

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

In the Matter of the Accusation Against:

**PREFERRED PHARMACY INC.,
SCOTT LEROY MONTGOMERY, CEO,
Original Pharmacy Permit No. PHY 54453;**

**TONY HIEU LA,
Registered Pharmacist License No. RPH 73904;**

and

**MICHAEL JEAN OLIVIER AGBASSI,
Registered Pharmacist License No. RPH 80700,**

Respondents.

Agency Case No. 7019

OAH No. 2022110412

DECISION AND ORDER

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

This Decision shall become effective at 5:00 p.m. on May 17, 2023.

It is so ORDERED on April 17, 2023.

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 written in a cursive style with a large, sweeping initial "S".

Seung W. Oh, Pharm.D.
Board President

1 ROB BONTA
Attorney General of California
2 MARICHELLE S. TAHIMIC
Supervising Deputy Attorney General
3 DIONNE MOCHON
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Attorneys for Complainant
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:

14 **PREFERRED PHARMACY, INC.;**
15 **SCOTT LEROY MONTGOMERY, CEO**
16 **3303 Harbor Blvd., Ste. H7**
17 **Costa Mesa, CA 92626.**

18 **Original Permit No. PHY 54453**

19 **and**

20 **TONY HIEU LA**
21 **57 Abrazo Aisle**
22 **Irvine, CA 92614**

23 **Registered Pharmacist License No. RPH**
24 **73904**

25 **and**

26 **MICHAEL JEAN OLIVIE AGBASSI**
27 **320 Alamo Way**
28 **Oceanside, CA 92057**

Registered Pharmacist License No. RPH
80700

Respondents.

Case No. 7019

OAH No. 2022110412

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO
RESPONDENT TONY HIEU LA ONLY**

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

3 **PARTIES**

4 1. Anne Sodergren (Complainant) is the Executive Officer of the Board of Pharmacy
5 (Board). She brought this action solely in her official capacity and is represented in this matter by
6 Rob Bonta, Attorney General of the State of California, by Dionne Mochon, Deputy Attorney
7 General.

8 2. Tony Hieu La (Respondent) is represented in this proceeding by attorney Luis Andre
9 P. Vizcocho, whose address is: 9090 Irvine Center Drive, Irvine, California 92618.

10 3. On or about July 31, 2019, the Board issued Registered Pharmacist License No. RPH
11 73904 to Respondent La. The Registered Pharmacist License was in full force and effect at all
12 times relevant to the charges brought in Accusation No. 7019, and will expire on July 31, 2023,
13 unless renewed.

14 **JURISDICTION**

15 4. Accusation No. 7019 was filed before the Board, and is currently pending against
16 Respondent. The Accusation and all other statutorily required documents were properly served
17 on Respondent on September 2, 2022. Respondent timely filed his Notice of Defense contesting
18 the Accusation.

19 5. A copy of Accusation No. 7019 is attached as Exhibit A and incorporated herein by
20 reference.

21 **ADVISEMENT AND WAIVERS**

22 6. Respondent has carefully read, fully discussed with counsel, and understands the
23 charges and allegations in Accusation No. 7019. Respondent has also carefully read, fully
24 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
25 Order.

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

1 to the issuance of subpoenas to compel the attendance of witnesses and the production of
2 documents; the right to reconsideration and court review of an adverse decision; and all other
3 rights accorded by the California Administrative Procedure Act and other applicable laws.

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

6 **CULPABILITY**

7 9. Respondent understands and agrees that the charges and allegations in Accusation
8 No. 7019, if proven at a hearing, constitute cause for imposing discipline upon his Pharmacist
9 License.

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

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

16 **CONTINGENCY**

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

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

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

2 **2. Report to the Board**

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

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

12 **3. Interview with the Board**

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

18 **4. Cooperate with Board Staff**

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

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1 **5. Continuing Education**

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

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

5 During the period of probation, Respondent shall notify all present and prospective
6 employers of the decision in case number 7019 and the terms, conditions and restrictions imposed
7 on Respondent by the decision, as follows:

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

20 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
21 Respondent undertaking any new employment, Respondent shall cause (a) Respondent’s direct
22 supervisor, (b) Respondent’s pharmacist-in-charge, designated representative-in-charge,
23 responsible manager, or other compliance supervisor, and (c) the owner or owner representative
24 of Respondent’s employer, to report to the board in writing acknowledging that the listed
25 individual(s) has/have read the decision in case number 7019, and terms and conditions imposed
26 thereby. If one person serves in more than one role described in (a), (b), or (c), the
27 acknowledgment shall so state. It shall be the Respondent La’s’s responsibility to ensure that
28 these acknowledgment(s) are timely submitted to the board. In the event of a change in the

1 person(s) serving the role(s) described in (a), (b), or (c) during the term of probation, Respondent
2 shall cause the person(s) taking over the role(s) to report to the board in writing within
3 fifteen (15) days of the change acknowledging that he or she has read the decision in case number
4 7019, and the terms and conditions imposed thereby.

5 If Respondent works for or is employed by or through an employment service, Respondent
6 must notify the person(s) described in (a), (b), and (c) above at every entity licensed by the board
7 of the decision in case number 7019, and the terms and conditions imposed thereby in advance of
8 Respondent commencing work at such licensed entity. A record of this notification must be
9 provided to the board upon request.

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

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

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

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

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

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

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

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

6 **9. Reimbursement of Board Costs**

7 As a condition precedent to successful completion of probation, Respondent shall pay to the
8 board its costs of investigation and prosecution in the amount of \$20,000.00. Failure to pay costs
9 by the deadline(s) as directed shall be considered a violation of probation.

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

13 **10. Probation Monitoring Costs**

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

18 **11. Status of License**

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

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

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

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

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

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

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

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

1 days following the next calendar month during which Respondent practices as a pharmacist in
2 California for the minimum of hours. Any failure to timely provide such notification(s) shall be
3 considered a violation of probation.

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

8 **14. Violation of Probation**

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

15 If Respondent violates probation in any respect, the board, after giving Respondent notice
16 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
17 was stayed. If a petition to revoke probation or an accusation is filed against Respondent during
18 probation, or the preparation of an accusation or petition to revoke probation is requested from
19 the Office of the Attorney General, the board shall have continuing jurisdiction and the period of
20 probation shall be automatically extended until the petition to revoke probation or accusation is
21 heard and decided and the charges and allegations in Accusation No. 7019 shall be deemed true
22 and correct.

23 **15. Completion of Probation**

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

26 **16. Ethics Course**

27 Within sixty (60) calendar days of the effective date of this decision, Respondent shall
28 enroll in a course in ethics, at Respondent's expense, approved in advance by the board or its

1 designee that complies with Title 16 California Code of Regulations section 1773.5. Respondent
2 shall provide proof of enrollment upon request. Within five (5) days of completion, Respondent
3 shall submit a copy of the certificate of completion to the board or its designee. Failure to timely
4 enroll in an approved ethics course, to initiate the course during the first year of probation, to
5 successfully complete it before the end of the second year of probation, or to timely submit proof
6 of completion to the board or its designee, shall be considered a violation of probation.

