

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

In the Matter of the Accusation Against:

**COUNTY OF KERN, CALIFORNIA, DBA KERN MEDICAL
CENTER CAMPUS PHARMACY**

Original Permit No. PHE 54462

ALISIA LIRA CARABANTES

Pharmacy Technician Registration No. TCH 28141

and

SANJIT SINGH DHILLON

Pharmacist License No. RPH 58780

RESPONDENTS.

Agency Case No. 7026

OAH No. 2021040550

DECISION AFTER REJECTION OF PROPOSED DECISION

Thomas Heller, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference and teleconference on December 1, 2021.

Mario Cuahutle, Deputy Attorney General, represented complainant Anne Sodergren, Executive Officer, Board of Pharmacy (Board), Department of Consumer Affairs.

Respondent Alisia Lira Carabantes (Carabantes) represented herself. Her first name is misspelled "Alicia" in the Accusation.

Before the hearing, respondents County of Kern, California, doing business as Kern Medical Center Campus Pharmacy (Kern Medical Center Campus Pharmacy), and Sanjit Singh Dhillon (Dhillon) settled the disciplinary charges against them subject to Board approval. Therefore, the hearing proceeded only as to the disciplinary charges against Carabantes.

Oral and documentary evidence was received. After the hearing, the administrative law judge held the record open for Carabantes to submit additional proposed exhibits and for complainant to submit any objections. Carabantes submitted additional documents that were marked collectively for identification as exhibit AA. Complainant did not file any objections, and exhibit AA was admitted into evidence.

The record was closed, and the matter was submitted for decision on December 10, 2021. On January 10, 2022, the ALJ issued a Proposed Decision.

On February 2, 2022, pursuant to section 11517 of the Government Code, the California Board of Pharmacy rejecting the January 10, 2022, Proposed Decision in the above-entitled matter with respect to Carabantes. In an order issued by the board, the parties were notified that the transcript had been received and the deadline for the parties to submit written argument was set for April 29, 2022. Written argument was timely received from complainant. Respondent did not submit additional written argument.

The Board, having reviewed and considered the entire record, including the transcript, exhibits and written argument received, now issues this decision.

SUMMARY

Complainant requests that the Board suspend or revoke Carabantes's pharmacy technician license for dispensing medications to the wrong patients on three occasions. Carabantes admits the errors but argues they do not justify suspending or revoking her registration after over 20 years of licensure as a pharmacy technician with no history of discipline. The dispensing errors are grounds for disciplinary action, and the appropriate level of discipline is a stayed revocation and probationary terms to protect the public.

FACTUAL FINDINGS

Background and Procedural History

1. On January 21, 1999, the Board issued Pharmacist Technician Registration Number TCH 28141 to Carabantes. The registration is current and will expire on April 30, 2022, unless renewed. Respondent has no history of discipline associated with the registration.

2. On March 19, 2019, the Board received complaints from the California Department of Public Health (CDPH) reporting prescription dispensing errors at Kern Medical Center Campus Pharmacy and at Sage Brush Medical Plaza Pharmacy. Both pharmacies are located on the Kern Medical Center campus in Bakersfield, California. CDPH stated Carabantes dispensed medications to the wrong patients twice in November 2018 and once in January 2019 while working at the pharmacies. Dhillon was the pharmacist in charge of the pharmacies at the time. CDPH also stated the pharmacies self-reported the errors to CDPH.

3. Julia Krumer, Pharm.D., a Board inspector, investigated the complaints and confirmed the three errors. First, on November 16, 2018, while working at Sage Brush Medical Plaza Pharmacy, Carabantes dispensed patient B.C.'s prescription for Humira to patient M.C. Humira is a medication used to treat rheumatoid arthritis, psoriasis, and Crohn's disease. Second, on November 20, 2018, while working at Kern Medical Center Campus Pharmacy, Carabantes dispensed patient V.R.'s prescription for Bydureon BCise to patient L.U. Bydureon BCise is a medication used to treat diabetes. Third, on January 15, 2019, while working at Kern Medical Center Campus Pharmacy, Carabantes dispensed patient H.M.'s prescription for a Basaglar KwikPen to a relative of patient B.M. A Basaglar KwikPen is an insulin injection device.

4. In the first two incidents, the patients who received the wrong prescriptions had their own prescriptions for the same dosages of the same medications. In the first incident, M.C. noticed the prescription was labeled for B.C., contacted pharmacy staff, and did not use it. In the second incident, V.R. called the pharmacy to ask about her prescription about 30 minutes after Carabantes dispensed it to L.U., and pharmacy staff identified the error and contacted L.U. The prescription was labeled for V.R., and L.U. did not use it. But in the third incident, B.M. had her own prescription for a Basaglar KwikPen at a lower dosage than H.M., and the dispensing error went unnoticed until after B.M. started using the Basaglar KwikPen at the higher

dosage prescribed for H.M. B.M.'s prescribed dosage was 15 units every morning, but H.M.'s prescription was labeled for use at a higher dosage of 40 units at bedtime. The pharmacy did not identify the error until B.M. returned the medication box from H.M.'s prescription about two weeks later. B.M. reported experiencing low blood sugar and nervousness for two days after injecting the higher dosage.

5. On January 19, 2021, complainant filed an Accusation for disciplinary action regarding the dispensing errors against Kern Medical Center Campus Pharmacy, Dhillon, and Carabantes. Respondents filed notices of defense. The Accusation includes four causes for discipline related to the errors against all three respondents, and two causes for discipline against Kern Medical Center Campus Pharmacy and Dhillon for other alleged dispensing errors that did not involve Carabantes.

Hearing

COMPLAINANT'S CASE

6. Krumer has been a licensed pharmacist since 2006, and she has worked for the Board as an inspector since 2016. Before becoming an inspector, she worked as the staff pharmacist in the pharmacy department of a large retail store and at an independent specialty retail pharmacy.

7. Krumer testified about her findings regarding the three dispensing errors. Based on her investigations, the errors were the result of Carabantes not following pharmacy policy and procedures for the computerized scanning of prescriptions to verify them before dispensing them to patients. Krumer stated that dispensing errors have a significant potential to harm patients, and she opined that Carabantes's errors were unprofessional, although unintentional. All three errors resulted in disclosures of patient names and prescriptions to other patients. The error in January 2019 also resulted in a patient experiencing adverse health effects.

8. Krumer did not speak to Carabantes personally about the errors, but Carabantes provided a written statement to Krumer in January 2020 apologizing for them. Carabantes wrote she has been a pharmacy technician for over 20 years, and the errors were her first serious mistake. In November 2018, she scanned the paperwork for the prescriptions but not the items themselves. After the errors in November 2018, pharmacy policy required Carabantes to scan the items themselves, not just the paperwork for them. Carabantes tried to be careful, but in January 2019 she could not remember if she scanned the item itself or just the paperwork. Carabantes wrote she experienced panic attacks and missed many days of work due to anxiety and stress around that time. She also wrote she was no longer employed at the pharmacies, and she did not want to work at a retail pharmacy again due to her anxiety and stress. However, she was no longer on medication and no longer had panic attacks. She stated she did not intend to harm anyone or to give out patient information or medication to the wrong person.

9. Complainant also presented cost certifications stating that the Board incurred \$6,703 in investigative costs on the case, and that the Department of Justice has billed the Board another \$7,347.50 to prepare the case for hearing. The total of these costs is \$14,050.50.

CARABANTES'S CASE

10. In her hearing testimony, Carabantes admitted the dispensing errors and expressed remorse for them. She testified there was no policy in place in November 2018 to scan a prescription item itself as opposed to the paperwork for the prescription. She was also under a lot of stress at work, which had lines out the door, and she experienced panic attacks due to the stress. Nonetheless, she should have stopped and looked at the medication boxes more carefully.

11. Carabantes testified she was given a verbal warning after the dispensing errors in November 2018, which were fixed right away. She does not recall the dispensing error in January 2019. After making that mistake, she went to a doctor and took stress leave from work. She was out on leave until mid-February 2019, and the human resources department for the pharmacies told her to go home just after she returned from leave. She was fired shortly thereafter.

12. Carabantes is not working now, although she has applied for several pharmacy technician positions. She saw a therapist for about a year and is no longer having panic attacks, but she is still afraid to go back to work. She would like a teaching or an in-house position at a hospital. She could handle a slower-paced pharmacy but "couldn't do retail." She cannot afford to pay the Board's investigation and enforcement costs because she is not working.

13. After the hearing, Carabantes submitted a letter dated January 9, 2020, from Jeremiah (Jay) Joson, Pharm.D., the Interim Director of Pharmacy at Kern Medical, recommending Carabantes for a pharmacy technician teaching position. The letter does not reference the three dispensing errors, but does not contain a recommendation for her to practice as a pharmacy technician. Carabantes also submitted personnel and medical records confirming that she received medical treatment for anxiety and stress in 2018 and was on leave after the error in January 2019.

LEGAL CONCLUSIONS

Legal Standards

1. The Board may suspend or revoke Carabantes's registration for unprofessional conduct. (Bus. & Prof. Code, §§ 4300, subd. (a), 4301;¹ *Hoang v. California State Bd. of Pharmacy* (2014) 230 Cal.App.4th 448, 456.) Unprofessional conduct includes, but is not limited to, "[v]iolating 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." (§ 4301, subd. (o).)

