. California Code of Regulations, title 16, section 1716, states, in pertinent part, that
12 pharmacists shall not deviate from the requirements of a prescription except upon the prior
13 consent of the prescriber or to select the drug product in accordance with Section 4073 of the
14 Business and Professions Code.

15 13. California Code of Regulations, title 16, section 1717, states, in pertinent part:

16 (a) No medication shall be dispensed on prescription except in a new container
17 which conforms with standards established in the official compendia.

18 Notwithstanding the above, a pharmacist may dispense and refill a prescription
19 for non-liquid oral products in a clean multiple-drug patient medication package
(patient med pak), provided:

20 (1) a patient med pak is reused only for the same patient;

21 (2) no more than a one-month supply is dispensed at one time; and

22 (3) each patient med pak bears an auxiliary label which reads, store in a cool,
dry place.

23 (b) In addition to the requirements of Section 4040, Business and Professions
24 Code, the following information shall be maintained for each prescription on file and
shall be readily retrievable:

25 (1) The date dispensed, and the name or initials of the dispensing pharmacist.
26 All prescriptions filled or refilled by an intern pharmacist must also be initialed by the
supervising pharmacist before they are dispensed.

27 (2) The brand name of the drug or device; or if a generic drug or device is
28 dispensed, the distributor's name which appears on the commercial package label;
and

1 (3) If a prescription for a drug or device is refilled, a record of each refill,
2 quantity dispensed, if different, and the initials or name of the dispensing pharmacist.

3 (4) A new prescription must be created if there is a change in the drug, strength,
4 prescriber or directions for use, unless a complete record of all such changes is
5 otherwise maintained.

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

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

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

15 **COST RECOVERY**

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

20 **DRUGS**

21 16. Acetaminophen (APAP) with codeine #3, also known by the brand name Tylenol
22 with codeine #3, containing 300 mg of APAP and 15 mg of codeine, is used to treat pain and is a
23 dangerous drug under Business and Professions Code section 4022 and a Schedule III controlled
24 substance under Health and Safety Code section 11056, subdivision (e)(2).

25 17. Alprazolam, also known by the brand name Xanax, is used to treat anxiety and is a
26 dangerous drug under Business and Professions Code section 4022 and a Schedule IV controlled
27 substance under Health and Safety Code section 11057, subdivision (d)(1).

28 18. Diazepam, also known by the brand name Valium, is used to treat anxiety and is a
dangerous drug under Business and Professions Code section 4022 and a Schedule IV controlled
substance under Health and Safety Code section 11057, subdivision (d)(9).

19. Eszopiclone, also known by the brand name Lunesta, is used to treat insomnia and is
a dangerous drug under Business and Professions Code section 4022 and a Schedule IV

1 controlled substance per Title 21 of the Code of Federal Regulations, section 1308.14, (c)(55).

2 20. Promethazine with codeine, also known by the brand name Phenergan with codeine,
3 is used to treat cough and is a dangerous drug under Business and Professions Code section 4022
4 and a controlled substance under Health and Safety Code section 11058, subdivision (c)(1).

5 21. Zolpidem, also known by the brand name Ambien, is to treat insomnia, and is a
6 dangerous drug under Business and Professions Code section 4022 and a controlled substance
7 under Health and Safety Code section 11057, subdivision (d)(32).

8 **BACKGROUND**

9 22. On or about March 22, 2019, the Board received a complaint from a pharmacist
10 alleging that Respondent Pharmacy dispensed zolpidem and eszopiclone to a patient (LO) who
11 frequented multiple doctors and pharmacies to obtain early refills of the medications. As
12 described below, the subsequent Board investigation on or about March 2, 2020, substantiated the
13 allegation and also revealed violations of pharmacy law related to pharmacy practice, variation
14 from prescription, the dispensing of controlled substance prescriptions pursuant to orders written
15 on non-compliant controlled substance prescription documents, and the dispensing of highly
16 abused controlled substances without exercising corresponding responsibility regarding the
17 legitimacy of the prescriptions.

