

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

In the Matter of the Accusation Against:

**LAUREL CARE PHARMACY INC. DBA LAUREL CARE
PHARMACY, BEHSHAD SHANS,**

Permit No. PHY 55503,

and

BEHSHAD SHANS,

Pharmacist No. RPH 75742,

Respondents.

Agency Case No. 7130

OAH No. 2021100491

DECISION AFTER REJECTION

Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on May 2 and 3, 2022.

William D. Gardner, Deputy Attorney General, represented complainant Anne Sodergren in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

Rob D. Cucher, Esq., represented Laurel Care Pharmacy Inc. dba Laurel Care Pharmacy, and Behshad Shans (collectively, respondents).

Oral and documentary evidence was received. The record closed and the matter was submitted for decision on May 3, 2022. On June 15, 2022, the ALJ issued a proposed decision. On July 28, 2022, the Board issued an order rejecting the proposed decision. In an order dated October 14, 2022, the Board notified the parties that the deadline for submitting written argument was set for November 14, 2022. Written argument was timely received from both parties. The Board, having reviewed and considered the entire record, including the transcript, exhibits and written argument from both parties, now issues this decision after rejection.

FACTUAL FINDINGS

Jurisdictional Matters

1. On August 23, 2021, complainant filed the Accusation solely in her official capacity. On September 6, 2021, Notices of Defense were filed on behalf of respondents to request a hearing on the merits of the Accusation.

2. On October 14, 2016, the Board issued Original Pharmacist License Number RPH 75742 to Behshad Shans (Mr. Shans). The Pharmacist License is in full force and effect until February 28, 2024.

3. On February 6, 2017, the Board issued Permit Number PHY 55503 to Laurel Care Pharmacy Inc. dba Laurel Care Pharmacy (Pharmacy). The Permit is in full force and effect until February 1, 2023.

4. Since February 6, 2017, Mr. Shans has been the pharmacist-in-charge for the Pharmacy, as well as the Chief Executive Officer, 100 percent shareholder, President, Secretary and Treasurer/Chief Financial Officer.

Arrest Notification

5. In or about January 2019, the Board received an arrest notification regarding Mr. Shans. The Board obtained an Arrest Report from the Los Angeles Police Department (LAPD) regarding the arrest. (Exhs. 6, 7.) The Arrest Report indicated Mr. Shans was arrested on December 18, 2018, for sexual battery under Penal Code section 243.4, subdivision (e)(1).

6. According to the Arrest Report, on December 18, 2018, LAPD Officers Perez and Tipping were dispatched to the Foothill station to investigate a sexual battery incident. The officers spoke with the female victim, J.D. (initials are used to protect her privacy), who was at the station to report an incident that occurred the previous day at the Pharmacy.

7. Neither Officer Perez, Officer Tipping, nor the victim J.D., testified at this hearing. The Arrest Report was considered pursuant to *Lake v. Reed* (1997) 16 Cal.4th 448. The documented observations of the police officers were admitted as direct evidence under the hearsay exception for records by public employees. (Evid. Code, § 1280.) Mr. Shans' statements to the officers documented in the Arrest Report were admitted as direct evidence under the hearsay exception for party admissions. (Evid. Code § 1220.) J.D.'s hearsay statements to the police documented in the Arrest Report are, alone, not sufficient to support a finding but may be considered to explain or supplement other evidence. (Gov. Code, § 11513, subd. (d).)

8. According to J.D., on December 17, 2018, she went to the Pharmacy to pick up a prescription for antibiotics for her abdominal pain. Mr. Shans touched her stomach. At some point, J.D. went to the back office of the Pharmacy with Mr. Shans, where he lowered her pants, examined her abdominal area and lower back, and then gave her an ointment/cream. J.D. alleged Mr. Shans touched her inappropriately during the examination. J.D. told the officers she wanted Mr. Shans arrested and was willing to sign a private person arrest form. J.D. also told the officers that Mr. Shans telephoned her later on December 17, 2018, about an error on the instructions and prescription label for the antibiotics she picked up at the Pharmacy.

9. On December 18, 2018, after speaking with J.D. at the Foothill station, Officers Perez and Tipping went to the Pharmacy and spoke with Mr. Shans, who was identified as the pharmacist. The officers obtained Mr. Shans' statement regarding the previous day's incident with J.D.

10. Mr. Shans told the officers J.D. was at the Pharmacy to pick up a prescription. Mr. Shans asked J.D. about her medical condition, and J.D. said she was experiencing abdominal pain and was prescribed antibiotics. According to Mr. Shans, J.D. complained of stomach pain, a rash, and back pain. Mr. Shans asked J.D. if he could do an examination on her and she agreed. Mr. Shans brought J.D. to the back room in the rear of the building to conduct an examination. When the officers asked if he normally does examinations in the back room, Mr. Shans stated, "as long as they're not in the medication area it's fine." (Exh. 7, p. AG-59.) Mr. Shans also stated he checked J.D.'s stomach when he was in the front area of the Pharmacy.