2. Complainant bears the burden of proving the disciplinary charges in the Accusation. The standard of proof for the charges against Carabantes is proof by clear and convincing evidence. (See *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853; see also *In the Matter of the Accusation Against Mary Andreeasyan*, TCH 50143, OAH No. 2014030927, Agency Case No. 4014 (Feb. 28, 2019)). Although pharmacy technicians do not complete the same degree of training and education as a pharmacist, to obtain the license requires satisfying educational requirements and/or certification requirements that can take substantial time and expense to obtain. Revocation of a pharmacy technician license also affects "one's right to a specific professional employment" rather than the right to work for one specific employer that justifies imposition of a higher burden of proof rather than a preponderance of the evidence. See *Ettinger*, 185 Cal.App.3d at 857.

¹ Undesignated statutory references are to the Business and Professions Code.

Analysis

CAUSES FOR DISCIPLINE

3. The Accusation includes six causes for discipline, but only the first, second, third, and fifth causes for discipline include charges against Carabantes. Only those causes for discipline are analyzed below.

First Cause for Discipline – Unauthorized Disclosure of H.M.’s Prescription to B.M.

4. In the first cause for discipline, complainant charges Carabantes with unprofessional conduct under section 4301, subdivision (o), and California Code of Regulations, title 16, section 1764, for revealing H.M.’s prescription information to B.M. on January 15, 2019. California Code of Regulations, title 16, section 1764 states, “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 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 practitioner then caring for the patient, another licensed pharmacist serving the patient, or a person duly authorized by law to receive such information.”

5. Carabantes is not a pharmacist, but she committed the dispensing error involving B.M. and H.M. while working as a pharmacy technician under a pharmacist in charge (Dhillon). The error revealed H.M.’s prescription information to B.M. Therefore, Carabantes “assist[ed] in or abett[ed] the violation” of California Code of Regulations, title 16, section 1764, which constitutes unprofessional conduct under section 4301, subdivision (o). Accordingly, complainant proved this cause for discipline.

Second Cause for Discipline – Variation from B.M.’s Prescription

6. In the second cause for discipline, complainant charges Carabantes with unprofessional conduct under section 4301, subdivision (o), and California Code of Regulations, title 16, section 1716, for furnishing H.M.’s Basaglar KwikPen prescription to B.M., thereby mistakenly directing B.M. to inject the wrong dosage of the medication. California Code of Regulations, title 16, section 1716, states in relevant part, “Pharmacists shall not deviate from the requirements of a prescription except upon the prior consent of the prescriber or to select the drug product in accordance with Section 4073 of the Business and Professions Code.”

7. Complainant proved this cause for discipline. Carabantes mistakenly provided B.M. with a prescription that varied from B.M.’s own. In doing so, Carabantes assisted in or abetted a violation of California Code of Regulations, title 16, section 1716, which was unprofessional conduct under section 4301, subdivision (o).

Third Cause for Discipline – Unauthorized Disclosure of V.R.’s Prescription to L.U.

8. In the third cause for discipline, complainant charges Carabantes with unprofessional conduct under section 4301, subdivision (o), and California Code of Regulations, title 16, section 1764, for revealing V.R.’s prescription information to L.U. on November 20, 2018.

9. Complainant proved this cause for discipline. Carabantes committed the dispensing error involving V.R. and L.U. while working for a pharmacy and a pharmacist. The error revealed V.R.’s prescription information to L.U. Therefore, like the first cause for discipline, Carabantes assisted in or abetted a violation of California

Code of Regulations, title 16, section 1764, which was unprofessional conduct under section 4301, subdivision (o).

Fifth Cause for Discipline – Unauthorized Disclosure of B.C.’s Prescription to M.C.

10. In the fifth cause for discipline, complainant charges Carabantes with unprofessional conduct under section 4301, subdivision (o), and California Code of Regulations, title 16, section 1764, for revealing B.C.’s prescription information to M.C. on November 16, 2018.

11. Complainant proved this cause for discipline. Carabantes committed the dispensing error involving B.C. and M.C., which revealed B.C.’s prescription information to M.C. Therefore, like the first and third causes for discipline, Carabantes assisted in or abetted a violation of California Code of Regulations, title 16, section 1764, which was unprofessional conduct under section 4301, subdivision (o).

DISCIPLINARY ACTION

12. Protection of the public is the Board’s highest priority in exercising its licensing, regulatory, and disciplinary functions. (§ 4001.1.) “[W]hen that goal is inconsistent with other interests, the public’s protection is paramount.” (*Oduyale v. California State Bd. of Pharmacy* (2019) 41 Cal.App.5th 101, 118; *Sternberg v. California State Bd. of Pharmacy* (2011) 239 Cal.App.4th 1159, 1168-1169.)

13. The Board’s disciplinary guidelines, incorporated by reference in its regulations (Cal. Code Regs., tit. 16, § 1760), divide violations into four categories for purposes of determining the appropriate disciplinary action. Category I violations are the least serious, and Category IV are the most serious. The recommended range of discipline within each category “assume[s] a single violation of each listed statute or

regulation.” (Disciplinary Guidelines (rev. 2/2017), pp. 3, 5.) When there are “multiple violations, the appropriate penalty shall increase accordingly.” (*Id.* at p. 5.)

14. Complainant characterizes the violations as Category I violations, which “are less serious than Category 2 through 4 but are potentially harmful.” (Disciplinary Guidelines, p. 6.) If Carabantes was a pharmacist, the recommended minimum discipline for a Category I violation would be a stayed revocation with two years’ probation, and the maximum discipline would be revocation. (*Ibid.*) The Board has indicated in its disciplinary guidelines that “[f]or pharmacy technicians and designated representatives, the board believes an order of revocation is typically the appropriate penalty when any grounds for discipline are established, and that if revocation is not imposed that a minimum Category III level of discipline should be imposed.” (*Id.* at p. 5.) The minimum recommended Category III level of discipline is a stayed revocation, a 90-day suspension, and three to five years’ probation (*Id.* At p. 7). The maximum Category III level of discipline is revocation. (*Ibid.*) The ALJ in the Proposed Decision imposed the minimum recommended Category III level of discipline consistent with the disciplinary guidelines. However, the Board does not believe that this is a typical case that warrants this level of discipline for the reasons detailed in this decision and chooses to exercise its discretion to impose a different level of discipline.

15. The disciplinary guidelines also list 17 factors to be considered in determining whether a minimum, maximum, or intermediate penalty should be imposed in a given case. “No single one or combination of the . . . factors is required to justify the minimum and/or maximum penalty in a given case, as opposed to an intermediate one.” (Disciplinary Guidelines, p. 3.) The evidence presented about the factors in this case was as follows:

(1) Actual or potential harm to the public. Carabantes's violations harmed the public by disclosing three patients' prescriptions to other patients and by causing adverse health side effects to one patient who used the wrong dosage of medication.

(2) Actual or potential harm to any consumer. The violations harmed the affected patients as described in (1) above.

(3) Prior disciplinary record, including level of compliance with disciplinary order(s). Carabantes has no prior disciplinary record for over 20 years acting as a pharmacy technician.

(4) Prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s). Complainant presented no evidence of any prior warnings to Carabantes.

(5) Number and/or variety of current violations. Carabantes committed four violations involving three dispensing errors.

(6) Nature and severity of the act(s), offense(s) or crime(s) under consideration. Complainant classifies the dispensing errors as Category I violations.

(7) Aggravating evidence. The repeat nature of Carabantes's violations is a matter in aggravation. Complainant did not allege or present evidence of any other matters in aggravation.

(8) Mitigating evidence. Carabantes has been a pharmacy technician for over 20 years with no prior discipline. Her dispensing errors were unintentional, and she was experiencing stress, anxiety, and panic attacks at the time of the errors. Prior to finding out about the last error, she also went on leave to mitigate and try to address the stress, anxiety and panic attacks, including seeing a therapist for a year.

(9) Rehabilitation evidence. Carabantes testified she received mental health treatment and no longer has panic attacks. She presented minimal evidence of rehabilitation apart from that testimony, and no evidence of the conclusions of the mental health treatment provider regarding her fitness to practice as a pharmacy technician.

(10) Compliance with terms of any criminal sentence, parole, or probation. This factor is inapplicable.

(11) Overall criminal record. This factor is inapplicable.

(12) If applicable, evidence of proceedings for case being set aside and dismissed pursuant to Section 1203.4 of the Penal Code. This factor is inapplicable.

(13) Time passed since the act(s) or offense(s). Carabantes committed the acts at issue in late 2018 and early 2019.

(14) Whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct. Carabantes's conduct was unintentional. She personally committed the dispensing errors.

(15) Financial benefit to the respondent from the misconduct. Carabantes did not derive financial benefit from the misconduct.

(16) Other licenses held by the respondent and license history of those licenses. This factor is inapplicable.

(17) Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (see Business and Professions Code Section 315). This factor is

inapplicable.

16. Considering these factors and the entire record and Carabantes's prior experience as a pharmacy technician for over 20 years without disciplinary issues and her attempt to address her mental fitness to practice before disciplinary action was initiated, the Board does not believe the typical discipline is warranted in this case. Carabantes's violations were unintentional, and she has a long history of licensure as a pharmacy technician without any other discipline. The violations were also due in part to mental health issues that Carabantes has worked to address. Under these circumstances, the Board believes that the appropriate discipline action is not warranted under its disciplinary guidelines. The Board believes that a one year probationary period with standard conditions of probation and a required clinical diagnostic evaluation is the appropriate discipline in this case. Although Carabantes testified that she saw a mental health professional to address her anxiety issues, there was no mental health assessment included in the record. Although Carabantes testified that she would seek to teach or obtain an in house position at a hospital and would not work retail again, an unrestricted license would allow Carabantes to act as a pharmacy technician in any setting. Therefore, the Board must ensure, for public safety, that Carabantes' stress and anxiety issues have been successfully addressed.