7 Respondent shall be given credit for the live portion of the ethics course that was completed
8 within twelve (12) months prior to the effective date of this Decision and Order, so long as
9 Respondent provides sufficient documentation confirming completion of that portion of the
10 course.

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

12 Respondent shall not own, have any legal or beneficial interest in, nor serve as a manager,
13 administrator, member, officer, director, trustee, associate, or partner of any business, firm,
14 partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell
15 or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90)
16 days following the effective date of this decision and shall immediately thereafter provide written
17 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide
18 documentation thereof shall be considered a violation of probation.

19 **ACCEPTANCE**

20 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
21 discussed it with my attorney, Luis Andre P. Vizcocho. I understand the stipulation and the effect
22 it will have on my Registered Pharmacist License. I enter into this Stipulated Settlement and
23 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
24 Decision and Order of the Board of Pharmacy.

25
26 DATED: _____

27 TONY HIEU LA
Respondent

1 designee that complies with Title 16 California Code of Regulations section 1773.5. Respondent
2 shall provide proof of enrollment upon request. Within five (5) days of completion, Respondent
3 shall submit a copy of the certificate of completion to the board or its designee. Failure to timely
4 enroll in an approved ethics course, to initiate the course during the first year of probation, to
5 successfully complete it before the end of the second year of probation, or to timely submit proof
6 of completion to the board or its designee, shall be considered a violation of probation.

7 Respondent shall be given credit for the live portion of the ethics course that was completed
8 within twelve (12) months prior to the effective date of this Decision and Order, so long as
9 Respondent provides sufficient documentation confirming completion of that portion of the
10 course.

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

12 Respondent shall not own, have any legal or beneficial interest in, nor serve as a manager,
13 administrator, member, officer, director, trustee, associate, or partner of any business, firm,
14 partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell
15 or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90)
16 days following the effective date of this decision and shall immediately thereafter provide written
17 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide
18 documentation thereof shall be considered a violation of probation.

19 **ACCEPTANCE**

20 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
21 discussed it with my attorney, Luis Andre P. Vizcocho. I understand the stipulation and the effect
22 it will have on my Registered Pharmacist License. I enter into this Stipulated Settlement and
23 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
24 Decision and Order of the Board of Pharmacy.

25
26 DATED: 3/15/23



27 TONY HIEU LA
Respondent

1 I have read and fully discussed with Respondent Tony Hieu La the terms and conditions
2 and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve
3 its form and content.

4
5 DATED: _____

Luis Andre P. Vizcocho
Attorney for Respondent Tony Hieu La

6
7
8 **ENDORSEMENT**

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

11
12 DATED: _____

Respectfully submitted,


13 ROB BONTA
14 Attorney General of California
15 MARICHELLE S. TAHIMIC
Supervising Deputy Attorney General

16
17 DIONNE MOCHON
18 Deputy Attorney General
Attorneys for Complainant

19
20
21 SD2020800973
22 83856724.docx

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2 and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve
3 its form and content.

4
5 DATED: 03-15-2023


6 Luis Andre P. Vizcocho
7 *Attorney for Respondent Tony Hieu La*

8 **ENDORSEMENT**

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

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12 DATED: _____

Respectfully submitted,

13 ROB BONTA
14 Attorney General of California
15 MARICHELLE S. TAHIMIC
16 Supervising Deputy Attorney General

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18 Deputy Attorney General
19 *Attorneys for Complainant*

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2 and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve
3 its form and content.

4
5 DATED: _____

Luis Andre P. Vizcocho
Attorney for Respondent Tony Hieu La

6
7
8 **ENDORSEMENT**

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

11
12 DATED: March 15, 2023

Respectfully submitted,

13 ROB BONTA
14 Attorney General of California
15 MARICHELLE S. TAHIMIC
16 Supervising Deputy Attorney General



17
18
19 DIONNE MOCHON
20 Deputy Attorney General
Attorneys for Complainant

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23 SD2020800973
24 83856724.docx

Exhibit A

Accusation No. 7019

1 ROB BONTA
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2 MARICHELLE S. TAHIMIC
Supervising Deputy Attorney General
3 DIONNE MOCHON
Deputy Attorney General
4 State Bar No. 203092
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8 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

13 **PREFERRED PHARMACY, INC.;**
14 **SCOTT LEROY MONTGOMERY, CEO**
15 **3303 Harbor Blvd., Ste. H7**
Costa Mesa, CA 92626.

Case No. 7019

ACCUSATION

16 **Original Permit No. PHY 54453**

17 **and**

18 **TONY HIEU LA**
19 **57 Abrazo Aisle**
Irvine, CA 92614

20 **Registered Pharmacist License No. RPH**
21 **73904**

22 **and**

23 **MICHAEL JEAN OLIVIE AGBASSI**
24 **320 Alamo Way**
Oceanside, CA 92057

25 **Registered Pharmacist License No. RPH**
26 **80700**

27 Respondents.
28

1 **PARTIES**

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

4 2. On or about June 1, 2016, the Board issued Original Permit Number PHY 54453 to
5 Preferred Pharmacy, Inc. (Respondent Pharmacy), Scott Leroy Montgomery, CEO (Respondent
6 Montgomery). The Original Permit was in full force and effect at all times relevant to the charges
7 brought herein and will expire on June 1, 2023, unless renewed.

8 3. On or about November 3, 2015, the Board issued Registered Pharmacist License
9 Number RPH 73904 to Tony Hieu La (Respondent La). The Registered Pharmacist License was
10 in full force and effect at all times relevant to the charges brought herein and will expire on July
11 31, 2023, unless renewed.

12 4. On or about July 31, 2019, the Board issued Registered Pharmacist License Number
13 RPH 80700 to Michael Jean Olivie Agbassi (Respondent Agbassi). The Registered Pharmacist
14 License was in full force and effect at all times relevant to the charges brought herein and will
15 expire on September 30, 2022, unless renewed.

16 **JURISDICTION**

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

20 6. Section 4300 of the Code states:

21 (a) Every license issued may be suspended or revoked.

22 (b) The board shall discipline the holder of any license issued by the board, whose
23 default has been entered or whose case has been heard by the board and found guilty,
by any of the following methods:

24 (1) Suspending judgment.

25 (2) Placing him or her upon probation.

26 (3) Suspending his or her right to practice for a period not exceeding on year.

27 (4) Revoking his or her license.

28 ///

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

2 . . .

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

6
7 7. Section 4300.1 of the Code states:

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

12 8. Section 4307 of the Code states:

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

20 (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
21 years.

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

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

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

1 be in addition to the board’s authority to proceed under Section 4339 or any other
2 provision of law.

3 **STATUTORY PROVISIONS**

4 9. Section 733 of the Code states:

5 (a) A licentiate shall not obstruct a patient in obtaining a prescription drug or
6 device that has been legally prescribed or ordered for that patient. A violation of this
7 section constitutes unprofessional conduct by the licentiate and shall subject the
8 licentiate to disciplinary or administrative action by his or her licensing agency.