11. Mr. Shans told the officers that when he brought J.D. into the back room, "he checked her back and her stomach and observed a rash." (Exh. 7, p. AG-59.) Mr. Shans told the officers "He did pull her pants down low enough so he could see the rash during her examination" and "pulled them low enough to expose the rash but not expose her vagina."

(*Ibid.*) Mr. Shans told the officers he did not touch J.D.'s vagina. Mr. Shans stated that, after the examination, he prescribed J.D. an over-the-counter (OTC) ointment for her rash and dispensed her antibiotics. Mr. Shans told the officers he later telephoned J.D. to inform her there was a typo on the label for her medication and she needed to take her medication twice a day.

12. The Pharmacy has video surveillance inside the business but not in the back office where the incident occurred. Officers Perez and Tipping reviewed the surveillance video while at the Pharmacy on December 18, 2018. Their observations are summarized in the Arrest Report. (Exh. 7, p. AG-60.) On the video, the officers saw J.D. standing at the front counter speaking with Mr. Shans. They saw J.D.'s shirt was lifted high enough to expose her stomach and Mr. Shans started touching it. The officers saw J.D. then pulled her shirt down and she and Mr. Shans walked towards the east wall and out of frame. Mr. Shans declined the officers' request to watch the video a second time.

13. By letter dated June 4, 2019, the Board requested Mr. Shans provide a written explanation of the facts and circumstances surrounding the December 17, 2018, incident that resulted in his arrest. (Exh. 8.)

14. On June 17, 2019, Mr. Shans responded to the Board's inquiry in writing, indicating that no criminal charges were filed based on his arrest. Mr. Shans provided letters from his attorney and the Los Angeles City Attorney's Office indicating the City Attorney declined to file criminal charges against him. (Exh. 9.)

Board Investigation

15. Anna Yamada testified at the hearing. She is currently employed by the Board as an Inspector. She has been an Inspector for the Board since 2008. She has been a licensed pharmacist in California since 1999. Her educational background and professional experience as a pharmacist are summarized in her curriculum vitae (C.V.), admitted as Exhibit 31.

16. Anna Brodsky testified at the hearing. She is currently employed by the Board as an Inspector. She has been an Inspector for the Board since 2019. Inspector Brodsky has been a licensed pharmacist in California since 2010. Her educational background and professional experience as a pharmacist are summarized in her C.V., admitted as Exhibit 32.

17. Inspector Yamada conducted the Board's investigation of the December 17, 2018, incident involving Mr. Shans and patient J.D. At the time she commenced the investigation, Inspector Yamada had reviewed the Arrest Report and was aware that no criminal charges were filed against Mr. Shans. At hearing, Inspector Yamada explained her investigation focused on whether Mr. Shans' conduct in performing a physical examination of patient J.D. was beyond the scope of practice for a pharmacist.

18. As part of the investigation, Inspector Yamada interviewed witnesses, including patient J.D. and Mr. Shans; obtained and reviewed police body camera video footage; obtained and reviewed pharmacy records; and obtained written statements from Mr. Shans. In addition, on October 10, 2019, Inspectors Yamada and Brodsky conducted an on-site inspection and complaint investigation at the Pharmacy.

19. Inspector Yamada prepared a written investigation report dated June 11, 2020, which summarized the information and evidence obtained during the investigation. (Exh. 10.) Inspector Yamada's written investigation report was considered pursuant to *Lake v. Reed*, *supra*. (See Factual Finding 7, above.) Inspector Brodsky prepared a written declaration of her observations at the Pharmacy on October 10, 2019. (Exh. 16.)

October 10, 2019, Complaint Investigation

20. On October 10, 2019, Inspectors Yamada and Brodsky made an unannounced visit to the Pharmacy to conduct a complaint investigation. Mr. Shans and pharmacy technician Arwzou Matinvar were present. The inspectors also conducted a routine inspection to verify compliance with pharmacy laws and regulations, discussed below.

21. During the October 10, 2019, investigation, Inspector Yamada explained to Mr. Shans that she and Inspector Brodsky were following up on an arrest notification received by the Board. Mr. Shans told the inspectors he recalled the incident with patient J.D. His statement to the inspectors is summarized in Inspector Yamada's written report. (Exh. 10, p. AG-74.)

22. Mr. Shans told the inspectors the Pharmacy primarily serviced a Spanish-speaking population, and he was fluent in Spanish. Mr. Shans told the inspectors that J.D. was a new patient to the Pharmacy. She came to the Pharmacy on December 17, 2018, with a stomachache and an antibiotic prescription, and she was grabbing her stomach. Mr. Shans stated patient J.D. complained of pain so he looked to see if there was a rash, but there was no rash. Mr. Shans stated he looked at and touched J.D.'s stomach through her shirt. Mr. Shans stated J.D. lifted her shirt and exposed her abdominal area. He looked for a rash but saw none. Mr. Shans stated he filled J.D.'s prescription and she left the Pharmacy. Mr. Shans told the inspectors, "Nothing else happened." (Exh. 10, p. AG-74.)