COSTS

17. Complainant also requested an award of the Board's costs of investigation and enforcement of the case. Unless otherwise provided by law, "in any order issued in resolution of a disciplinary proceeding before any board within the [Department of Consumer Affairs] . . . upon request of the entity bringing the proceeding, the administrative law judge may direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case." (§ 125.3, subd. (a).)

18. In evaluating a request for costs, the administrative law judge must consider whether complainant's investigation was "disproportionately large" compared to the violation, and whether the licensee: (1) committed some misconduct but "used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed;" (2) had a "'subjective good faith belief in the merits of his or her position;'" (3) raised a "'colorable challenge'" to the proposed discipline; and (4) "will be financially able to make later payments." (*Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45 [quoting *California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 342, 345].)

19. Complainant presented certifications of the Board's investigation and enforcement costs, which are prima facie evidence that those costs are reasonable. (§ 125.3, subd. (c).) Carabantes presented no evidence that they are not. She obtained a reduction in the severity of the discipline imposed, but the reduction is not so great as to justify reducing the requested costs. Carabantes's subjective belief in the merits of her position likewise does not justify a reduction. In addition, complainant's investigation was not disproportionately large related to the violations.

20. But the cost certifications concern the Board's investigation of Carabantes and two other respondents, not just Carabantes. While section 125.3 does not require an administrative law judge to award costs on a pro rata basis (*Imports Performance, supra*, 201 Cal.App.4th at p. 920), it also does not prohibit such an award. Complainant's counsel proposed that Carabantes be ordered to pay one-third, or \$4,683.50, of the Board's investigation and enforcement costs. The ALJ considered and determined that \$4,683.50 was a reasonable amount of costs to assess and the amount would be payable in monthly installments as a condition of probation. The ALJ also determined that Carabantes did not establish that her financial situation prevented her from paying this reduced amount of costs in installments during the period of

probation.

ORDER

Pharmacy Technician Registration Number TCH 28141, issued to respondent Alisia Lira Carabantes is revoked; however, the revocation is stayed, and respondent is placed on probation for one year upon the following terms and conditions:

1. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

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

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty, or nolo contendere, no contest, or similar, in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- the filing of a disciplinary pleading, issuance of a citation, or initiation of another administrative action filed by any state or federal agency which involves respondent's license, or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

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

probation.

2. Report to the Board

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

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

3. Interview with the Board

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

4. Cooperate with Board Staff

Respondent shall timely cooperate with the Board's inspection program and with the Board's monitoring and investigation of respondent's compliance with the terms and conditions of 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. Reporting of Employment and Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 7026 and the terms, conditions, and restrictions imposed on respondent 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 shall report to the Board in writing the name, physical address, and mailing address of each of her employers, and the names and telephone numbers of all of her direct supervisors, as well as any pharmacists-in-charge, designated representatives-in-charge, responsible manager, or other compliance supervisors and the work schedule, if known. Respondent shall also include the reasons for leaving the prior employment. Respondent shall sign and return to the Board a written consent authorizing the Board or its designee to communicate with all of respondent's employers and supervisors, and authorizing those employers or supervisors 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 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 7026, and the 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 respondent's responsibility to ensure that these acknowledgments are timely submitted to the Board. In the event of a change in the persons serving the roles described in (a), (b), or (c) during the term of probation, respondent 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 7026, and the terms and conditions imposed thereby.

If respondent 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 7026, 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 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, 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 pharmacy technician, or any position for which a pharmacy technician license is a requirement or criterion for employment, whether the respondent is an employee, independent contractor, or volunteer.

6. Notification of Change in Name, Address, or Phone Number

Respondent 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.

7. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$4,683.50, payable in monthly installments beginning on the first day of the month following the effective date of this decision and continuing until paid in full.

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.

8. Probation Monitoring Costs

Respondent 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.

9. Status of License

Respondent shall, at all times while on probation, maintain an active, current pharmacy technician license with the Board, including any period during which suspension or probation is tolled. Failure to maintain an active, current pharmacy technician license shall be considered a violation of probation.

If respondent's pharmacy technician 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's license shall be subject to all terms and conditions of this probation not previously satisfied.

10. License Surrender While on Probation

Following the effective date of this decision, should respondent cease practice due to retirement or health or be otherwise unable to satisfy the terms and conditions of probation, respondent 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 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 respondent'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 may not reapply for any license from the Board for three years from the effective date of the surrender. Respondent 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.

11. Certification Prior to Resuming Work

Respondent shall be suspended, and shall not work as a pharmacy technician, until she has been certified as defined by Business and Professions Code section 4202, subdivision (a)(4), has submitted proof of certification to the board, and has been notified by the board or its designee that she may begin work. Failure to achieve certification within six (6) months of the effective date shall be considered a violation of probation.

During suspension, respondent shall not enter any pharmacy area or any portion of any other board licensed premises of a wholesaler, third-party logistics provider, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the board, or any manufacturer, or any area where dangerous drugs and/or dangerous devices or controlled substances are maintained.

Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding, or dispensing; nor shall respondent manage, administer, or assist any licensee of the Board. Respondent shall not have access to or control the ordering, distributing, manufacturing, or dispensing of dangerous drugs and/or dangerous devices or controlled substances.

During this suspension, respondent shall not engage in any activity that requires licensure as a pharmacy technician. Respondent shall not direct or control any aspect

of the practice of pharmacy or of the manufacture, distribution, wholesaling, or retailing of dangerous drugs and/or dangerous devices, or controlled substances.

Failure to comply with any such suspension shall be considered a violation of probation.

12. Practice Requirement – Extension of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 40 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 receives a waiver in writing from the Board or its designee.

If respondent does not practice as a pharmacy technician 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 will resume practice at the required level. Respondent shall further notify the Board in writing within 10 days following the next calendar month during which respondent practices as a pharmacy technician 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'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.

13. Clinical Diagnostic Evaluation

Within 90 days of the effective date of this decision, and on a periodic basis thereafter if required by the Board or its designee, respondent shall undergo, at her own expense, clinical diagnostic evaluation(s) by a practitioner selected or approved prior to the evaluation by the Board or its designee. The approved evaluator shall be provided with a copy of the Board's accusation and decision. Respondent shall sign a release authorizing the evaluator to furnish the Board with a current diagnosis and a written report regarding respondent's judgment and ability to function independently as a pharmacy technician with safety to the public. If the evaluator recommends restrictions or conditions on respondent's practice, including but not limited to other terms and conditions listed in these guidelines (e.g., required psychotherapy, inpatient treatment, prescription coordination and monitoring, restricted practice), the Board or its designee may by written notice to respondent adopt any such restrictions or conditions as additional probation terms and conditions, violation of which shall be considered a violation of probation. Failure to comply with any requirement or deadline stated by this paragraph shall be considered a violation of probation.

If at any time the approved evaluator or therapist determines that respondent is unable to practice safely or independently, the licensed mental health practitioner shall notify the Board immediately by telephone and follow up by written letter within three (3) working days. Upon notification from the Board or its designee of this determination, respondent shall be automatically suspended and shall not resume practice until notified by the Board or its designee that practice may resume.

Failure to comply with any requirement or deadline stated by this term shall be considered a violation of probation.

14. Violation of Probation

If respondent 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 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 violates probation in any respect, the Board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation or an accusation is filed against respondent during probation, 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's license will be fully restored.

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This Decision shall become effective at 5:00 p.m. on August 18, 2022.

It is so ORDERED on July 19, 2022.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

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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:

**COUNTY OF KERN, CALIFORNIA, dba
KERN MEDICAL CENTER CAMPUS PHARMACY,
Original Permit No. PHE 54462**

**ALISIA LIRA CARABANTES,
Pharmacy Technician Registration No. TCH 28141**

and

**SANJIT SINGH DHILLON,
Pharmacist License No. RPH 58780,**

Respondents

Agency Case No. 7026; OAH No. 2021040550

**ORDER EXTENDING TIME FOR
ISSUANCE OF A DECISION AFTER REJECTION**

On February 2, 2022, the California State Board of Pharmacy (Board) issued a Notice that it had rejected the Proposed Decision in the above matter related solely to Respondent Alisia Lira Carabantes (Respondent). As indicated in that Notice, the Board, will decide the case upon the record, including the transcript and written argument, pursuant to Government Code section 11517, subdivision (c)(2)(E).

YOU ARE HEREBY NOTIFIED that pursuant to Government Code section 11517, subdivision (c)(2)(E)(iv), the time for issuance of a Decision must be extended for 30 days due to special circumstances to give the Board an adequate opportunity to adequately address the issues required to issue its decision pursuant to that section. The Board obtained the transcript on March 17, 2022. On or about April 8, 2022, the Board issued an order requesting written argument to be submitted by April 29, 2022. Since obtaining the transcript and written argument, the Board failed to maintain quorum at a meeting scheduled in May 2022 to properly determine this case. The Board also lost three Board members effective June 1, 2022, and could not set up an emergency meeting to decide this matter before its next scheduled meeting on June 16, 2022. The Board met to determine this case on June 16, 2022. The Board has two previously scheduled Committee meetings on June 22, 2022. Because the deadline to decide this case expires on June 25, 2022, the Board will have insufficient time to draft and review its decision after rejection. For all of these reasons, the Board requires a 30-day extension to issue its decision in this matter.