9 (b) Notwithstanding any other law, a licentiate shall dispense drugs and
10 devices, as described in subdivision (a) of Section 4024, pursuant to a lawful order or
11 prescription unless one of the following circumstances exists:

12 (1) Based solely on the licentiate's professional training and judgment,
13 dispensing pursuant to the order or the prescription is contrary to law, or the licentiate
14 determines that the prescribed drug or device would cause a harmful drug interaction
15 or would otherwise adversely affect the patient's medical condition.

16 (2) The prescription drug or device is not in stock. If an order, other than an
17 order described in Section 4019 , or prescription cannot be dispensed because the
18 drug or device is not in stock, the licentiate shall take one of the following actions:

19 (A) Immediately notify the patient and arrange for the drug or device to be
20 delivered to the site or directly to the patient in a timely manner.

21 (B) Promptly transfer the prescription to another pharmacy known to stock the
22 prescription drug or device that is near enough to the site from which the prescription
23 or order is transferred, to ensure the patient has timely access to the drug or device.

24 (C) Return the prescription to the patient and refer the patient. The licentiate
25 shall make a reasonable effort to refer the patient to a pharmacy that stocks the
26 prescription drug or device that is near enough to the referring site to ensure that the
27 patient has timely access to the drug or device.

28 (3) The licentiate refuses on ethical, moral, or religious grounds to dispense a drug
or device pursuant to an order or prescription. A licentiate may decline to dispense a
prescription drug or device on this basis only if the licentiate has previously notified
his or her employer, in writing, of the drug or class of drugs to which he or she
objects, and the licentiate's employer can, without creating undue hardship, provide a
reasonable accommodation of the licentiate's objection. The licentiate's employer
shall establish protocols that ensure that the patient has timely access to the
prescribed drug or device despite the licentiate's refusal to dispense the prescription
or order. For purposes of this section, “reasonable accommodation” and “undue
hardship” shall have the same meaning as applied to those terms pursuant to
subdivision (l) of Section 12940 of the Government Code.

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1 10. Section 810 of the Code states:

2 ...

3 (b) It shall constitute cause for revocation or suspension of a license or
4 certificate for a health care professional to engage in any conduct prohibited under
5 Section 1871.4 of the Insurance Code or Section 549 or 550 of the Penal Code.

6 11. Section 4040 of the Code states:

7 (a) “Prescription” means an oral, written, or electronic transmission order that is
8 both of the following:

9 (1) Given individually for the person or persons for whom ordered that includes
10 all of the following:

11 (A) The name or names and address of the patient or patients.

12 (B) The name and quantity of the drug or device prescribed and the directions
13 for use.

14 (C) The date of issue.

15 (D) Either rubber stamped, typed, or printed by hand or typeset, the name,
16 address, and telephone number of the prescriber, his or her license classification, and
17 his or her federal registry number, if a controlled substance is prescribed.

18 (E) A legible, clear notice of the condition or purpose for which the drug is
19 being prescribed, if requested by the patient or patients.

20 (F) If in writing, signed by the prescriber issuing the order, or the certified
21 nurse-midwife, nurse practitioner, physician assistant, or naturopathic doctor who
22 issues a drug order pursuant to Section 2746.51 , 2836.1 , 3502.1 , or 3640.5 ,
23 respectively, or the pharmacist who issues a drug order pursuant to Section 4052.1 ,
24 4052.2 , or 4052.6.

25 (2) Issued by a physician, dentist, optometrist, podiatrist, veterinarian, or
26 naturopathic doctor pursuant to Section 3640.7 or, if a drug order is issued pursuant to
27 Section 2746.51 , 2836.1, 3502.1 , or 3460.5, by a certified nurse-midwife, nurse
28 practitioner, physician assistant, or naturopathic doctor licensed in this state, or
29 pursuant to Section 4052.1 , 4052.2 , or 4052.6 by a pharmacist licensed in this state.

30 (b) Notwithstanding subdivision (a), a written order of the prescriber for a
31 dangerous drug, except for any Schedule II controlled substance, that contains at least
32 the name and signature of the prescriber, the name and address of the patient in a
33 manner consistent with paragraph (2) of subdivision (a) of Section 11164 of the
34 Health and Safety Code , the name and quantity of the drug prescribed, directions for
35 use, and the date of issue may be treated as a prescription by the dispensing
36 pharmacist as long as any additional information required by subdivision (a) is readily
37 retrievable in the pharmacy. In the event of a conflict between this subdivision and
38 Section 11164 of the Health and Safety Code , Section 11164 of the Health and
39 Safety Code shall prevail.

40 (c) “Electronic transmission prescription” includes both image and data
41 prescriptions. “Electronic image transmission prescription” means any prescription

1 order for which a facsimile of the order is received by a pharmacy from a licensed
2 prescriber. "Electronic data transmission prescription" means any prescription order,
other than an electronic image transmission prescription, that is electronically
transmitted from a licensed prescriber to a pharmacy.

3 (d) The use of commonly used abbreviations shall not invalidate an otherwise
4 valid prescription.

5 (e) Nothing in the amendments made to this section (formerly Section 4036) at
6 the 1969 Regular Session of the Legislature shall be construed as expanding or
limiting the right that a chiropractor, while acting within the scope of his or her
license, may have to prescribe a device.

7 12. Section 4059.5 of the Code states:

8 . . .

9 (e) A dangerous drug or dangerous device shall not be transferred, sold, or
10 delivered to a person outside this state, whether foreign or domestic, unless the
transferor, seller, or deliverer does so in compliance with the laws of this state and of
11 the United States and of the state or country to which the dangerous drugs or
dangerous devices are to be transferred, sold, or delivered. Compliance with the laws
12 of this state and the United States and of the state or country to which the dangerous
drugs or dangerous devices are to be delivered shall include, but not be limited to,
13 determining that the recipient of the dangerous drugs or dangerous devices is
authorized by law to receive the dangerous drugs or dangerous devices.

14 . . .

15 13. Section 4110 of the Code states:

16 (a) No person shall conduct a pharmacy in the State of California unless he or
17 she has obtained a license from the board. A license shall be required for each
pharmacy owned or operated by a specific person. A separate license shall be
18 required for each of the premises of any person operating a pharmacy in more than
one location. The license shall be renewed annually. The board may, by regulation,
19 determine the circumstances under which a license may be transferred.

20 . . .

21 14. Section 4116 of the Code states:

22 (a) No person other than a pharmacist, an intern pharmacist, an authorized
officer of the law, or a person authorized to prescribe shall be permitted in that area,
23 place, or premises described in the license issued by the board wherein controlled
substances or dangerous drugs or dangerous devices are stored, possessed, prepared,
24 manufactured, derived, compounded, dispensed, or repackaged. However, a
pharmacist shall be responsible for any individual who enters the pharmacy for the
25 purposes of receiving consultation from the pharmacist or performing clerical,
inventory control, housekeeping, delivery, maintenance, or similar functions relating
26 to the pharmacy if the pharmacist remains present in the pharmacy during all times as
the authorized individual is present.