23. Mr. Shans told the inspectors the police came to the Pharmacy the day after the incident. He was surprised by the visit and claimed the police did not provide him with information about any specific complaint. Mr. Shans told Inspectors Yamada and Brodsky he did not do anything, but patient J.D. claimed he touched her inappropriately. Mr. Shans stated he had no further contact with J.D. after she left the Pharmacy. Mr. Shans told Inspector Yamada "he wanted to put the incident behind him because they were false claims." (Exh. 10, p. AG-75.)

24. During the October 10, 2019, investigation, Mr. Shans stated to the inspectors that only pharmacy staff are allowed to enter the back area of the Pharmacy where medications are stored. He stated he used the back room of the Pharmacy as his office. Inspector Yamada took photographs of the Pharmacy during the October 10, 2019, investigation. (Exh. 17.) At hearing, she explained that access to the back office required

passing through the area of the Pharmacy where the medication inventory was located. Inspector Yamada testified it was not appropriate for nonpharmacy staff to be in the medication area. Mr. Shans stated he conducts medication therapy management (MTM) and "brown bag reviews" of patient medications. He indicated such reviews are conducted at the Pharmacy's front counter, but sometimes he conducts reviews with patients in the back office. He denied performing any patient examinations in the office.

25. During the October 10, 2019, investigation, Mr. Shans repeatedly stated to the inspectors that patient J.D. never went into the back area of the Pharmacy or his office. Mr. Shans stated patient J.D. did not have a rash, and no ointment was purchased by or applied on J.D. When Inspector Yamada asked if he touched any part of patient J.D., Mr. Shans said, "the stomach." Mr. Shans denied that he told the police he examined patient J.D. or lowered her pants. When Inspector Yamada asked Mr. Shans if he ever recommended or prescribed an OTC product for patient J.D., Mr. Shans stated he could not recall.

26. During the October 10, 2019, investigation, at Inspector Yamada's request, Mr. Shans handwrote and signed a sworn statement regarding the incident with patient J.D. (Exh. 19.) In the statement, which is dated October 10, 2019, Mr. Shans claimed patient J.D. came to the Pharmacy complaining of abdominal pain and rash, she lifted her shirt to expose her abdominal area, and he saw no rash present on her stomach. He claimed an antibiotic was dispensed to patient J.D. and she never returned to or contacted the Pharmacy, and he never saw or spoke with J.D. again. Mr. Shans also claimed patient J.D. only stayed in the front OTC area of the Pharmacy and never came into the dispensing area or the back office. Mr. Shans claimed the police officers who came to the Pharmacy never told him the details of J.D.'s complaint or the specific allegations made against him.

Police Body Camera Video

27. Later in the day on October 10, 2019, after the visit to the Pharmacy was completed, Inspector Yamada spoke by telephone with LAPD Officer Tipping. Officer Tipping's

statements to Inspector Yamada were consistent with the summary of the incident in the Arrest Report. Officer Tipping informed Inspector Yamada that body camera video from the officers' interview of Mr. Shans was available.

28. On November 6, 2019, in response to an investigative subpoena, LAPD provided Inspector Yamada with a link for the body camera video from Officers Tipping and Perez showing their interviews and investigation of the incident involving Mr. Shans. Inspector Yamada downloaded and saved the videos on four DVDs. Inspector Yamada reviewed the videos and included summaries and transcriptions of the videos in her written report.

29. At hearing, respondents stipulated that Inspector Yamada's transcription of the police body camera video of Mr. Shans' interview with Officers Tipping and Perez on December 18, 2018, is true and accurate. (Exh. 10, pp. AG-82 to AG-88.) The body camera video of Mr. Shans' interview with the police confirmed he made statements to the police indicating the following:

A. Mr. Shans occasionally performs physical examinations of patients. When Officer Tipping asked Mr. Shans if he could do physical examinations, Mr. Shans said, "Yes, if they [patients] show me a rash or whatever I can definitely check those out yeah." (Exh. 10, p. AG-83.)

B. Mr. Shans pulled J.D.'s pants down to look for rashes on her abdomen. When Officer Tipping asked Mr. Shans if he pulled J.D.'s pants off, Mr. Shans responded, "I pulled her pants down to look at her abdominal area I guess." (Exh. 10, p. AG-87.) Officer Tipping then asked Mr. Shans, "How far down did you pull?" (*Ibid.*) Inspector Yamada's summary and transcription indicates Mr. Shans was outside the frame but could be seen "briefly gesturing with his hands to his hip area under his waist." (*Ibid.*) Mr. Shans stated he pulled down J.D.'s pants to see the "[r]ashes she was complaining about." (*Ibid.*)