For the above-stated reason, the Board's Decision After Rejection shall be rendered no later than July 24, 2022. This Order is subject to judicial review pursuant to Government Code section 11523. (Gov. Code, § 11517, subd. (c)(2)(E)(iv).)

It is so ORDERED on June 22, 2022.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

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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:

**COUNTY OF KERN, CALIFORNIA, dba
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and

**SANJIT SINGH DHILLON,
Pharmacist License No. RPH 58780,**

Respondents

Agency Case No. 7026

OAH No. 2021040550

ORDER SETTING DATE FOR SUBMISSION OF WRITTEN ARGUMENT

The administrative record of the hearing in the above-entitled matter having now become available, the parties are hereby notified of the opportunity to submit written argument in accordance with the Order Rejecting the Proposed Decision dated November 3, 2021. In addition to any arguments the parties may wish to submit, the board is particularly interested in arguments directed to the question whether the discipline is appropriate under the circumstances. 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 **April 29, 2022**.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

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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:

**COUNTY OF KERN, CALIFORNIA, dba
KERN MEDICAL CENTER CAMPUS PHARMACY,
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**ALISIA LIRA CARABANTES,
Pharmacy Technician Registration No. TCH 28141**

and

**SANJIT SINGH DHILLON,
Pharmacist License No. RPH 58780,**

Respondents

Agency Case No. 7026

OAH No. 2021040550

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 appropriate standard of proof and discipline is imposed. 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" clearly distinguishable.

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:

**COUNTY OF KERN, CALIFORNIA, DBA KERN MEDICAL
CENTER CAMPUS PHARMACY**

Original Permit No. PHE 54462

ALISIA LIRA CARABANTES

Pharmacy Technician Registration No. TCH 28141

and

SANJIT SINGH DHILLON

Pharmacist License No. RPH 58780

RESPONDENTS.

Agency Case No. 7026

OAH No. 2021040550

PROPOSED DECISION

Thomas Heller, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference and teleconference on December 1, 2021.

Mario Cuahutle, Deputy Attorney General, represented complainant Anne Sodergren, Executive Officer, Board of Pharmacy (Board), Department of Consumer Affairs.

Respondent Alisia Lira Carabantes (Carabantes) represented herself. Her first name is misspelled "Alicia" in the Accusation.

Before the hearing, respondents County of Kern, California, doing business as Kern Medical Center Campus Pharmacy (Kern Medical Center Campus Pharmacy), and Sanjit Singh Dhillon (Dhillon) settled the disciplinary charges against them subject to Board approval. Therefore, the hearing proceeded only as to the disciplinary charges against Carabantes.

Oral and documentary evidence was received. After the hearing, the administrative law judge held the record open for Carabantes to submit additional proposed exhibits and for complainant to submit any objections. Carabantes submitted additional documents that were marked collectively for identification as exhibit AA. Complainant did not file any objections, and exhibit AA was admitted into evidence.

The record was closed, and the matter was submitted for decision on December 10, 2021.

SUMMARY

Complainant requests that the Board suspend or revoke Carabantes's pharmacy technician registration for dispensing medications to the wrong patients on three occasions. Carabantes admits the errors but argues they do not justify suspending or revoking her registration after over 20 years of licensure as a pharmacy technician with no history of discipline. The dispensing errors are grounds for disciplinary action, and the appropriate level of discipline is a stayed revocation with a 90-day suspension and probationary terms to protect the public.

FACTUAL FINDINGS

Background and Procedural History

1. On January 21, 1999, the Board issued Pharmacist Technician Registration Number TCH 28141 to Carabantes. The registration is current and will expire on April 30, 2022, unless renewed. Respondent has no history of discipline associated with the registration.

2. On March 19, 2019, the Board received complaints from the California Department of Public Health (CDPH) reporting prescription dispensing errors at Kern Medical Center Campus Pharmacy and at Sage Brush Medical Plaza Pharmacy. Both pharmacies are located on the Kern Medical Center campus in Bakersfield, California. CDPH stated Carabantes dispensed medications to the wrong patients twice in November 2018 and once in January 2019 while working at the pharmacies. Dhillon was the pharmacist in charge of the pharmacies at the time. CDPH also stated the pharmacies self-reported the errors to CDPH.

3. Julia Krumer, Pharm.D., a Board inspector, investigated the complaints and confirmed the three errors. First, on November 16, 2018, while working at Sage Brush Medical Plaza Pharmacy, Carabantes dispensed patient B.C.'s prescription for Humira to patient M.C. Humira is a medication used to treat rheumatoid arthritis, psoriasis, and Crohn's disease. Second, on November 20, 2018, while working at Kern Medical Center Campus Pharmacy, Carabantes dispensed patient V.R.'s prescription for Bydureon BCise to patient L.U. Bydureon BCise is a medication used to treat diabetes. Third, on January 15, 2019, while working at Kern Medical Center Campus Pharmacy, Carabantes dispensed patient H.M.'s prescription for a Basaglar KwikPen to a relative of patient B.M. A Basaglar KwikPen is an insulin injection device.

4. In the first two incidents, the patients who received the wrong prescriptions had their own prescriptions for the same dosages of the same medications. In the first incident, M.C. noticed the prescription was labeled for B.C., contacted pharmacy staff, and did not use it. In the second incident, V.R. called the pharmacy to ask about her prescription about 30 minutes after Carabantes dispensed it to L.U., and pharmacy staff identified the error and contacted L.U. The prescription was labeled for V.R., and L.U. did not use it. But in the third incident, B.M. had her own prescription for a Basaglar KwikPen at a lower dosage than H.M., and the dispensing error went unnoticed until after B.M. started using the Basaglar KwikPen at the higher dosage prescribed for H.M. B.M.'s prescribed dosage was 15 units every morning, but H.M.'s prescription was labeled for use at a higher dosage of 40 units at bedtime. The pharmacy did not identify the error until B.M. returned the medication box from H.M.'s prescription about two weeks later. B.M. reported experiencing low blood sugar and nervousness for two days after injecting the higher dosage.

5. On January 19, 2021, complainant filed an Accusation for disciplinary action regarding the dispensing errors against Kern Medical Center Campus Pharmacy, Dhillon, and Carabantes. Respondents filed notices of defense. The Accusation includes four causes for discipline related to the errors against all three respondents, and two causes for discipline against Kern Medical Center Campus Pharmacy and Dhillon for other alleged dispensing errors that did not involve Carabantes.

Hearing

COMPLAINANT'S CASE

6. Krumer has been a licensed pharmacist since 2006, and she has worked for the Board as an inspector since 2016. Before becoming an inspector, she worked as the staff pharmacist in the pharmacy department of a large retail store and at an independent specialty retail pharmacy.

7. Krumer testified about her findings regarding the three dispensing errors. Based on her investigations, the errors were the result of Carabantes not following pharmacy policy and procedures for the computerized scanning of prescriptions to verify them before dispensing them to patients. Krumer stated that dispensing errors have a significant potential to harm patients, and she opined that Carabantes's errors were unprofessional, although unintentional. All three errors resulted in disclosures of patient names and prescriptions to other patients. The error in January 2019 also resulted in a patient experiencing adverse health effects.

8. Krumer did not speak to Carabantes personally about the errors, but Carabantes provided a written statement to Krumer in January 2020 apologizing for them. Carabantes wrote she has been a pharmacy technician for over 20 years, and the errors were her first serious mistake. In November 2018, she scanned the paperwork

for the prescriptions but not the items themselves. After the errors in November 2018, pharmacy policy required Carabantes to scan the items themselves, not just the paperwork for them. Carabantes tried to be careful, but in January 2019 she could not remember if she scanned the item itself or just the paperwork. Carabantes wrote she experienced panic attacks and missed many days of work due to anxiety and stress around that time. She also wrote she was no longer employed at the pharmacies, and she did not want to work at a retail pharmacy again due to her anxiety and stress. However, she was no longer on medication and no longer had panic attacks. She stated she did not intend to harm anyone or to give out patient information or medication to the wrong person.

9. Complainant also presented cost certifications stating that the Board incurred \$6,703 in investigative costs on the case, and that the Department of Justice has billed the Board another \$7,347.50 to prepare the case for hearing. The total of these costs is \$14,050.50.

CARABANTES'S CASE

10. In her hearing testimony, Carabantes admitted the dispensing errors and expressed remorse for them. She testified there was no policy in place in November 2018 to scan a prescription item itself as opposed to the paperwork for the prescription. She was also under a lot of stress at work, which had lines out the door, and she experienced panic attacks due to the stress. Nonetheless, she should have stopped and looked at the medication boxes more carefully.

11. Carabantes testified she was given a verbal warning after the dispensing errors in November 2018, which were fixed right away. She does not recall the dispensing error in January 2019. After making that mistake, she went to a doctor and

took stress leave from work. She was out on leave until mid-February 2019, and the human resources department for the pharmacies told her to go home just after she returned from leave. She was fired shortly thereafter.

12. Carabantes is not working now, although she has applied for several pharmacy technician positions. She saw a therapist for about a year and is no longer having panic attacks, but she is still afraid to go back to work. She would like a teaching or an in-house position at a hospital. She could handle a slower-paced pharmacy but “couldn’t do retail.” She cannot afford to pay the Board’s investigation and enforcement costs because she is not working.

13. After the hearing, Carabantes submitted a letter dated January 9, 2020, from Jeremiah (Jay) Joson, Pharm.D., the Interim Director of Pharmacy at Kern Medical, recommending Carabantes for a pharmacy technician teaching position. The letter does not reference the three dispensing errors. Carabantes also submitted personnel and medical records confirming that she received treatment for anxiety and stress in 2018 and was on leave after the error in January 2019.