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15. Section 4156 of the Code states:

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

16. Section 4169 of the Code states:

(a) A person or entity shall not do any of the following:

(1) Purchase, trade, sell, warehouse, distribute, or transfer dangerous drugs or dangerous devices at wholesale with a person or entity that is not licensed with the board as a wholesaler, third-party logistics provider, or pharmacy.

(2) Purchase, trade, sell, or transfer dangerous drugs that the person knew or reasonably should have known were adulterated, as set forth in Article 2 (commencing with Section 111250) of Chapter 6 of Part 5 of Division 104 of the Health and Safety Code Section 4301 of the Code states:

17. Section 4301 of the Code states:

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

...

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

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

...

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

...

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

...

(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the board. ...

1 18. Section 4330 of the Code states:

2 ...

3 (b) Any nonpharmacist owner who commits any act that would subvert or tend
4 to subvert the efforts of the pharmacist in charge to comply with the laws governing
the operation of the pharmacy is guilty of a misdemeanor.

5 ...

6 **REGULATORY PROVISIONS**

7 19. California Code of Regulations, title 16, section 1709.1 states:

8 (a) The pharmacist-in-charge of a pharmacy shall be employed at that location
9 and shall have responsibility for the daily operation of the pharmacy.

10 (b) The pharmacy owner shall vest the pharmacist-in-charge with adequate
authority to assure compliance with the laws governing the operation of a pharmacy.

11 ...

12 20. California Code of Regulations, title 16, section 1714 states:

13 ...

14 (c) The pharmacy and fixtures and equipment shall be maintained in a clean and
15 orderly condition. The pharmacy shall be dry, well-ventilated, free from rodents and
insects, and properly lighted. The pharmacy shall be equipped with a sink with hot and
16 cold running water for pharmaceutical purposes.

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

20 ...

21 21. California Code of Regulations, title 16, section 1764 states:

22 No pharmacist shall exhibit, discuss, or reveal the contents of any prescription,
the therapeutic effect thereof, the nature, extent, or degree of illness suffered by any
23 patient or any medical information furnished by the prescriber with any person other
than the patient or his or her authorized representative, the prescriber or other licensed
24 practitioner then caring for the patient, another licensed pharmacist serving the

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CODE OF FEDERAL REGULATIONS

1 22. Title 42, Code of Federal Regulations, (CFR) section 424.57 states:

2 ...

3
4 c) *Application certification standards.* The supplier must meet and must certify
5 in its application for billing privileges that it meets and will continue to meet the
6 following standards:

7 ...

8 (11) Must agree not to contact a beneficiary by telephone when supplying a
9 Medicare-covered item unless one of the following applies:

10 (i) The individual has given written permission to the supplier to contact them
11 by telephone concerning the furnishing of a Medicare-covered item that is to be
12 rented or purchased.

13 (ii) The supplier has furnished a Medicare-covered item to the individual and
14 the supplier is contacting the individual to coordinate the delivery of the item.

15 (iii) If the contact concerns the furnishing of a Medicare-covered item other
16 than a covered item already furnished to the individual, the supplier has furnished at
17 least one covered item to the individual during the 15-month period preceding the
18 date on which the supplier makes such contact.

PENAL CODE SECTIONS

19 23. California Penal Code section 550 states:

20 ...

21 (a) It is unlawful to do any of the following, or to aid, abet, solicit, or conspire
22 with any person to do any of the following:

23 ...

24 (6) Knowingly make or cause to be made any false or fraudulent claim for
25 payment of a health care benefit.

26 (7) Knowingly submit a claim for a health care benefit that was not used by, or
27 on behalf of, the claimant.

28 ...

CALIFORNIA CIVIL CODE SECTION

29 24. California Civil Code section 56.10, subdivision (a) states:

30 (a) A provider of health care, health care service plan, or contractor shall not
31 disclose medical information regarding a patient of the provider of health care or an
32 enrollee or subscriber of a health care service plan without first obtaining an
33 authorization, except as provided in subdivision (b) or (c).

HEALTH AND SAFETY CODE

1
2 25. California Health and Safety Code section 111255 states:

3 Any drug or device is adulterated if it has been produced, prepared, packed, or
4 held under conditions whereby it may have been contaminated with filth, or whereby
it may have been rendered injurious to health.

5 26. California Health and Safety Code section 111295 states:

6 It is unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any
7 drug or device that is adulterated.

COST RECOVERY

8
9 27. Section 125.3 of the Code states, in pertinent part, that the Board may request the
10 administrative law judge to direct a licentiate found to have committed a violation or violations of
11 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
12 enforcement of the case.

FACTUAL ALLEGATIONS

13
14 28. Respondent Pharmacy is a pharmacy located in Costa Mesa, California.
15 Respondent Pharmacy primarily dispenses diabetic test strips, test meters, lancets and lancing
16 devices, and topical creams. The Board received multiple complaints alleging Preferred
17 Pharmacy cold-called patients in an attempt to fill prescriptions, and/or filled patient
18 prescriptions, without authorization. Board investigations confirmed that Respondent Pharmacy
19 cold-called patients, test-billed prescriptions, filled prescriptions without patient knowledge, and
20 utilized an unlicensed call center to solicit potential patients to fill prescriptions.

21 29. Respondent La was the Pharmacist in Charge (PIC) of Respondent Pharmacy from
22 February 1, 2017 to October 7, 2019.

23 30. Respondent Agbassi was the PIC of Respondent Pharmacy since October 3, 2019
24 until present.

25 31. Respondent Montgomery owns and operates a variety of businesses and pharmacies
26 including Respondent Pharmacy, located at 2202 Harbor Blvd., Suite D, Costa Mesa, California.
27 Respondent Montgomery is not a licensed pharmacist. RXMSO is an entity associated with
28

1 Respondent Montgomery and is located in the same building complex as Respondent Pharmacy.
2 The Board received information that RXMSO had call centers located in California, Florida, and
3 the Philippines. RXMSO hired affiliates that obtained patient information and sold the
4 information to RXMSO.

5 **COMPLAINTS TO THE BOARD**

6 32. On or around April 4, 2018, the Board received a complaint from Pharmacist MK on
7 behalf of a homeless patient. The patient required daily insulin and any delay in the ability to test
8 her blood sugar could result in hospitalization. The patient learned that she could not refill her
9 prescription for diabetic test strips through her insurance because Respondent Pharmacy
10 previously completed and billed her insurance for the prescription test strips. The patient did not
11 request nor receive diabetic test strips from Respondent Pharmacy and had no knowledge that the
12 prescription was placed on her behalf. Pharmacist MK researched Respondent Pharmacy's
13 location and determined that Respondent Pharmacy was approximately 150 miles away from the
14 patient. Pharmacist MK called Respondent Pharmacy and was informed that Respondent
15 Pharmacy received signature confirmation for delivery. Pharmacist MK believed that this
16 signature could not be the patient's signature as the patient was homeless.