C. Mr. Shans physically examined J.D. in the back office of the Pharmacy. Inspector Yamada's summary and transcription indicates Mr. Shans and the two officers

walked to the back office through the Pharmacy's drug dispensing area. Officer Perez then asked Mr. Shans, "Where do you do the check-up? In here?" (Exh. 10, p. AG-84.) Mr. Shans responded, "Yeah." (*Ibid.*) Officer Tipping asked Mr. Shans, "Is it normal for you to bring patients back here to do examinations?" (*Ibid.*) Mr. Shans responded, "As long as they are not in the medication area, that's ok." (*Ibid.*)

D. Mr. Shans checked J.D.'s stomach and back. After the two officers scrolled through the Pharmacy's video surveillance footage and located J.D., they asked Mr. Shans what type of examination he performed on J.D. Mr. Shans responded, "Okay, so I did check stomach, I did check her back, she was complaining of back pain as well." (Exh. 10, p. AG-85.) Officer Perez asked Mr. Shans, "You brought her in here [the back office] when you did all that?" (*Ibid.*) Mr. Shans said, "Correct." (*Ibid.*)

E. Mr. Shans palpitated J.D.'s stomach. Officer Tipping asked Mr. Shans, "Now when you do an examination like the one you did on her what do you typically do?" Mr. Shans responded, "I typically feel, palpitate, look for rashes." (Exh. 10, p. AG- 85.) When asked if he felt or saw anything on J.D., Mr. Shans indicated J.D. was bloated and had a little bit of rash on her stomach. (*Ibid.*)

F. Mr. Shans prescribed an OTC "pain cream" or ointment to J.D. (Exh. 10, pp. AG-83; AG-86.) He told the police he "gave" J.D. the ointment for free. (*Ibid.*)

30. Based on her review of the police body camera video, Inspector Yamada found inconsistencies between Mr. Shans' statements to the police and his statements to the Board's inspectors during the October 10, 2019, investigation.

A. Mr. Shans stated to Inspector Yamada he could not recall if he recommended or prescribed any OTC product to patient J.D. (Exh. 10, p. AG-76.) However, Mr. Shans told the police officers he gave patient J.D. an OTC "pain cream" or ointment along with her antibiotic prescription. (*Id.*, pp. AG-83, AG-86.)

B. Mr. Shans repeatedly stated to Inspectors Yamada and Brodsky that patient J.D. never went into the back area of the Pharmacy or his office. (*Id.*, p. AG-75, AG-77, AG-78; Exh. 16, p. AG-131.) However, Mr. Shans told the police officers that patient J.D. went into his back office, which was where he performed his examination of J.D. (Exh. 10, p. AG-84.)

C Mr. Shans stated to Inspector Yamada that he never examined patient J.D. (Exh. 10, p. AG-76.) However, Mr. Shans told the police officers that he examined patient J.D. in his back office and checked her stomach and back. (*Id.*, p. AG-83.)

D. Mr. Shans told Inspector Yamada that he never lowered J.D.'s pants. (Exh. 10, p. AG-76.) However, Mr. Shans told the police officers that he "pulled her pants down to look at her abdominal area" and, in the police body camera video, Mr. Shans is seen gesturing with his hands to his hip area under his waist. (*Id.*, p. AG-0087.)

Mr. Shans' Written Statements

31. As noted above, Mr. Shans provided the Board's inspectors with a sworn statement during the October 10, 2019, investigation. (Exh. 19.) Seven days later, Mr. Shans submitted a second written statement to the Board dated October 17, 2019. (Exh. 20.) In the second statement, which is unsworn, Mr. Shans claimed that J.D. came to the Pharmacy complaining of abdominal pain and a rash in her abdominal area, she lifted her shirt to show him her abdominal area, and then she asked Mr. Shans "for consultation in regards to the rash and abdominal pain, asking if the antibiotics prescribed will relieve her pain and remove the rash." (*Ibid.*) Mr. Shans wrote that no visible rash was noted and he consulted with J.D. "to seek her primary care physician for her complaints." (*Ibid.*)

32. On May 19, 2020, Inspector Yamada spoke with Mr. Shans and informed him she was issuing written notices of non-compliance for the following violations: (1) dispensing J.D.'s medication with incorrect dosage information and an incorrect prescription label; (2) making false and dishonest verbal and written statements to the Board's inspectors during the October 10, 2019, inspection, specifically that J.D. never entered the back area of the

Pharmacy, Mr. Shans never examined J.D., and Mr. Shans never touched or examined J.D. or lowered her pants; and (3) Mr. Shans performed a physical examination of J.D. and lowered her pants, which was beyond the scope of pharmacy practice.