LEGAL CONCLUSIONS

Legal Standards

1. The Board may suspend or revoke Carabantes’s registration for unprofessional conduct. (Bus. & Prof. Code, §§ 4300, subd. (a), 4301;¹ *Hoang v. California State Bd. of Pharmacy* (2014) 230 Cal.App.4th 448, 456.) Unprofessional

¹ Undesignated statutory references are to the Business and Professions Code.

conduct includes, but is not limited to, “[v]iolating 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.” (§ 4301, subd. (o).)

2. Complainant bears the burden of proving the disciplinary charges in the Accusation. The standard of proof for the charges against Carabantes is proof by a preponderance of the evidence because pharmacy technicians hold an occupational license. (See *Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 915 (*Imports Performance*); Evid. Code, § 115.) To obtain a pharmacy technician registration, an applicant must complete 240 hours of instruction covering, among other things, “the duties and responsibilities of a pharmacy technician in relationship to other pharmacy personnel and knowledge of standards and ethics, laws and regulations governing the practice of pharmacy.” (Cal. Code Regs., tit. 16, § 1793.6, subd. (c).) This educational prerequisite is not analogous to the rigorous educational, training, and testing requirements for obtaining a professional license that justify imposing a burden of proof of clear and convincing evidence. (See *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856; *Imports Performance, supra*, 201 Cal.App.4th at p. 915; *San Benito Foods v. Veneman* (1996) 50 Cal.App.4th 1889, 1894.)

3. Moreover, a pharmacy technician performs nondiscretionary tasks that do not require the type of professional judgment exercised by a pharmacist. “A pharmacy technician may perform packaging, manipulative, repetitive, or other nondiscretionary tasks, only while assisting, and while under the direct supervision and control of, a pharmacist.” (§ 4115, subd. (a); Cal. Code Regs., tit. 16, § 1793.) A

pharmacy technician's nondiscretionary tasks may include "(a) removing the drug or drugs from stock; [¶] (b) counting, pouring, or mixing pharmaceuticals; [¶] (c) placing the product into a container; [¶] (d) affixing the label or labels to the container; [¶] (e) packaging and repackaging." (Cal. Code Regs., tit. 16, § 1793.2.) A pharmacy technician is not authorized "to perform any act requiring the exercise of professional judgment by a pharmacist." (§ 4115, subd. (c); Cal. Code Regs., tit. 16, § 1793.) Only a pharmacist may perform such tasks as receiving new oral prescriptions, evaluating and interpreting prescriptions, interpreting a patient's medication records, and consulting with prescribing physicians. (Cal. Code Regs., tit. 16, § 1793.1.)

4. Accordingly, complainant bears the burden of proving the disciplinary charges against Carabantes by a preponderance of the evidence.

Analysis

CAUSES FOR DISCIPLINE

5. The Accusation includes six causes for discipline, but only the first, second, third, and fifth causes for discipline include charges against Carabantes. Only those causes for discipline are analyzed below.

First Cause for Discipline – Unauthorized Disclosure of H.M.'s Prescription to B.M.

6. In the first cause for discipline, complainant charges Carabantes with unprofessional conduct under section 4301, subdivision (o), and California Code of Regulations, title 16, section 1764, for revealing H.M.'s prescription information to B.M. on January 15, 2019. California Code of Regulations, title 16, section 1764 states, "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 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 practitioner then caring for the patient, another licensed pharmacist serving the patient, or a person duly authorized by law to receive such information.”

7. Carabantes is not a pharmacist, but she committed the dispensing error involving B.M. and H.M. while working as a pharmacy technician under a pharmacist in charge (Dhillon). The error revealed H.M.’s prescription information to B.M. Therefore, Carabantes “assist[ed] in or abett[ed] the violation” of California Code of Regulations, title 16, section 1764, which constitutes unprofessional conduct under section 4301, subdivision (o). Accordingly, complainant proved this cause for discipline.

Second Cause for Discipline – Variation from B.M.’s Prescription

8. In the second cause for discipline, complainant charges Carabantes with unprofessional conduct under section 4301, subdivision (o), and California Code of Regulations, title 16, section 1716, for furnishing H.M.’s Basaglar KwikPen prescription to B.M., thereby mistakenly directing B.M. to inject the wrong dosage of the medication. California Code of Regulations, title 16, section 1716, states in relevant part, “Pharmacists shall not deviate from the requirements of a prescription except upon the prior consent of the prescriber or to select the drug product in accordance with Section 4073 of the Business and Professions Code.”

9. Complainant proved this cause for discipline. Carabantes mistakenly provided B.M. with a prescription that varied from B.M.’s own. In doing so, Carabantes

assisted in or abetted a violation of California Code of Regulations, title 16, section 1716, which was unprofessional conduct under section 4301, subdivision (o).

Third Cause for Discipline – Unauthorized Disclosure of V.R.’s Prescription to L.U.

10. In the third cause for discipline, complainant charges Carabantes with unprofessional conduct under section 4301, subdivision (o), and California Code of Regulations, title 16, section 1764, for revealing V.R.’s prescription information to L.U. on November 20, 2018.

11. Complainant proved this cause for discipline. Carabantes committed the dispensing error involving V.R. and L.U. while working for a pharmacy and a pharmacist. The error revealed V.R.’s prescription information to L.U. Therefore, like the first cause for discipline, Carabantes assisted in or abetted a violation of California Code of Regulations, title 16, section 1764, which was unprofessional conduct under section 4301, subdivision (o).

Fifth Cause for Discipline – Unauthorized Disclosure of B.C.’s Prescription to M.C.

12. In the fifth cause for discipline, complainant charges Carabantes with unprofessional conduct under section 4301, subdivision (o), and California Code of Regulations, title 16, section 1764, for revealing B.C.’s prescription information to M.C. on November 16, 2018.

13. Complainant proved this cause for discipline. Carabantes committed the dispensing error involving B.C. and M.C., which revealed B.C.’s prescription information to M.C. Therefore, like the first and third causes for discipline, Carabantes assisted in or

abetted a violation of California Code of Regulations, title 16, section 1764, which was unprofessional conduct under section 4301, subdivision (o).

DISCIPLINARY ACTION

14. Protection of the public is the Board's highest priority in exercising its licensing, regulatory, and disciplinary functions. (§ 4001.1.) "[W]hen that goal is inconsistent with other interests, the public's protection is paramount." (*Oduyale v. California State Bd. of Pharmacy* (2019) 41 Cal.App.5th 101, 118; *Sternberg v. California State Bd. of Pharmacy* (2011) 239 Cal.App.4th 1159, 1168-1169.)

15. The Board's disciplinary guidelines, incorporated by reference in its regulations (Cal. Code Regs., tit. 16, § 1760), divide violations into four categories for purposes of determining the appropriate disciplinary action. Category I violations are the least serious, and Category IV are the most serious. The recommended range of discipline within each category "assume[s] a single violation of each listed statute or regulation." (Disciplinary Guidelines (rev. 2/2017), pp. 3, 5.) When there are "multiple violations, the appropriate penalty shall increase accordingly." (*Id.* at p. 5.)

16. Complainant characterizes the violations as Category I violations, which "are less serious than Category 2 through 4 but are potentially harmful." (Disciplinary Guidelines, p. 6.) If Carabantes was a pharmacist, the recommended minimum discipline for a Category I violation would be a stayed revocation with two years' probation, and the maximum discipline would be revocation. (*Ibid.*) But "[f]or pharmacy technicians and designated representatives, the board believes an order of revocation is typically the appropriate penalty when any grounds for discipline are established, and that if revocation is not imposed that a minimum Category III level of discipline should be imposed." (*Id.* at p. 5.) The minimum recommended Category III

level of discipline is a stayed revocation, a 90-day suspension, and three to five years' probation. (*Id.* at p. 7.) The maximum Category III level of discipline is revocation. (*Ibid.*)

17. The disciplinary guidelines also list 17 factors to be considered in determining whether a minimum, maximum, or intermediate penalty should be imposed in a given case. "No single one or combination of the . . . factors is required to justify the minimum and/or maximum penalty in a given case, as opposed to an intermediate one." (Disciplinary Guidelines, p. 3.) The evidence presented about the factors in this case was as follows:

(1) Actual or potential harm to the public. Carabantes's violations harmed the public by disclosing three patients' prescriptions to other patients and by causing adverse health effects to a patient who used the wrong dosage of medication due to one of the violations.

(2) Actual or potential harm to any consumer. The violations harmed the affected patients as described in (1) above.

(3) Prior disciplinary record, including level of compliance with disciplinary order(s). Carabantes has no prior disciplinary record.

(4) Prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s). Complainant presented no evidence of any prior warnings to Carabantes.

(5) Number and/or variety of current violations. Carabantes committed four violations involving three dispensing errors.

(6) Nature and severity of the act(s), offense(s) or crime(s) under consideration. Complainant classifies the dispensing errors as Category I violations.

(7) Aggravating evidence. The repeat nature of Carabantes's violations is a matter in aggravation. Complainant did not allege or present evidence of any other matters in aggravation.

(8) Mitigating evidence. Carabantes has been a pharmacy technician for over 20 years with no prior discipline. Her dispensing errors were unintentional, and she was experiencing stress, anxiety, and panic attacks at the time of the errors.

(9) Rehabilitation evidence. Carabantes testified she received mental health treatment and no longer has panic attacks. She presented minimal evidence of rehabilitation apart from that testimony.