17 33. On or about September 21, 2018, the Board received an anonymous complaint
18 alleging that a patient received a telephone call from Respondent Pharmacy. The anonymous
19 complainant stated that the caller asked the patient to describe their pain and to provide the name
20 of the patient's care provider so that Respondent Pharmacy could call the provider and initiate
21 prescriptions. The patient did not know how Respondent Pharmacy received the patient's
22 information and did not provide the requested information.

23 34. On or about April 17, 2020, the Board received a complaint from a former employee
24 of RXMSO. The employee, identified as YM, believed Respondent Montgomery operated
25 RXMSO. YM confirmed RXMSO worked with approximately seven pharmacies including
26 Respondent Pharmacy. YM stated that Respondent Pharmacy held patient information without
27 patient authorization. YM alleged that RXMSO employed call center agents in the Philippines,
28 Florida, and California. None of the agents was a licensed pharmacist or pharmacy technician.

1 YM stated that the call centers initiated contact with prospective patients and identified
2 themselves as “with the Health Care Department.” The agent offered prospective patients such
3 things as cookbooks or coupons for free meals to obtain patient information, including the
4 patient’s full name, date of birth, treating physician information, and last four numbers of the
5 patient’s social security number.

6 35. On or around September 9, 2020, the Board received an online complaint from MI, a
7 nurse practitioner for Sutter Health. MI stated that he received a prescription request for a
8 Medicare patient, TW, from Respondent Pharmacy. MI indicated that the patient had never been
9 to, nor requested services from, Respondent Pharmacy.

10 **BOARD INVESTIGATIONS**

11 36. Based on the complaints, the Board conducted investigations and inspections of
12 Respondent Pharmacy.

13 37. On or around March 6, 2019, Board Inspectors BM and CW conducted an inspection
14 of Respondent Pharmacy located at 3303 Harbor Blvd., Suite H7, Costa Mesa, California.
15 Respondent La assisted in the inspection. The pharmacy stocked UPS boxes and UPS label
16 sleeves. The pharmacy’s stock was comprised mostly of topical creams and diabetic products.
17 The pharmacy Daily Fill Log appeared to be mostly diabetes supplies, including over the counter
18 alcohol pads, lancets, meters, and strips. Inspector BM noted that one computer monitor had a
19 screen that stated, “Allow Remote Control” and “Control Remote Computer.” Respondent La
20 confirmed that Respondent Pharmacy held an Arizona non-resident pharmacy license. Board
21 Inspector BM viewed an expired Nevada Pharmacy license on the wall.

22 38. During the inspection, Board Inspectors BM and CW issued corrections for the
23 following violations:

24 a.) California Code of Regulations 1707.5(d), for the pharmacy not having
25 interpretive services;

26 b.) California Code of Regulations 1714(c), for the pharmacy not having a sink
27 with hot water;

28 ///

1 c.) California Code of Regulations 1715.65(c), for the pharmacy not having
2 completed an inventory reconciliation of Schedule II controlled substances; and

3 d.) Business and Professions Code 4070(a), for e-fax prescriptions not being
4 reduced to hard copy form and maintained.

5 39. As part of the inspection, Inspector BM interviewed Respondent La who stated the
6 following:

7 a.) Respondent Montgomery knew more about the pharmacy procedures than
8 Respondent La.

9 b.) Respondent La did not know about the marketing procedures and did not know
10 if Respondent Pharmacy cold-called patients.

11 c.) Respondent Pharmacy received prescriptions via e-script or e-fax and
12 automatically placed patient prescriptions on auto refill.

13 d.) E-scripts came directly from the prescribers via a Faxage server.¹ Inspector
14 BM could not locate printed E-faxed prescriptions.

15 e.) Respondent Pharmacy used a delivery driver and did not mail prescriptions.
16 Approximately half of Respondent's patients walked into the premises to fill prescriptions and
17 prescriptions were set for auto refills. Respondent La did not know exactly how the prescriptions
18 were delivered to locations several hours from Respondent Pharmacy's location.

19 40. Inspector BM asked Respondent La to log into Respondent Pharmacy's computer
20 system. Respondent La could not log in to the fax server and called Respondent Montgomery.
21 Once Respondent La gained access, Board Inspector BM reviewed prescriptions received by fax.
22 The system organized prescriptions by the prescriber fax number and date/time. While reviewing
23 Respondent Pharmacy's prescriptions, Board Inspector BM found:

24 a.) Respondent Pharmacy stocked preprinted prescriptions that appeared to be
25 created by Respondent Pharmacy or a marketing company and included a fine print disclaimer

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27 _____
28 ¹ A faxage server is a third-party faxing vendor fax that collects the prescriptions from doctors
which then gets entered into a computer system, instead of the prescription being sent directly to the
pharmacy.

1 that the prescriber's signature authorized the pharmacy to "substitute as necessary any
2 comparable cream formulation, patch, gel, or kit."

3 b.) Inspector BM pulled two examples of preprinted prescriptions. One
4 prescription was for Patient RD for lidocaine 5% ointment with three refills, and the other
5 prescription was for CP for calcipotriene 0.005% cream with 5 refills. The prescriptions appeared
6 to be created by Respondent Pharmacy or a marketing group and requested the prescription be
7 faxed back to an unidentified toll free number. The prescriptions contained a disclaimer in fine
8 print at the bottom that indicated that the prescriber's signature authorized the pharmacy to
9 "substitute as necessary any comparable cream formulation, patch, gel, or kit."

10 c.) A review of Patient TW's file included a pre-printed fax that appeared to have
11 been created by Respondent Pharmacy, although the prescription did not include the pharmacy
12 name. The prescription included preprinted information such as the patient name, address, date of
13 birth, and the prescriber name, address, phone number, fax number, and National Provider
14 Identifier (NPI). The prescription advised the prescriber to fax the prescription back to an
15 unidentified toll free number. The prescription contained generic prescriptions of diabetic test
16 strips, lancets, alcohol prep pads, lancet device, glucose meter, control solution, and syringes, all
17 with a 90-day quantity or single device listed in the quantity. The prescription included a section
18 for refills, but three refills appeared to be already electronically circled on the prescription. The
19 prescription was signed and dated June 24, 2017, however a signature log for the patient was not
20 retrievable during inspection. Patient TW resided in Bakersfield. Respondent La stated that
21 distant deliveries used a different system and that he did not have access to that system.

22 d.) Respondent La could not pull additional sample signatures for delivery when
23 asked to do so by Board Inspector BM.

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Marketing Relationship with RXMSO

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2 41. RXMSO is an entity associated with Respondent Montgomery and is located in the
3 same building complex as Respondent Pharmacy. RXMSO includes a call center that contacted
4 prescribers and patients to obtain prescriptions, demographics, and insurance information and
5 access pharmacy systems to upload patient and prescription information on behalf of Respondent
6 Pharmacy. There was no pharmacist overseeing RXMSO.