33. Four months later, Mr. Shans submitted a third written statement dated September 17, 2020, addressed to Inspector Yamada. (Exh. 27.) In this statement, Mr. Shans noted that he successfully completed a three-day Professional Boundaries and Ethics course that took place virtually in September 2020. (See Exh. 105.) Mr. Shans claimed he took the course to better understand his boundaries, vulnerabilities, and risk factors as a community pharmacist in relation to his interactions with patient J.D. Mr. Shans acknowledged he should not have examined J.D.'s abdominal area and he accepted "full responsibility that [his] actions were wrong." (*Id.*, p. AG-171.) Mr. Shans admitted: "I crossed a professional boundary when JD asked me to examine her abdominal area and I touched her abdomen looking for a rash." (*Id.*) He also wrote, in part: "I now understand that I did cross a professional boundary with JD. If given the opportunity, I would deeply apologize to JD for having crossed this boundary." (*Id.*, p. AG-172.)

34. In the September 17, 2020, statement, Mr. Shans also admitted he was not truthful in his statements to Inspector Yamada regarding the incident with patient J.D., writing in part:

Inspector Yamada, when you asked me what happened, I was scared because I already knew it was wrong to have examined JD. I was not honest with you about what happened. I sincerely regret not being forthcoming with you. It was my duty to put the profession of pharmacy first, not myself, and tell the truth but I put myself first, and did not tell the truth.

(Exh. 27, p. AG-172.)

Scope of Pharmacy Practice

35. Based on her investigation, Inspector Yamada concluded that Mr. Shans conducted a physical examination of patient J.D. on December 17, 2018, which was beyond the scope of pharmacy practice. Inspector Yamada opined that Mr. Shans' lowering of J.D.'s pants to check for a rash was inappropriate behavior for a pharmacist and outside the scope of practice.

36. Inspector Yamada testified regarding the scope of pharmacy practice. Inspector Yamada explained that if a patient comes in complaining about a rash, a pharmacist does not do diagnosing but can make recommendations based on the symptoms reported by the patient. If the patient complains of a rash, it is appropriate for the pharmacist to ask questions about the symptoms, e.g., is the patient itching, and then recommend a product to address the symptoms. It is not appropriate for a pharmacist to diagnose the patient's condition. If, for example, a patient complains of a cough, it is appropriate for the pharmacist to ask about the patient's symptoms and recommend a cough syrup depending on the type of cough. It is not appropriate for the pharmacist to diagnose the patient's condition by, for example, listening to the patient's lungs or touching or feeling the patient.

37. Inspector Yamada testified that, while pharmacists are not permitted to diagnose conditions of patients, a pharmacist can do an assessment of the patient's condition by taking the patient's temperature, blood pressure, and pulse. On cross-examination, Inspector Yamada explained the difference between an assessment versus an examination of a patient. An assessment is a review and analysis of information, such as blood pressure, temperature, and pulse rate. An examination involves a physical examination of parts of the patient's body, which is not within the scope of pharmacy practice. If, for example, a patient has swelling, it is not appropriate for the pharmacist to touch the swollen part of the patient's body. The pharmacist can ask probing questions about the patient's symptoms and then recommend a product or medication to address the symptoms, e.g., an anti-inflammatory to

address the swelling. If the symptoms are more serious, the pharmacist refers the patient to a physician. If a patient with a rash wants to show it to the pharmacist, Inspector Yamada explained it is appropriate for the pharmacist to look at it. She explained that a pharmacist typically will not touch a rash because of the risk of contagion.

38. In Inspector Yamada's opinion, the four years of training required to obtain a Doctor of Pharmacy degree does not include training on how to conduct physical examinations of patients. Inspector Yamada is not aware of any continuing education courses that train pharmacists on performing physical examinations of patients.

39. Inspector Brodsky testified that conducting a physical examination of a patient is not appropriate for a pharmacist and is outside the scope of pharmacy practice. The purpose of a physical examination is to diagnose a condition.

40. Inspector Brodsky explained that patient consultation is within the realm of pharmacy. The regulations require a pharmacist to give consultation to a patient for a new prescription or when a patient asks for a consultation. Inspector Brodsky noted there are specific requirements for consultations. Inspector Brodsky explained that a consultation is a back-and-forth exchange of information between a patient and a pharmacist. For example, if the pharmacist is dispensing a new medication for the patient, the pharmacist must explain the medication and may ask if the patient knows why they are taking the medication.

41. Inspector Brodsky testified that a patient assessment is within the scope of pharmacy practice. An assessment involves a basic judgment on the facts or statements the patient presents to the pharmacist. For example, if a patient tells a pharmacist they have a rash and asks for a recommendation, the pharmacist makes an assessment of the information provided by the patient. Inspector Brodsky testified that 99 percent of the time a pharmacist never touches a patient. The pharmacist can ask probing questions to obtain further information, such as when did the rash start, how long has the patient had the rash, etc., and then typically OTC hydrocortisone is recommended. Inspector Brodsky opined that if a patient

raises her shirt to show a pharmacist a rash on her stomach, it is not necessary to bring the patient to a private location for a further examination if the pharmacist could already see the rash.

Fourth through Sixth Causes for Discipline

42. On October 10, 2019, Inspectors Yamada and Brodsky conducted a routine inspection to verify the Pharmacy's compliance with pharmacy laws and regulations. Inspector Yamada, in testimony, explained that Board inspectors typically conduct a routine inspection when visiting pharmacies that have not been inspected in the preceding three years.