(10) Compliance with terms of any criminal sentence, parole, or probation. This factor is inapplicable.

(11) Overall criminal record. This factor is inapplicable.

(12) If applicable, evidence of proceedings for case being set aside and dismissed pursuant to Section 1203.4 of the Penal Code. This factor is inapplicable.

(13) Time passed since the act(s) or offense(s). Carabantes committed the acts at issue in late 2018 and early 2019.

(14) Whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly

participated in such conduct. Carabantes's conduct was unintentional. She personally committed the dispensing errors.

(15) Financial benefit to the respondent from the misconduct.

Carabantes did not derive financial benefit from the misconduct.

(16) Other licenses held by the respondent and license history of those licenses. This factor is inapplicable.

(17) Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (see Business and Professions Code Section 315). This factor is inapplicable.

18. Considering these factors and the entire record, the "typically . . . appropriate penalty" of revocation for a pharmacy technician is not warranted in this case. (Disciplinary Guidelines, p. 5.) Carabantes's violations were unintentional, and she has a long history of licensure as a pharmacy technician without any other discipline. The violations were also due in part to mental health issues that Carabantes has worked to address. Under these circumstances, the appropriate disciplinary action is a Category III level of discipline that includes a stayed revocation, a 90-day suspension, and three years' probation. During the 90-day suspension, Carabantes will be required to undergo a clinical diagnostic evaluation and identify a pharmacist to serve as her practice supervisor while on probation.

COSTS

19. Complainant also request an award of the Board's costs of investigation and enforcement of the case. Unless otherwise provided by law, "in any order issued in resolution of a disciplinary proceeding before any board within the [Department of

Consumer Affairs] . . . upon request of the entity bringing the proceeding, the administrative law judge may direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case." (§ 125.3, subd. (a).)

20. In evaluating a request for costs, the administrative law judge must consider whether complainant's investigation was "disproportionately large" compared to the violation, and whether the licensee: (1) committed some misconduct but "used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed;" (2) had a "'subjective good faith belief in the merits of his or her position;'" (3) raised a "'colorable challenge'" to the proposed discipline; and (4) "will be financially able to make later payments." (*Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45 [quoting *California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 342, 345].)

21. Complainant presented certifications of the Board's investigation and enforcement costs, which are prima facie evidence that those costs are reasonable. (§ 125.3, subd. (c).) Carabantes presented no evidence that they are not. She obtained a reduction in the severity of the discipline imposed, but the reduction is not so great as to justify reducing the requested costs. Carabantes's subjective belief in the merits of her position likewise does not justify a reduction. In addition, complainant's investigation was not disproportionately large related to the violations.

22. But the cost certifications concern the Board's investigation of Carabantes and two other respondents, not just Carabantes. While section 125.3 does not require an administrative law judge to award costs on a pro rata basis (*Imports Performance, supra*, 201 Cal.App.4th at p. 920), it also does not prohibit such an award. Complainant's counsel proposed that Carabantes be ordered to pay one-third, or

\$4,683.50, of the Board's investigation and enforcement costs. This is a reasonable amount of costs to assess, and the amount will be payable in monthly installments as a condition of probation. Carabantes did not establish that her financial situation prevents her from paying this reduced amount of costs in installments during the period of probation.

ORDER

Pharmacy Technician Registration Number TPH 28141, issued to respondent Alisia Lira Carabantes is revoked; however, the revocation is stayed, and respondent is placed on probation for three years upon the following terms and conditions:

1. Suspension

As part of probation, respondent is suspended from practice as a pharmacy technician for 90 days beginning the effective date of this decision.

During suspension, respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, third-party logistics provider, veterinary food-animal drug retailer, or any other distributor of drugs that is licensed by the Board, or any manufacturer, or any area where dangerous drugs and/or dangerous devices or controlled substances are maintained.

Respondent shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the board, or have access to or control the ordering, distributing, manufacturing, or dispensing of dangerous drugs and/or dangerous devices or controlled substances.

During this suspension, respondent shall not engage in any activity that requires the professional judgment of and/or licensure as a pharmacy technician. Respondent shall not direct or control any aspect of the practice of pharmacy or of the manufacturing, distributing, wholesaling, or retailing of dangerous drugs and/or dangerous devices or controlled substances.

Failure to comply with this suspension shall be considered a violation of probation.

2. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

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

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

3. Report to the Board

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

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

4. Interview with the Board

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

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5. Cooperate with Board Staff

Respondent shall timely cooperate with the Board's inspection program and with the Board's monitoring and investigation of respondent's compliance with the terms and conditions of 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.

6. Reporting of Employment and Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 7026 and the terms, conditions, and restrictions imposed on respondent 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 shall report to the Board in writing the name, physical address, and mailing address of each of her employers, and the names and telephone numbers of all of her direct supervisors, as well as any pharmacists-in-charge, designated representatives-in-charge, responsible manager, or other compliance supervisors and the work schedule, if known. Respondent shall also include the reasons for leaving the prior employment. Respondent shall sign and return to the Board a written consent authorizing the Board or its designee to communicate with all of respondent's employers and supervisors, and authorizing those employers or supervisors 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 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 7026, and the 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 respondent's responsibility to ensure that these acknowledgments are timely submitted to the Board. In the event of a change in the persons serving the roles described in (a), (b), or (c) during the term of probation, respondent 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 7026, and the terms and conditions imposed thereby.

If respondent 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 7026, 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 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, 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 pharmacy technician, or any position for which a pharmacy technician license is a requirement or criterion for employment, whether the respondent is an employee, independent contractor, or volunteer.

7. Notification of Change in Name, Address, or Phone Number

Respondent 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. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$4,683.50, payable in installments of no less than \$200 per month beginning on the first day of the month following the effective date of this decision and continuing until paid in full.

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.

9. Probation Monitoring Costs

Respondent 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.

10. Status of License

Respondent shall, at all times while on probation, maintain an active, current pharmacy technician license with the Board, including any period during which suspension or probation is tolled. Failure to maintain an active, current pharmacy technician license shall be considered a violation of probation.

If respondent's pharmacy technician 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's license shall be subject to all terms and conditions of this probation not previously satisfied.

11. License Surrender While on Probation

Following the effective date of this decision, should respondent cease practice due to retirement or health or be otherwise unable to satisfy the terms and conditions of probation, respondent 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 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 respondent'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 may not reapply for any license from the Board for three years from the effective date of the surrender. Respondent 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.

12. Certification Prior to Resuming Work

Respondent shall be suspended, and shall not work as a pharmacy technician, until she has been certified as defined by Business and Professions Code section 4202, subdivision (a)(4), has submitted proof of certification to the board, and has been notified by the board or its designee that she may begin work. Failure to achieve certification within six (6) months of the effective date shall be considered a violation of probation.

During suspension, respondent shall not enter any pharmacy area or any portion of any other board licensed premises of a wholesaler, third-party logistics provider, veterinary food-animal drug retailer or any other distributor of drugs which is

licensed by the board, or any manufacturer, or any area where dangerous drugs and/or dangerous devices or controlled substances are maintained.

Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding, or dispensing; nor shall respondent manage, administer, or assist any licensee of the Board. Respondent shall not have access to or control the ordering, distributing, manufacturing, or dispensing of dangerous drugs and/or dangerous devices or controlled substances.

During this suspension, respondent shall not engage in any activity that requires licensure as a pharmacy technician. Respondent shall not direct or control any aspect of the practice of pharmacy or of the manufacture, distribution, wholesaling, or retailing of dangerous drugs and/or dangerous devices, or controlled substances.

Failure to comply with any such suspension shall be considered a violation of probation.

13. Practice Requirement – Extension of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 40 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 receives a waiver in writing from the Board or its designee.

If respondent does not practice as a pharmacy technician 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 will resume practice at the required level. Respondent shall further notify the Board in writing within 10 days following the next calendar month during which respondent practices as a pharmacy technician 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'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. Clinical Diagnostic Evaluation

Within 90 days of the effective date of this decision, and on a periodic basis thereafter if required by the Board or its designee, respondent shall undergo, at her own expense, clinical diagnostic evaluation(s) by a practitioner selected or approved prior to the evaluation by the Board or its designee. The approved evaluator shall be provided with a copy of the Board's accusation and decision. Respondent shall sign a release authorizing the evaluator to furnish the Board with a current diagnosis and a written report regarding respondent's judgment and ability to function independently as a pharmacy technician with safety to the public. If the evaluator recommends restrictions or conditions on respondent's practice, including but not limited to other terms and conditions listed in these guidelines (e.g., required psychotherapy, inpatient treatment, prescription coordination and monitoring, restricted practice), the Board or its designee may by written notice to respondent adopt any such restrictions or

conditions as additional probation terms and conditions, violation of which shall be considered a violation of probation. Failure to comply with any requirement or deadline stated by this paragraph shall be considered a violation of probation.

If at any time the approved evaluator or therapist determines that respondent is unable to practice safely or independently, the licensed mental health practitioner shall notify the Board immediately by telephone and follow up by written letter within three (3) working days. Upon notification from the Board or its designee of this determination, respondent shall be automatically suspended and shall not resume practice until notified by the Board or its designee that practice may resume.

Failure to comply with any requirement or deadline stated by this term shall be considered a violation of probation.