7 42. RXMSO company training documents included a coverage check process, a script for
8 calling patients, RXMSO training, and a store contact list. The training document described the
9 “Doc Chase” process, where after the pharmacy “approves a prescription,” the RXMSO
10 employee would attempt to obtain a prescription from the provider. Training documents included
11 a prepared script for the employee to use when calling the prescriber. The training material
12 instructed the employee to attempt to obtain a prescription by contacting the prescriber twice a
13 day for approximately seven days. The documents described another process, the “Reverse Que,”
14 in which the agent would reverse or “credit return” billed prescriptions and then rebill them. The
15 materials used by RXMSO were provided to employees of Respondent Pharmacy.

16 43. Beginning with the COVID-19 pandemic, call center employees worked from home.
17 RXMSO affiliates cold-called patients and identified themselves as from the “health department.”
18 Once the affiliates obtained patient information, “coverage checkers” verified prescription
19 profitability. If patients requested refills of prescriptions deemed “not profitable” to the
20 pharmacy, the pharmacy would inform the patient “their insurance was telling the pharmacy to
21 have the patient use a local community pharmacy” even though the pharmacy had not spoken
22 with the patient’s insurance company. If the claim was approved, the patient would move to the
23 “doc chase” department. Members of the “doc chase” department would call prescribers and
24 inform the prescriber that they previously spoke with the patient, even though the “doc chase”
25 employee had not spoken with the patient. The “doc chase” employees received commissions
26 based on how many prescriptions they obtained.

27 44. On or around August 19, 2020, Board Inspectors traveled to Respondent Pharmacy to
28 tour the call center and to conduct a follow up interview of Respondent Agbassi. Respondent

1 Agbassi indicated that the call center ceased onsite operations and that he did not have access to
2 the call center space. Respondent Agbassi stated that the company recently downsized and had
3 only one call center employee. Respondent Agbassi believed Respondent Montgomery previously
4 had access to the call center and oversaw the operations on occasion.

5 45. During the Board investigator's interview with Respondent Agbassi, Respondent
6 Montgomery arrived. Inspector BM interviewed Respondent Montgomery. Respondent
7 Montgomery admitted that Respondent Pharmacy bought patient leads from a marketer, or
8 Management Services Organization in this case, RXMSO. The call center employed
9 approximately five employees who worked from home due to COVID-19 shelter-in-place orders.

10 **Test Billing and Solicitation of Prescriptions**

11 46. A review of Respondent Pharmacy's data indicated as follows:

12 a.) The data was comprised of approximately 50,000 prescriptions.

13 b.) Respondent Pharmacy marked approximately 31,680 prescriptions as
14 "completed."

15 c.) Respondent Pharmacy reversed billing in approximately 18,318 prescriptions,
16 resulting in approximately 37% of prescriptions being cancelled.

17 d.) Respondent Pharmacy data reflected that there were approximately 5,333
18 patients who only had prescriptions that were in cancelled status, indicating that Respondent
19 Pharmacy typed and attempted to process prescriptions for 5,333 patients for whom Respondent
20 Pharmacy had never filled prescriptions. This is a red flag that indicated Respondent test billed
21 prescriptions, that is, Respondent Pharmacy submitted fraudulent insurance claims to determine if
22 the prescription would result in a profit for the pharmacy.

23 e.) Data from February 1, 2017, through October 7, 2019, indicated that
24 Respondent La verified approximately 30,323 prescriptions as PIC, while Respondent Agbassi
25 verified approximately 976 prescriptions as PIC. Over 18,000 prescriptions did not list a
26 pharmacist in the verified by column, indicating no pharmacist reviewed or dispensed the
27 prescription.

28

f.) Although Respondent La alleged that Respondent Pharmacy only utilized a delivery driver for delivering prescriptions, Respondent Pharmacy held prescriptions for patients from 821 separate California cities. Respondent Pharmacy only completed approximately 30 prescriptions in Costa Mesa, where Respondent Pharmacy was located, representing 0.11% of Respondent’s prescriptions. The top cities where Respondent Pharmacy completed prescriptions are as follows:

Patient City	Distance from Costa Mesa (approximate miles)	Count of Rx Number	Percentage of Total Rx's
Sacramento	427	1894	5.98%
Los Angeles	41	1591	5.02%
Fresno	261	1294	4.08%
San Diego	87	850	2.68%
Bakersfield	154	814	2.57%
Long Beach	28	646	2.04%
Modesto	354	592	1.87%
Lancaster	113	549	1.73%
San Bernardino	56	424	1.34%
Victorville	88	413	1.30%

47. Dr. LM appeared in approximately 2,489 prescriptions. Of these prescriptions, approximately 2,445 prescriptions were cancelled and only 44 were completed. Dr. LM’s address of record was approximately fifty miles from the pharmacy. The patients listed as Dr. LM’s “patients” resided throughout the state and not near Respondent Pharmacy nor Dr. LM’s office. Dr. LM’s office confirmed via questionnaire that out of the approximately 2,445 prescriptions provided by Inspector BM, only 19 of those patients (~~27 total prescriptions~~) were under Dr. LM’s care. The remaining approximately 2,171 separate patients had prescriptions created by Preferred Pharmacy that were not patients of Dr. LM. Thus, approximately 2,426 separate prescriptions were created by Preferred Pharmacy using Dr. LM’s name. Dr. LM stated that he had not authorized the pharmacy to create prescriptions for the patients that were not his patients. Dr. LM did note that he had sent some prescriptions to the pharmacy for the 19 patients under his care but stated that Respondent Pharmacy test billed approximately 2,426 prescriptions under Dr. LM’s name without his authorization.

1 48. Dr. DS confirmed that Respondent Pharmacy test billed 56 prescriptions that were not
2 authorized. Dr. DS stated that he was not familiar with Respondent Pharmacy, did not prescribe
3 these types of prescriptions (test strips, lancets, alcohol pads), had not authorized Respondent
4 Pharmacy to test bill prescriptions under his name, and that the patients on the list of prescriptions
5 provided were not his patients. Dr. DS's office confirmed 56 prescriptions had not been
6 authorized by the prescriber.

7 49. Dr. DD confirmed that he did not authorize approximately 19 prescriptions that were
8 test billed by Respondent Pharmacy. Dr. DD retired on January 25, 2019, and he confirmed that
9 he did not write any prescriptions after that date. Additionally, Dr. DD stated that he was not
10 familiar with Respondent Pharmacy, was located more than 500 miles from Respondent
11 Pharmacy, did not perform telemedicine, and only saw patients in person. Thus, it was unlikely
12 that he authorized any prescriptions for patients located outside of Paradise, California.

13 50. An employee of Respondent Pharmacy and RXMSO confirmed that Respondent
14 Pharmacy test billed prescriptions to ensure that the prescriptions were profitable. The employee
15 explained that if Respondent Pharmacy could make \$35.00 from the patient's prescription, then it
16 would pursue obtaining the prescription. The employee confirmed that if the patient wanted a
17 refill or a prescription but the profit was less than \$35.00, or if the patient had a high copay,
18 Respondent Pharmacy would lie to the patient and tell the patient that their insurance informed
19 Respondent Pharmacy to have the patient use a local community pharmacy instead.