43. The Fourth, Fifth, and Sixth Causes for Discipline in the Accusation are based on violations disclosed by the October 10, 2019, inspection. At hearing, respondents conceded and admitted that the factual allegations of the Fourth, Fifth, and Sixth Causes for Discipline are true. Both parties further stipulated that the Board issued orders of correction and respondents complied with all such orders.

44. A. The undisputed evidence established that Mr. Shans, while acting as the pharmacist-in-charge for the Pharmacy, failed to take an initial inventory of controlled substances when the Pharmacy first opened on February 7, 2017, and failed to conduct a biennial controlled substance inventory within two years of the initial inventory date, as required by 21 Code of Federal Regulations part 1304.11(b) and (c). (Accusation, ¶ 36, Fourth Cause for Discipline.)

B. During the October 10, 2019, inspection, Mr. Shans provided Inspector Yamada with a CII (Schedule II) perpetual inventory binder when she asked about the DEA biennial controlled substance inventory. Mr. Shans stated to the inspectors his belief that the recording of the acquisition and disposition of Schedule II medications in a Schedule II inventory binder satisfied the requirement for biennial inventory records. That was incorrect. Inspector Yamada had to explain to him that the biennial inventory was a federal law requirement and separate from the perpetual inventory count he was doing at the Pharmacy.

(See Exh. 16, p. AG-130; Exh. 10, p. AG-73.)

45. The undisputed evidence established that Mr. Shans, while working at the Pharmacy on December 17, 2018, incorrectly dispensed ciprofloxacin 500 milligram to patient J.D. to be taken once daily instead of twice daily as prescribed by the prescriber. (Accusation, ¶ 37, Fifth Cause for Discipline.)

46. The undisputed evidence established that Mr. Shans, while working at the Pharmacy on December 17, 2018, dispensed ciprofloxacin 500 milligrams to patient J.D. with an incorrect prescription label for use of the drug. The prescription label incorrectly stated the drug was to be taken once daily instead of twice daily as prescribed by the prescriber. (Accusation, ¶ 38, Sixth Cause for Discipline.)

Respondents' Other Evidence

47. Mr. Shans testified at the hearing and explained that he simply wanted to help patient J.D. At the time of the December 17, 2018, incident, Mr. Shans thought he was merely giving an opinion that was requested by J.D., which he thought was proper based on his education and training. Mr. Shans testified, at the time of his interview with the police, he believed he had done nothing wrong. But after speaking with the Board inspectors, he felt "guilty" about what he told the inspectors because he was not "forthcoming." That motivated him to enroll in a course on professional boundaries and ethics in September 2020, so he could better understand what he did wrong with patient J.D. (See Exh. 105.) Mr. Shans testified he wrote his September 17, 2020, letter to apologize to Inspector Yamada and the Board for "not being completely forthcoming" and to better explain his interaction with patient J.D. (Exh. 27.)

48. Mr. Shans testified that patient J.D. asked him for a consultation about a rash and pain in her abdominal area. Mr. Shans testified J.D. "clearly mentioned" a rash and pain. This was at the front counter of the Pharmacy. He testified J.D. voluntarily lifted her shirt to show her abdominal area. Mr. Shans did not see a rash. Mr. Shans testified J.D. asked if he could

take a closer look and she asked for privacy. Mr. Shans testified that J.D. walked ahead of him to the back of the Pharmacy. Mr. Shans testified the door to the back office was open and J.D. could have left the office at any time. Mr. Shans testified J.D. lowered her pants and then he adjusted them so he could view her stomach. He did not see anything he would call a rash. Mr. Shans testified that the interaction with J.D. in the back office of the Pharmacy lasted less than one minute.

49. Mr. Shans testified he does not recall if he told the police he prescribed medications. Mr. Shans testified he does not prescribe medications but only recommends OTC products, which is something he does regularly. For example, if a patient has a rash on their face or hands, he will inspect and look at it to determine the correct OTC product to recommend for the patient.

50. Mr. Shans testified he had a criminal attorney at the time of the October 10, 2019, inspection and complaint investigation by Inspectors Yamada and Brodsky. Mr. Shans testified he "mentioned" to the inspectors he wanted to speak with his criminal attorney. Mr. Shans testified that, at the time he gave his statement to the inspectors at the October 10, 2019, inspection, he felt he was "under pressure" from having two inspectors walk in and interrogate him. He was scared and shocked. Mr. Shans admitted, in his testimony, he was not honest with the Board inspectors about touching patient J.D. and bringing her to the back office. Mr. Shans explained he felt the "pressure of the time" and did not want to speak with the inspectors because of his criminal attorney's recommendation that he not discuss the case with anyone. On cross-examination, Mr. Shans admitted neither of the Board's inspectors dissuaded him from contacting his attorney.