15. Supervised Practice

Within 90 days of the effective date of this decision, respondent shall submit to the Board or its designee, for prior approval, the name of a pharmacist licensed by and not on probation with the Board, to serve as respondent's practice supervisor. As part of the documentation submitted, respondent shall cause the proposed practice supervisor to report to the Board in writing acknowledging that he or she has read the decision in case number 7026 and is familiar with the terms and conditions imposed thereby, including the level of supervision required by the Board or its designee. Respondent may have multiple supervisors approved by the Board if necessary to meet respondent's work requirements.

Any of the following shall be considered a violation of probation: failure to timely nominate either an initial or a replacement practice supervisor; failure to cause the practice supervisor to timely report to the Board in writing acknowledging the

decision, terms and conditions, and supervision level; practicing in the absence of an approved practice supervisor after lapse of the nomination period; and/or failure to adhere to the level of supervision required by the Board or its designee. If any of these obligations or prohibitions is not met, respondent shall be prohibited from practice as a pharmacy technician and may not resume such practice until notified by the Board or its designee in writing.

16. Violation of Probation

If respondent 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 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 violates probation in any respect, the Board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation or an accusation is filed against respondent during probation, 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.

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17. Completion of Probation

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

DATE: 01/10/2022



Thomas Heller (Jan 10, 2022 15:17 PST)

THOMAS HELLER

Administrative Law Judge

Office of Administrative Hearings

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

12 In the Matter of the Accusation Against:

Case No. 7026

13 **COUNTY OF KERN, CALIFORNIA, DBA**
14 **KERN MEDICAL CENTER CAMPUS**
15 **PHARMACY**
2014 College Ave.
16 **Bakersfield, CA 93305**

ACCUSATION

17 **Original Permit No. PHE 54462,**

18 **ALICIA LIRA CARABANTES**
620 Voorhies Lane
19 **Bakersfield, CA 93306**

20 **Pharmacy Technician Registration No. TCH**
28141,

21 **and**

22 **SANJIT SINGH DHILLON**
15732 San Marco Pl.
23 **Bakersfield, CA 93314**

24 **Pharmacist License No. RPH 58780**

25 Respondents.

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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.

4 2. On or about July 1, 2016, the Board of Pharmacy issued Original Permit Number
5 PHE 54462 to County of Kern, California, dba Kern Medical Center Campus Pharmacy
6 (Respondent Kern). The Original Permit Number was in full force and effect at all times relevant
7 to the charges brought herein and will expire on November 1, 2021, unless renewed.

8 3. On or about January 21, 1999, the Board of Pharmacy issued Pharmacy Technician
9 Registration Number TCH 28141 to Alicia Lira Carabantes (Respondent Carabantes). The
10 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
11 brought herein and will expire on April 30, 2022, unless renewed.

12 4. On or about September 7, 2006, the Board of Pharmacy issued Pharmacist License
13 Number RPH 58780 to Sanjit Singh Dhillon (Respondent Dhillon). The Pharmacist License was
14 in full force and effect at all times relevant to the charges brought herein and will expire on
15 March 31, 2022, unless renewed.

16 **JURISDICTION**

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

20 6. Section 118, subdivision (b), of the Code provides that the
21 suspension/expiration/surrender/cancellation of a license shall not deprive the
22 Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period
23 within which the license may be renewed, restored, reissued or reinstated.

24 **STATUTORY PROVISIONS**

25 7. Section 4300 of the Code states:

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

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

- (1) Suspending judgment.
- (2) Placing him or her upon probation.
- (3) Suspending his or her right to practice for a period not exceeding one year.
- (4) Revoking his or her license.
- (5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy, including, but not limited to, the following:

- (1) Medical or psychiatric evaluation.
- (2) Continuing medical or psychiatric treatment.
- (3) Restriction of type or circumstances of practice.
- (4) Continuing participation in a board-approved rehabilitation program.
- (5) Abstention from the use of alcohol or drugs.
- (6) Random fluid testing for alcohol or drugs.
- (7) Compliance with laws and regulations governing the practice of pharmacy.

(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary certificate of licensure for any violation of the terms and conditions of probation. Upon satisfactory completion of probation, the board shall convert the probationary certificate to a regular certificate, free of conditions.

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

8. Section 4300.1 of the Code states:

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

9. Section 4301 of the Code states:

The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been issued by mistake. Unprofessional

conduct shall include, but is not limited to, any of the following:

- (a) Procurement of a license by fraud or misrepresentation.
- (b) Incompetence.
- (c) Gross negligence.
- (d) The clearly excessive furnishing of controlled substances in violation of subdivision (a) of Section 11153 of the Health and Safety Code.
- (e) The clearly excessive furnishing of controlled substances in violation of subdivision (a) of Section 11153.5 of the Health and Safety Code. Factors to be considered in determining whether the furnishing of controlled substances is clearly excessive shall include, but not be limited to, the amount of controlled substances furnished, the previous ordering pattern of the customer (including size and frequency of orders), the type and size of the customer, and where and to whom the customer distributes its product.
- (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.
- (h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.
- (i) Except as otherwise authorized by law, knowingly selling, furnishing, giving away, or administering, or offering to sell, furnish, give away, or administer, any controlled substance to an addict.
- (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.
- (k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.
- (l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The

board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(m) The cash compromise of a charge of violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code relating to the Medi-Cal program.

(n) The revocation, suspension, or other discipline by another state of a license to practice pharmacy, operate a pharmacy, or do any other act for which a license is required by this chapter that would be grounds for revocation, suspension, or other discipline under this chapter. Any disciplinary action taken by the board pursuant to this section shall be coterminous with action taken by another state, except that the term of any discipline taken by the board may exceed that of another state, consistent with the board's enforcement guidelines. The evidence of discipline by another state is conclusive proof of unprofessional conduct.

(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.

(p) Actions or conduct that would have warranted denial of a license.

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

(r) The selling, trading, transferring, or furnishing of drugs obtained pursuant to Section 256b of Title 42 of the United States Code to any person a licensee knows or reasonably should have known, not to be a patient of a covered entity, as defined in paragraph (4) of subsection (a) of Section 256b of Title 42 of the United States Code.

(s) The clearly excessive furnishing of dangerous drugs by a wholesaler to a pharmacy that primarily or solely dispenses prescription drugs to patients of long-term care facilities. Factors to be considered in determining whether the furnishing of dangerous drugs is clearly excessive shall include, but not be limited to, the amount of dangerous drugs furnished to a pharmacy that primarily or solely dispenses prescription drugs to patients of long-term care facilities, the previous ordering pattern of the pharmacy, and the general patient population to whom the pharmacy distributes the dangerous drugs. That a wholesaler has established, and employs, a tracking system that complies with the requirements of subdivision (b) of Section 4164 shall be considered in determining whether there has been a violation of this subdivision. This provision shall not be interpreted to require a wholesaler to obtain personal medical information or be authorized to permit a wholesaler to have access to personal medical information except as otherwise authorized by Section 56 and following of the Civil Code. For purposes of this section, long-term care facility shall have the same meaning given the term in Section 1418 of the Health and Safety Code.

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1 patient, another licensed pharmacist serving the patient, or a person duly authorized by law to
2 receive such information.”

3 **COST RECOVERY**

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5 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
6 administrative law judge to direct a licensee found to have committed a violation or violations of
7 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
8 enforcement of the case, with failure of the licensee to comply subjecting the license to not being
9 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
10 included in a stipulated settlement.

11 **FACTUAL ALLEGATIONS AS TO PATIENT HM**

12 14. On or about March 19, 2019, the Board received a complaint from the California
13 Department of Public Health (CDPH) alleging that a pharmacy technician at Kern Medical Center
14 Campus Pharmacy provided a prescription to a patient that was prescribed for another patient.
15 The Board conducted an investigation of the complaint.

16 15. The Board’s investigation revealed that on or about January 15, 2019, Kern Medical
17 Center Campus Pharmacy erroneously furnished patient HM’s Basaglar KwikPen to patient BM
18 thus revealing patient HM’s medical information to patient BM without patient HM’s
19 authorization. The erroneously dispensed Basaglar KwikPen to patient BM had directions to
20 inject 40 units at bedtime when patient BM was prescribed Basaglar KwikPen with directions to
21 inject 15 units every morning thus resulting in injecting of a wrong dose of medication.

22 16. At all times relevant, Respondent Dhillon was employed as the Pharmacist-in-Charge
23 at Kern Medical Center Campus Pharmacy and Respondent Carabantes was employed as a
24 Pharmacy Technician at Kern Medical Center Campus Pharmacy.

25 **FIRST CAUSE FOR DISCIPLINE**

26 (Unauthorized Disclosure of Prescriptions)

27 17. Respondent Kern, Respondent Dhillon, and Respondent Carabantes are subject to
28 disciplinary action under Code section 4301, subdivision (o), in conjunction with California Code

1 of Regulations, title 16, section 1764, on the grounds of unprofessional conduct in that
2 Respondent Kern erroneously furnished patient HM's Basaglar KwikPen to patient BM.
3 Respondent Dhillon was the Pharmacist-in-Charge of Respondent Kern when this conduct
4 occurred and Respondent Carabanates was the Pharmacy Technician who dispensed patient HM's
5 Basaglar KwikPen to patient BM.

6 **SECOND CAUSE FOR DISCIPLINE**

7 (Variation from Prescriptions)

8 18. Respondent Kern, Respondent Dhillon, and Respondent Carabantes are subject to
9 disciplinary action under Code section 4301, subdivision (o), in conjunction with California Code
10 of Regulations, title 16, section 1716, on the grounds of unprofessional conduct in that
11 Respondent Kern erroneously furnished patient HM's Basaglar KwikPen to patient BM, which
12 mistakenly directed patient BM to inject 40 units at bedtime when patient BM was prescribed
13 with directions to inject 15 units every morning. Respondent Dhillon was the Pharmacist-in-
14 Charge of Respondent Kern when this conduct occurred and Respondent Carabanates was the
15 Pharmacy Technician who dispensed patient HM's Basaglar KwikPen to patient BM, resulting in
16 patient BM ingesting the wrong dose of medication.