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Pharmacy Practice)**

20 23. Respondent Pharmacy's permit and Respondent Pharmacist's license are subject to
21 disciplinary action for unprofessional conduct under Code section 4301, subdivision (o), in that
22 they violated a Board regulation, specifically California Code of Regulations, title 16, section
23 1717, subdivision (a), which requires medications to be dispensed in new containers conforming
24 with standards established in official compendia. A Board inspection on or about March 2, 2020,
25 determined that Respondents were washing and re-using medication vials.

26 **SECOND CAUSE FOR DISCIPLINE**

27 **(Duty to Consult)**

28 24. Respondent Pharmacy's permit and Respondent Pharmacist's license are subject to

1 disciplinary action for unprofessional conduct under Code section 4301, subdivision (o), in that
2 they violated a Board regulation, specifically California Code of Regulations, title 16, section
3 1707.2, subdivision (b)(2), which requires notification to patients receiving delivered
4 prescriptions of their right to request oral consultation. A Board inspection on or about March 2,
5 2020, determined that Respondents were failing to provide a right to request consultation notice
6 to patients who were receiving medications by delivery.

7 **THIRD CAUSE FOR DISCIPLINE**

8 **(Variation from Prescription)**

9 25. Respondent Pharmacy's permit and Respondent Pharmacist's license are subject to
10 disciplinary action for unprofessional conduct under Code section 4301, subdivision (o), in that
11 they violated a Board regulation, specifically California Code of Regulations, title 16, section
12 1716, which generally prohibits pharmacists from deviating from the requirements of a
13 prescription. A Board inspection on or about March 2, 2020, determined that Rx 400290,
14 dispensed to EA on March 30, 2018, was for 40 tablets of Valium 10 mg, but Respondents
15 dispensed 70 tablets.

16 **FOURTH CAUSE FOR DISCIPLINE**

17 **(Controlled Substances Prescription Requirements)**

18 26. Respondent Pharmacy's permit and Respondent Pharmacist's license are subject to
19 disciplinary action for unprofessional conduct under Code section 4301, subdivision (j), in that
20 they violated a statute related to controlled substances, specifically Health and Safety Code
21 section 11164, subdivision (a), which requires prescriptions for controlled substances to be made
22 on a controlled substance prescription form as specified in Health and Safety Code section
23 11162.1. A Board investigation determined that in the three-year period of March 1, 2017 to
24 March 2, 2020, Respondents dispensed 15 controlled substance prescriptions written on forms
25 lacking multiple required security features. Respondents improperly dispensed a total of 463
26 tablets and 2033 ml of controlled substances based on deficient prescription forms, as further
27 described below.