51. Fred G. Weissman testified as an expert witness for respondents. Mr. Weissman previously worked for the University of Southern California School of Pharmacy before retiring on June 30, 2021. His qualifications are summarized in his C.V., admitted as Exhibit 106. Mr. Weissman was originally licensed as a pharmacist in California in 1963. Mr. Weissman also

graduated with a law degree from Loyola Law School, which he attended from 1985 to 1989.

52. Mr. Weissman testified the only document he reviewed for his testimony was the Accusation. He did not review the Arrest Report for Mr. Shans' arrest or the Board's investigation report prepared by Inspector Yamada.

53. Mr. Weissman testified that it is sometimes acceptable for a pharmacist to have contact with a patient, for example, when taking the patient's blood pressure or giving an injection. Mr. Weissman testified if a patient voluntarily shows an area of their body to a pharmacist, the pharmacist is allowed to evaluate the condition "within reasonable boundaries." If the rash is in the patient's vaginal area, the pharmacist should not get involved. If the rash is on the patient's abdominal area, whether the pharmacist should evaluate depends on where the rash is located on the abdomen. Mr. Weissman opined there was nothing wrong with Mr. Shans providing a pain cream to patient J.D., based on his assessment of her condition.

54. On cross-examination, Mr. Weissman was asked if changes in pharmacy law have expanded the scope of pharmacy practice to allow a pharmacist to perform a physical examination of a patient's body. Mr. Weissman testified he would not say a physical examination is permitted, but he would say evaluation or assessment of a condition is permitted. Mr. Weissman explained a pharmacist may assess a condition by looking at it and evaluating it in order to advise the patient about an OTC medication or to refer the patient to their doctor.

55. Mr. Weissman testified that touching is appropriate within reasonable boundaries. Mr. Weissman testified it is a judgment call for a pharmacist to determine how to evaluate and assess a patient's complaint about their condition. Mr. Weissman was asked if there was anything wrong with a pharmacist placing their hand on the stomach of a patient complaining of abdominal pain. Mr. Weissman opined that if the patient said their stomach really hurt, the pharmacist could assess by placing the back of their hand or palm on the

patient's stomach to see if there is excessive warmth, which could be indicative of infection. Whether merely asking the patient about their symptoms is a sufficient assessment is a "judgment call" by the pharmacist. Mr. Weissman explained that a pharmacist must exercise their judgment to determine if the assessment should be done in a private area, as opposed to a more public area of a pharmacy. Mr. Weissman opined that Mr. Shans used his best judgment during the December 17, 2018, incident with patient J.D.

56. A. Mr. Shans presented two character reference letters. One letter is dated March 2, 2022, by Omid Matinvar, Pharm.D. (Exh. 101.) The other letter is dated March 3, 2022, by Rabbi Shimon Mahpari. (Exh. 102.)

B. Mr. Matinvar has known Mr. Shans for 25 years as a friend and pharmacist colleague. In his letter, Mr. Matinvar wrote: "I also have worked as a pharmacist myself with Behshad on many occasions and have observed how he approaches each patient as an individual, with kindness and compassion." (Exh. 101.) In his letter, Rabbi Mahpari described Mr. Shans as an "outstanding and very active member of our community," and commended Mr. Shans for his service to the community, both in the temple and outside, especially to those less fortunate and in need. Rabbi Mahpari further wrote: "I can personally attest that Behshad is kind hearted, caring and a true professional." (Exh. 102) Neither Mr. Matinvar nor Rabbi Mahpari make reference to the incident with patient J.D., or Mr. Shans' efforts at rehabilitation, in their letters.

57. Mr. Shans presented certificates of completion for three courses. He completed a three-day course titled, "PBI Professional Boundaries and Ethics Course," on September 14-16, 2020. (Exh. 105.) In March 2022, Mr. Shans completed a course titled, "Creating a Culture of Safety in the Pharmacy: Reducing Medication Errors," and another course titled, "Balancing Accountability and Patient Safety in a Just Culture." (Exhs. 103, 104.)

Cost Recovery

58. The Board incurred reasonable costs in the investigation (\$13,305.25) and enforcement (\$13,225) of the case, in the total amount of \$26,530.25. (Exhs. 3, 4.)

59. Mr. Shans testified he is the sole financial support for his family, consisting of his wife and their three minor children who range in age from five months old to eight years old. Mr. Shans' wife stays at home to care for their five-month-old baby. Mr. Shans also takes care of his elderly parents. Mr. Shans has no other source of income besides the Pharmacy.