17 **FACTUAL ALLEGATIONS AS TO PATIENT VR**

18 19. On or about March 19, 2019, the Board received a complaint from the California
19 Department of Public Health (CDPH) alleging that a pharmacy technician at Kern Medical Center
20 Campus Pharmacy incorrectly dispensed a patient's prescription to a different patient thus
21 disclosing the patient's prescription information to an unauthorized individual. The Board
22 conducted an investigation of the complaint.

23 20. The Board's investigation revealed that on or about November 20, 2018, patient LU
24 was dispensed Bydureon BCise prescribed for patient VR.

25 21. At all times relevant, Respondent Dhillon was employed as the Pharmacist-in-Charge
26 at Kern Medical Center Campus Pharmacy and Respondent Carabantes was employed as a
27 Pharmacy Technician at Kern Medical Center Campus Pharmacy.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 (Unauthorized Disclosure of Prescriptions)

3 22. Respondent Kern, Respondent Dhillon, and Respondent Carabantes are subject to
4 disciplinary action under Code section 4301, subdivision (o), in conjunction with California Code
5 of Regulations, title 16, section 1764, on the grounds of unprofessional conduct in that
6 Respondent Kern erroneously dispensed patient VR's Bydureon BCise to patient LU.
7 Respondent Dhillon was the Pharmacist-in-Charge of Respondent Kern when this conduct
8 occurred and Respondent Carabanates was the Pharmacy Technician who dispensed the
9 Bydureon BCise to patient LU prescribed for patient VR.

10 **FACTUAL ALLEGATIONS AS TO PATIENT AB**

11 23. On or about March 19, 2019, the Board received a complaint from the California
12 Department of Public Health (CDPH) alleging that Kern Medical Center Campus Pharmacy
13 dispensed a restocked medication with previous patient label underneath the new prescription
14 thus disclosing the previous patient's information to an unauthorized individual. The Board
15 conducted an investigation of the complaint.

16 24. The Board's investigation revealed that on or about November 26, 2018, Kern
17 Medical Center Campus Pharmacy dispensed patient AB's Amoxicillin with prescription label for
18 patient LP underneath AB's prescription label thus revealing patient LP's medical information to
19 patient AB without patient LP's authorization.

20 **FOURTH CAUSE FOR DISCIPLINE**

21 (Unauthorized Disclosure of Prescriptions)

22 25. Respondent Kern is subject to disciplinary action under Code section 4301,
23 subdivision (o), in conjunction with California Code of Regulations, title 16, section 1764, on the
24 grounds of unprofessional conduct in that Respondent Kern erroneously dispensed patient AB's
25 Amoxicillin with prescription label for patient LP underneath AB's prescription label.

26 **FACTUAL ALLEGATIONS AS TO PATIENT BC**

27 26. On or about March 19, 2019, the Board received a complaint from the California
28 Department of Public Health (CDPH) alleging that Sage Brush Medical Plaza Pharmacy

1 incorrectly dispensed a patient's prescription to a different patient thus disclosing the patient's
2 prescription information to an unauthorized individual. The Board conducted an investigation of
3 the complaint.

4 27. The Board's investigation revealed that on or about November 16, 2018, patient MC
5 was dispensed Humira prescribed for patient BC.

6 28. At all times relevant, Respondent Dhillon was employed as the Pharmacist-in-Charge
7 at Sage Brush Medical Plaza Pharmacy and Respondent Carabantes was employed as a Pharmacy
8 Technician at Sage Brush Medical Plaza Pharmacy.

9 **FIFTH CAUSE FOR DISCIPLINE**

10 (Unauthorized Disclosure of Prescriptions)

11 29. Respondent Dhillon and Respondent Carabantes are subject to disciplinary action
12 under Code section 4301, subdivision (o), in conjunction with California Code of Regulations,
13 title 16, section 1764, on the grounds of unprofessional conduct in that Respondent Dhillon was
14 the Pharmacist-in-Charge of Sage Brush Medical Plaza Pharmacy when this conduct occurred
15 and Respondent Carabanates was the Pharmacy Technician who erroneously furnished patient
16 BC's Humira to patient MC thus revealing patient BC's medical information to patient MC
17 without patient BC's authorization.

18 **FACTUAL ALLEGATIONS AS TO PATIENT HS**

19 30. On or about March 19, 2019, the Board received a complaint from the California
20 Department of Public Health (CDPH) alleging that Kern Medical Center Campus Pharmacy
21 incorrectly dispensed a patient's prescription to a different patient thus disclosing the patient's
22 prescription information to an unauthorized individual. The Board conducted an investigation of
23 the complaint.

24 31. The Board's investigation revealed that on or about January 15, 2019, a pharmacy
25 technician dispensed the wrong medication to the wrong patient. Specifically, patient HS #1 was
26 dispensed Triamcinolone 0.1% cream labeled for a different patient HS #2 instead of prescribed
27 Augmentin 125-31.25 mg/5ml for patient HS #1.

32. At all times relevant, Respondent Dhillon was employed as the Pharmacist-in-Charge at Kern Medical Center Campus Pharmacy.

SIXTH CAUSE FOR DISCIPLINE

(Unauthorized Disclosure of Prescriptions)

33. Respondent Kern and Respondent Dhillon are subject to disciplinary action under Code section 4301, subdivision (o), in conjunction with California Code of Regulations, title 16, section 1764, on the grounds of unprofessional conduct in that Respondent Kern erroneously dispensed patient HS #2's Triamcinolone 0.1% cream to patient HS #1. Respondent Dhillon was the Pharmacist-in-Charge of Respondent Kern when this conduct occurred.

DISCIPLINE CONSIDERATIONS

34. To determine the degree of discipline, if any, to be imposed on Respondent Kern Medical Center Campus Pharmacy, Complainant alleges that on or about March 28, 2018, in a prior disciplinary action titled In the Matter of the Accusation Against Kern Medical Center Campus Pharmacy before the Board of Pharmacy, in Case Number 5551, Respondent's license was publicly reprovved for unauthorized receipt and delivery of prescriptions and prescription medication, unauthorized deposit of a prescription, unauthorized electronic transmission of prescriptions, and storage of pharmacy records at an unlicensed location. That decision is now final.

OTHER MATTERS

35. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number PHE 54462 issued to County of Kern, California dba Kern Medical Center Campus Pharmacy, County of Kern, California shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHE 54462 is placed on probation or until Pharmacy Permit Number PHE 54462 is reinstated if it is revoked.

36. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number PHE 54462 issued to County of Kern, California dba Kern Medical Center Campus Pharmacy, while Russell Judd has been an officer and/or owner and had knowledge of or knowingly

1 participated in any conduct for which the licensee was disciplined, he shall be prohibited from
2 serving as a manager, administrator, owner, member, officer, director, associate, or partner of a
3 licensee for five years if Pharmacy Permit Number PHE 54462 is placed on probation or until
4 Pharmacy Permit Number PHE 54462 is reinstated if it is revoked.

5 37. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number
6 PHE 54462 issued to County of Kern, California dba Kern Medical Center Campus Pharmacy,
7 while Glenn Goldis has been an officer and/or owner and had knowledge of or knowingly
8 participated in any conduct for which the licensee was disciplined, he shall be prohibited from
9 serving as a manager, administrator, owner, member, officer, director, associate, or partner of a
10 licensee for five years if Pharmacy Permit Number PHE 54462 is placed on probation or until
11 Pharmacy Permit Number PHE 54462 is reinstated if it is revoked.

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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 PHE 54462, issued to County of Kern, California, dba Kern Medical Center Campus Pharmacy;

2. Revoking or suspending Pharmacy Technician Registration Number TCH 28141, issued to Alicia Lira Carabantes;

3. Revoking or suspending Pharmacist License Number RPH 58780, issued to Sanjit Singh Dhillon;

4. Prohibiting Respondent County of Kern, California, dba Kern Medical Center Campus Pharmacy from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHE 54462 is placed on probation or until Pharmacy Permit Number PHE 54462 is reinstated if Pharmacy Permit Number PHE 54462 issued to County of Kern, California, dba Kern Medical Center Campus Pharmacy is revoked;

5. Prohibiting Russell Judd from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHE 54462 is placed on probation or until Pharmacy Permit Number PHE 54462 is reinstated if Pharmacy Permit Number PHE 54462 issued to County of Kern, California, dba Kern Medical Center Campus Pharmacy is revoked;

6. Prohibiting Glenn Goldis from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHE 54462 is placed on probation or until Pharmacy Permit Number PHE 54462 is reinstated if Pharmacy Permit Number PHE 54462 issued to County of Kern, California, dba Kern Medical Center Campus Pharmacy is revoked;

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1 7. Ordering Kern Medical Center Campus Pharmacy, Alicia Lira Carabantes and Sanjit
2 Singh Dhillon to pay the Board of Pharmacy the reasonable costs of the investigation and
3 enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

4 8. Taking such other and further action as deemed necessary and proper.
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7 DATED: 1/19/2021
8 _____

Signature on File

9 _____
10 ANNE SODERGREN
11 Executive Officer
12 Board of Pharmacy
13 Department of Consumer Affairs
14 State of California
15 *Complainant*

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