Alprazolam

A. On or about February 2, 2019, Respondents dispensed 60 tablets of alprazolam 2 mg to AG (Rx 400589).

B. On or about October 16, 2019, Respondents dispensed 15 tablets of alprazolam 1 mg to DH (Rx 400978).

APAP/Codeine #3

C. On or about August 5, 2017, Respondents dispensed 30 tablets of APAP with codeine #3 to EA (Rx 400129).

D. On or about August 25, 2017, Respondents dispensed 15 tablets of APAP with codeine #3 to EA (Rx 400138).

E. On or about September 8, 2017, Respondents dispensed 24 tablets of APAP with codeine #3 to EA (Rx 400145).

F. On or about October 7, 2017, Respondents dispensed 24 tablets of APAP with codeine #3 to EA (Rx 400158).

Eszopiclone

G. On or about September 29, 2018, Respondents dispensed 150 tablets of eszopiclone 3 mg to EO (Rx 400438).

H. On or about December 26, 2018, Respondents dispensed 55 tablets of eszopiclone 3 mg to LO (Rx 400540).

I. On or about March 11, 2019, Respondents dispensed 90 tablets of eszopiclone 3 mg to LO (Rx 400635).

Promethazine with Codeine

J. On or about July 18, 2017, Respondents dispensed 360 ml of promethazine with codeine syrup to BG (Rx 400120).

K. On or about January 2, 2019, Respondents dispensed 480 ml of promethazine with codeine syrup to AG (Rx 400547).

L. On or about February 9, 2019, Respondents dispensed 473 ml of promethazine with codeine syrup to AG (Rx 400598).

1 M. On or about May 16, 2019, Respondents dispensed 240 ml of promethazine with
2 codeine syrup to BG (Rx 400753).

3 N. On or about June 1, 2019, Respondents dispensed 240 ml of promethazine with
4 codeine syrup to BG (Rx 400776).

5 O. On or about August 31, 2019, Respondents dispensed 240 ml of promethazine with
6 codeine syrup to BG (Rx 400922).

7 **FIFTH CAUSE FOR DISCIPLINE**

8 **(Corresponding Responsibility)**

9 27. Respondent Pharmacy's permit and Respondent Pharmacist's license are subject to
10 disciplinary action for unprofessional conduct under Code section 4301, subdivisions (d), and (j),
11 in that they excessively dispensed controlled substances in violation of Health and Safety Code
12 section 11153, subdivisions (a)(1) and (2), under Code section 4306.5 in that Respondent
13 Pharmacist failed to exercise her corresponding responsibility to confirm the validity of
14 controlled substance prescriptions, and under Code section 4301, subdivision (o) in that
15 Respondents violated a Board regulation, specifically, California Code of Regulations, title 16,
16 section 1761, which requires a pharmacist to confirm the validity of controlled substance
17 prescriptions before dispensing. A Board examination of CURES¹ data, electronic pharmacy
18 records, and prescription documents from March 1, 2017, to March 2, 2020, showed that
19 Respondents consistently failed to recognize red flags or factors of irregularity relating to
20 multiple patients.

21 28. Respondents failed to recognize the below-listed red flags or factors of irregularity
22 regarding controlled substances they dispensed:

23 Obtaining controlled substance prescriptions from multiple prescribers;

24 Majority cash payment for controlled substance prescriptions;

25 ¹ The Controlled Substance Utilization Review and Evaluation System (CURES) program
26 requires mandatory weekly reporting by pharmacies of controlled substance medications. The
27 data is collected statewide and is accessible to pharmacists and prescribers as part of the
28 Prescription Drug Monitoring Program, so that they may evaluate whether patients are utilizing
their controlled substances safely and effectively. For example, the data may be used to
determine if a patient sees multiple prescribers, frequents multiple pharmacies to fill controlled
substance prescriptions, and/or obtains early refills of controlled substance prescriptions.

1 Long distances travelled from the patient's home to prescriber or pharmacy;
2 Pharmacy located far distance from prescriber's medical office;
3 Requests for early fills;
4 Prescriptions written outside the prescriber's specialty;
5 Prescriptions lacking multiple required security features;
6 Majority of prescriptions for highly abused controlled substances;
7 Filling promethazine with codeine prescriptions monthly or more often; and
8 Presenting with prescriptions for the highest strength of opioids or benzodiazepines
9 with patient profile showing no prior usage of medication from either class.

10 29. As a result of Respondents' failure to properly review CURES data, they dispensed
11 controlled substances to patients who were egregious doctor and pharmacy shoppers, controlled
12 substances to a patient who toggled between cash and third party payment to obtain early fills of
13 medication, controlled substances to patients travelling far distances to various prescribers and
14 pharmacies, and high dose opioids and benzodiazepines to patients who were naïve to
15 medications from both drug classes. Respondents improperly dispensed approximately 529
16 irregular prescriptions for 95,775 units of controlled substances to eight patients (AG, DT, DH,
17 BG, VO, BT, TM, and DE).