20 51. Inspector BM contacted patients that received prescriptions from Respondent
21 Pharmacy. Responding patients indicated that Respondent Pharmacy billed their insurance in
22 some instances, that they received cold calls in an attempt to obtain authorization to bill and
23 obtain prescriptions for the patient, that they had not contacted Respondent Pharmacy directly to
24 fill prescriptions. By way of example, the following patients stated the following:

25 a.) Patient DJ stated that she received supplies from Respondent Pharmacy that she
26 had not requested. She had not been to the pharmacy and did not know how Respondent
27 Pharmacy obtained her information. Patient DJ confirmed that she was cold-called by
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1 Respondent Pharmacy. She further confirmed that she did not authorize Respondent Pharmacy to
2 bill her insurance.

3 b.) Patient RP indicated that she received prescriptions from Respondent Pharmacy
4 but that she had not been to, did not provide a prescription to, and did not know how Respondent
5 Pharmacy obtained her contact information. Patient RP confirmed that Respondent Pharmacy
6 cold-called her.

7 c.) Patient JM stated that he had not received or requested prescriptions from
8 Respondent Pharmacy. Patient JM stated that he did not authorize Respondent Pharmacy to bill
9 his insurance. Patient JM's prescription was listed as "cancelled" in the computer system.

10 d) Respondent Pharmacy declined to fill a prescription for S.O. after her insurance
11 changed and the pharmacy noted "New Insurance no longer meets margin, will D/C Patient In
12 Pioneers" according to a screenshot provided.

13 52. On or around November 21, 2019, Respondent La participated in a conference call
14 with Board Inspectors and confirmed that Respondent Pharmacy used "RXMSO" employees
15 known as "chasers." Contrary to what Respondent La previously stated, Respondent Pharmacy
16 mailed about 90% of the prescriptions. Patients called and asked why they received prescriptions
17 from Respondent Pharmacy. "RXMSO" staff that called these patients were different from the
18 "chasers." Respondent Pharmacy sometimes received returns from patients. Those prescriptions
19 were returned for destruction and reversed from billing. Respondent La explained the
20 prescription would be filled typically by him, given to the clerk who would label it for shipping,
21 and the driver would collect the boxes for delivery via "DCS."

22 **Adulterated Prescriptions**

23 53. Respondent Pharmacy accepted prescriptions returned by patients. If a patient
24 returned a prescription, Respondent Agbassi would reverse the insurance charge and examine the
25 product. If the product appeared intact and still sealed, Respondents would re-dispense the
26 product despite having no knowledge of the conditions in which the products were kept.

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1 **Lack of Pharmacy Security**

2 54. On or around September 9, 2019, Inspector BM conducted another inspection of
3 Respondent Pharmacy. Upon entering the pharmacy, Inspector BM found that two clerks and
4 pharmacy technicians EL and YT were present in the pharmacy with computers running and
5 patient profiles visible on one screen and without a pharmacist present. Pharmacy technicians
6 possessed keys to enter the pharmacy. Although the pharmacy maintained a small stock of
7 dangerous drugs in the front locked room, test strips, pharmacy computers, and patient
8 prescriptions were located in the main pharmacy area.

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Interference with Pharmacist in Charge**

11 **Against Respondent Pharmacy and Respondent Montgomery)**

12 55. Respondent Pharmacy and Respondent Montgomery are subject to disciplinary action
13 under Code sections 4301 subdivision (o), for violating California Code of Regulations, title 16,
14 section 1709.1, subdivision (b), and Code section 4330, subdivision (b), in that Respondent
15 Pharmacy and Respondent Montgomery utilized an unlicensed, offsite call center to contact
16 patients and prescribers; maintained fax servers to receive prescriptions that the Pharmacist-in-
17 Charge could neither access nor locate; and, used delivery systems that the Pharmacist-in-Charge
18 did not have knowledge of, access to, nor control over, as described above in paragraphs 28
19 through 54 which are incorporated herein by reference.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Unlicensed Activity Against All Respondents)**

22 56. Respondents are subject to disciplinary action under Code sections 4301, subdivision
23 (o), for violating Code section 4110, subdivision (a), in that Respondents utilized an unlicensed
24 entity, RXMSO, to run a call center to contact prescribers and patients to obtain prescriptions and
25 access pharmacy systems to upload patient and prescription information. This location was not
26 supervised by a pharmacist and was not licensed by the Board, as described above in paragraphs
27 28 through 54, which are incorporated herein by reference.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unauthorized Disclosure of Prescription Information**

3 **Against Respondent Pharmacy and Respondent Montgomery)**

4 57. Respondents are subject to disciplinary action under Code sections 4301 subdivisions
5 (j) and (o), for violating California Code of Regulations, title 16, section 1764, and California
6 Civil Code section 56.10, subdivision (a), in that Respondent Pharmacy and Respondent
7 Montgomery ran an unlicensed call center that contacted prescribers and patients to obtain
8 prescriptions, demographics, and insurance information and accessed pharmacy systems to
9 upload patient and prescription information. The call center was not supervised by a pharmacist
10 and was manned by unlicensed staff, as described above in paragraphs 28 through 54, which are
11 incorporated herein by reference.

12 **FOURTH CAUSE FOR DISCIPLINE**

13 **(Insurance Fraud Against All Respondents)**

14 58. Respondents are subject to disciplinary action under Code sections 4301 subdivisions
15 (j) and (o), for violating Code section 810, subdivision (b) and Penal Code section 550
16 subdivision (a)(6) and (7), in that Respondent Pharmacy knowingly made or caused to be made
17 any false or fraudulent claim for payment of a health care benefit and knowingly submitted a
18 claim for a health care benefit that was not used by, or on behalf of, the claimant. Specifically,
19 and as more fully set forth in paragraphs 46 through 52 above, between February 1, 2017, and
20 November 7, 2019, Respondents cancelled 18,318 prescriptions in the computer system and had
21 approximately 5,333 patients who only had prescriptions that were in the cancelled status (the
22 pharmacy entered a prescription for them but never dispensed drugs or products). These 18,318
23 claims represented approximately 37% of Respondent Pharmacy's typed prescriptions and
24 suggests that Respondent Pharmacy was test-billing and soliciting prescriptions it knew it would
25 not be dispensing. Additionally, patients confirmed that Respondent Pharmacy cold-called
26 patients and billed their insurance either without the patient's authorization and/or without the
27 patient requesting prescriptions be filled by Respondent Pharmacy.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct Against All Respondents)**

3 59. Respondent Pharmacy is subject to disciplinary action under Code sections 4301
4 subdivisions (f), (g) and (o) in that Respondent Pharmacy test-billed insurance claims the patient
5 did not receive, billed patient's insurance without authorization, ran an unlicensed call center that
6 accessed patient prescription information, cold-called patients, and lied about cold calling
7 patients, as described above in paragraphs 44 through 52, which are incorporated herein by
8 reference.