18 **OTHER MATTERS**

19 30. Under Code section 4307, if discipline is imposed on Original Pharmacy Permit
20 Number PHY 54659 issued to Thrive Pharmacy Care Inc., then Thrive Pharmacy Care Inc. shall
21 be prohibited from serving as a manager, administrator, owner, member, officer, director,
22 associate, or partner of a licensee for up to five years if Original Pharmacy Permit Number PHY
23 54659 is placed on probation or until Original Pharmacy Permit Number PHY 54659 is reinstated
24 if it is revoked.

25 31. Under Code section 4307, if discipline is imposed on Original Pharmacy Permit
26 Number PHY 54659, issued to Thrive Pharmacy Care Inc., and Sze-Huay Lim was an owner and
27 had knowledge of or knowingly participated in any conduct for which the licensee was
28 disciplined, then Sze-Huay Lim shall be prohibited from serving as a manager, administrator,

owner, member, officer, director, associate, or partner of a licensee for up to five years if Original Pharmacy Permit Number PHY 54659 is placed on probation or until Original Pharmacy Permit Number PHY 54659 is reinstated if it is revoked.

32. Under Code section 4307, if discipline is imposed on Original Pharmacy Permit Number PHY 54659, issued to Thrive Pharmacy Care Inc., and Fong-Chun Wang was an owner and had knowledge of or knowingly participated in any conduct for which the licensee was disciplined, then Fong-Chun Wang shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for up to five years if Original Pharmacy Permit Number PHY 54659 is placed on probation or until Original Pharmacy Permit Number PHY 54659 is reinstated if it is revoked.

33. Pursuant to section 4307 of the Code, if discipline is imposed on Original Pharmacist License Number RPH 58435 issued to Fong-Chun Wang, then Fong-Chun Wang shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for up to five years if Original Pharmacist License Number RPH 58435 is placed on probation or until Original Pharmacist License Number RPH 58435 is reinstated if it is revoked.

PRAYER

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

1. Revoking or suspending Original Pharmacy Permit Number PHY 54659, issued to Thrive Pharmacy Care Inc. doing business as Calaveras Pharmacy;

2. Revoking or suspending Original Pharmacist License Number RPH 58435, issued to Fong-Chun Wang;

3. Prohibiting Thrive Pharmacy Care Inc. from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Original Pharmacy Permit Number PHY 54659 is placed on probation or until Original Pharmacy Permit Number PHY 54659 is reinstated if Original Pharmacy Permit Number 54659 issued to Thrive Pharmacy Care Inc. is revoked.

1 4. Prohibiting Sze-Huay Lim from serving as a manager, administrator, owner, member,
2 officer, director, associate, or partner of a licensee for up to five years if Original Pharmacy
3 Permit Number PHY 54659 is placed on probation or until Original Pharmacy Permit Number
4 PHY 54659 is reinstated if Original Permit Number 54659 issued to Thrive Pharmacy Care Inc. is
5 revoked.

6 5. Prohibiting Fong-Chun Wang from serving as a manager, administrator, owner,
7 member, officer, director, associate, or partner of a licensee for five years if Original Pharmacy
8 Permit Number PHY 54659 is placed on probation or until Original Permit Number PHY 54659
9 is reinstated if Original Permit Number 54659 issued to Thrive Pharmacy Care Inc. is revoked.

10 6. Prohibiting Fong-Chun Wang from serving as a manager, administrator, owner,
11 member, officer, director, associate, or partner of a licensee for five years if Original Pharmacist
12 License Number RPH 58435 is placed on probation or until Original Pharmacist License Number
13 RPH 548435 is reinstated if Original Pharmacist License Number RPH 548435 is revoked;

14 7. Ordering Thrive Pharmacy Care Inc. Calaveras Pharmacy and Fong-Chun Wang to
15 pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case,
16 pursuant to Business and Professions Code section 125.3; and,

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

18
19 DATED: 1/28/2021

Signature on File

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

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