9 **SIXTH CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct-Subverting an Investigation**

11 **Against Respondent Pharmacy, Respondent Montgomery and Respondent La)**

12 60. Respondent Pharmacy and Respondent Montgomery are subject to disciplinary action
13 under Code sections 4301, subdivision (q), in that Respondent Pharmacy, Respondent
14 Montgomery and Respondent La each signed a written statement denying that patients were cold-
15 called, stating that pharmacy personnel delivered prescriptions despite prescriptions being
16 shipped hundreds of miles away, and denying that marketers had access to pharmacy records
17 despite marketers calling patients and prescribers regarding their prescriptions, as described
18 above in paragraphs 28 through 54, which are incorporated herein by reference.

19 **SEVENTH CAUSE FOR DISCIPLINE**

20 **(Unprofessional Conduct by a Corporation**

21 **Against Respondent Pharmacy and Respondent Montgomery)**

22 61. Respondent Pharmacy and Respondent Montgomery are subject to disciplinary action
23 under Code sections 4301, subdivision (o), in conjunction with Code section 4156 in that
24 Respondent Pharmacy and Respondent Montgomery test-billed insurance claims for prescriptions
25 the patients did not receive, billed patients' insurance without authorization, ran an unlicensed
26 call center that accessed patient prescription information, cold-called patients, and lied about cold
27 calling patients, as described above in paragraphs 28 through 54, which are incorporated herein
28 by reference.

1 **EIGHTH CAUSE FOR DISCIPLINE**

2 **(Obstruction of Prescriptions Against All Respondents)**

3 62. Respondents are subject to disciplinary action under Code sections 4301, subdivisions
4 (f) and (o), and Code section 733, subdivision (a) and (b), in that Respondents' policies and
5 procedures confirmed the pharmacy would not ship a patient their prescription if the prescription
6 did not meet a set profit margin, including if the patient was receiving a refill for a prescription
7 previously filled by the pharmacy. In addition, Respondents declined to fill prescriptions for
8 Patient SO after her insurance changed and her file noted "new insurance no longer meets
9 margin," as described above in paragraphs 28 through 54, which are incorporated herein by
10 reference.

11 **NINTH CAUSE FOR DISCIPLINE**

12 **(Adulterated Drugs Against all Respondent Pharmacy and Respondent Agbassi)**

13 63. Respondent Pharmacy, Respondent Montgomery and Respondent Agbassi are subject
14 to disciplinary action under Code sections 4301, subdivision (j), Code section 4169, subdivision
15 (a)(1) and (2), and Health and Safety Code sections 111255 and 111295 in that Respondents sold,
16 delivered, held, or offered for sale an adulterated drug, as described above in paragraphs 28
17 through 54, which are incorporated herein by reference.

18 **TENTH CAUSE FOR DISCIPLINE**

19 **(Lack of Pharmacy Security**

20 **Against Respondent Pharmacy and Respondent Agbassi)**

21 64. Respondent Pharmacy, Respondent Montgomery and Respondent Agbassi are subject
22 to disciplinary action under Code sections 4301 subdivision (j), Code section 4116, subdivision
23 (a) and California Code of Regulations, title 16, section 1714, subdivision (d), in that non-
24 pharmacist personnel had a key to the pharmacy premises, which allowed access to pharmacy
25 computer systems and records an hour prior to the arrival of the pharmacist, as described above in
26 paragraph 54, which is incorporated herein by reference.

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OTHER MATTERS

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2 65. Pursuant to Section 4307, if Pharmacy Permit Number PHY 54453 issued to
3 Preferred Pharmacy, Inc. is suspended, revoked or placed on probation, Respondent Pharmacy
4 shall be prohibited from serving as a manager, administrator, owner, member, officer, director,
5 associate, or partner of a licensee of the Board.

6 66. Pursuant to Section 4307, if Pharmacy Permit Number PHY 54453 issued to
7 Preferred Pharmacy, Inc. is suspended, revoked or placed on probation, and Respondent Agbassi,
8 while acting as the manager, administrator, owner, member, officer, director, associate, or
9 partner, had knowledge of or knowingly participated in any conduct for which Pharmacy Permit
10 Number PHY 54453 was revoked, suspended, or placed on probation, Respondent Agbassi shall
11 be prohibited from serving as a manager, administrator, owner, member, officer, director,
12 associate, or partner of a licensee of the Board.

13 67. Pursuant to Section 4307, if Pharmacy Permit Number PHY54453 issued to Preferred
14 Pharmacy, Inc. is suspended, revoked or placed on probation, and Respondent Montgomery,
15 while acting as the manager, administrator, owner, member, officer, director, associate, or
16 partner, had knowledge of or knowingly participated in any conduct for which Pharmacy Permit
17 Number PHY 54453 was revoked, suspended, or placed on probation, Respondent Montgomery
18 shall be prohibited from serving as a manager, administrator, owner, member, officer, director,
19 associate, or partner of a licensee of the Board.

20 68. Pursuant to Section 4307, if Pharmacist License Number RPH 73904 issued to Tony
21 Hieu La is suspended or revoked, Respondent La shall be prohibited from serving as a manager,
22 administrator, owner, member, officer, director, associate, or partner of a licensee.

23 69. Pursuant to Section 4307, if Pharmacist License Number RPH 80700 issued to
24 Michael Jean Olivie Agbassi is suspended or revoked, Respondent Agbassi shall be prohibited
25 from serving as a manager, administrator, owner, member, officer, director, associate, or partner
26 of a licensee.

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PRAYER

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

1. Revoking or suspending Original Permit Number PHY 54453, issued to Preferred Pharmacy, Inc.; Scott Leroy Montgomery, CEO;

2. Revoking or suspending Registered Pharmacist License Number RPH 73904, issued to Tony Hieu La;

3. Revoking or suspending Registered Pharmacist License Number RPH 80700, issued to Michael Jean Olivie Agbassi;

4. Ordering Tony Hieu La, Michael Jean Olivier Agbassi and Scott Leroy Montgomery to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

5. Prohibiting Preferred Pharmacy, Inc. from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 54453 is placed on probation or until Pharmacy Permit Number PHY 54453 is reinstated if Pharmacy Permit Number PHY 54453 issued to Preferred Pharmacy is revoked;

6. Prohibiting Scott Montgomery from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 54453 is placed on probation or until Pharmacy Permit Number PHY 54453 is reinstated if it is revoked;

7. Prohibiting Tony Hieu La from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Registered Pharmacist License Number RPH 73904 is placed on probation or until Registered Pharmacist License Number RPH 73904 is reinstated if it is revoked; and,

8. Prohibiting Michael Jean Olivie Agbassi from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Registered Pharmacist License Number RPH 80700 is placed on probation or until Registered Pharmacist License Number RPH 80700 is reinstated if it is revoked; and,

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

DATED: 8/31/2022

Signature on File

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