LEGAL CONCLUSIONS

Legal Principles

1. Complainant has the burden of proving by clear and convincing evidence to a reasonable certainty that respondent Shans engaged in the misconduct alleged in the Accusation. (*Sternberg v. California State Board of Pharmacy* (2015) 239 Cal.App.4th 1159, 1171, citing *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-856 [the standard of proof applicable to the discipline of professional licenses is "*clear and convincing proof to a reasonable certainty*"], italics in original.) "The courts have defined clear and convincing evidence as evidence which is so clear as to leave no substantial doubt and as sufficiently strong to command the unhesitating assent of every reasonable mind. [Citations.] It has been said that a preponderance calls for probability, while clear and convincing proof demands a *high probability* [citations]." (*In re Terry D.* (1978) 83 Cal.App.3d 890, 899, italics original.) Unlike professional licenses, the appropriate burden of proof against a facility or other site license is a preponderance of the evidence. (*See In the Matter of the Third Amended Accusation against IV Solutions, Inc., Alireza Varastehpour, President and Renee Sadow*, Case No. 3606, OAH No 2011050988 (*IV Solutions*).) The Board has designated the standard of proof discussion in *IV Solutions* case as a precedential decision. (See [Precedential Decisions - California State Board of Pharmacy](#).)

2. Pursuant to Business and Professions Code (Code) section 4300, subdivision (a), every license issued by the Board may be suspended or revoked.

3. Code section 4036.5 defines "pharmacist-in-charge" to mean "a pharmacist proposed by a pharmacy and approved by the Board as the supervisor or manager responsible for ensuring the pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy."

4. Code section 4113, subdivision (c), provides: "The pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy."

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

6. Code section 4301 provides, in pertinent part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, any of the following:

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

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

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

(o) Violating or attempting to violate, directly or indirectly, 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.

7. Code section 4306.5, subdivision (a), provides that unprofessional conduct for a pharmacist also includes: "Acts or omissions that involve, in whole or in part, the inappropriate exercise of his or her education, training, or experience as a pharmacist."

8. Under Government Code section 11513, subdivision (d), hearsay evidence, when objected to and not otherwise admissible, may be used to supplement or explain other evidence but may not, by itself, support a factual finding. This is often referred to as "administrative hearsay." Therefore, evidence that is not hearsay can be used for any purpose, but evidence that is administrative hearsay can only be used for these limited purposes.

Scope of Pharmacy Practice

9. The Legislature has declared "the practice of pharmacy to be a profession," and "pharmacists are health care providers who have the authority to provide health care services." (Code § 4050, subds. (a), (c).) "Pharmacy practice is a dynamic, patient-oriented health service that applies a scientific body of knowledge to improve and promote patient health by means of appropriate drug use, drug-related therapy, and communication for clinical and consultative purposes. Pharmacy practice is continually evolving to include more sophisticated and comprehensive patient care activities." (Code § 4050, subd. (b).)

10. Code section 4052, subdivision (a), sets forth the permitted functions for pharmacists, and limitations, in pertinent part, as follows:

Notwithstanding any other law, a pharmacist may:

- (1) Furnish a reasonable quantity of compounded drug product to a prescriber for office use by the prescriber.
- (2) Transmit a valid prescription to another pharmacist.

(3) Administer drugs and biological products that have been ordered by a prescriber.

(4) Perform procedures or functions in a licensed health care facility as authorized by Section 4052.1.

Perform procedures or functions as part of the care provided by a health care facility, a licensed home health agency, a licensed clinic in which there is a [sic] physician oversight, a provider who contracts with a licensed health care service plan, or a physician, as authorized by Section 4052.2.

(5) Perform procedures or functions as authorized by Section 4052.6 [advanced practice pharmacist].

(6) Manufacture, measure, fit to the patient, or sell and repair dangerous devices, or furnish instructions to the patient or the patient's representative concerning the use of those devices.

(7) Provide consultation, training, and education to patients about drug therapy, disease management, and disease prevention.

(8) Provide professional information, including clinical or pharmacological information, advice, or consultation to other health care professionals, and participate in multidisciplinary review of patient progress, including appropriate access to medical records.

(9) Furnish the medications described in paragraph (A) [i.e., specified contraception, nicotine replacement products, medications for individuals traveling outside the United States, and specified HIV prophylaxis] in accordance with paragraph (B).

(10) Administer immunizations pursuant to a protocol with a prescriber.

(11) Order and interpret tests for the purpose of monitoring and managing the efficacy and toxicity of drug therapies.

11. A pharmacist who is recognized by the Board as an “advanced practice pharmacist” may also perform the functions specified in Code section 4052.6, subdivision (a), which provides in pertinent part:

A pharmacist recognized by the board as an advanced practice pharmacist may do all of the following:

- (1) Perform patient assessments.
- (2) Order and interpret drug therapy-related tests.
- (3) Refer patients to other health care providers.
- (4) Participate in the evaluation and management of diseases and health conditions in collaboration with other health care providers.
- (5) Initiate, adjust, or discontinue drug therapy in the manner specified in [Section 4052.2, subdivision (a)(4)].

12. A pharmacist who seeks to be recognized by the Board as an advanced practice pharmacist must satisfy all the requirements under Code section 4210, subdivision (a)(1) through (4). The pharmacist must hold a valid license in good standing issued by the Board, file an application with the Board, and pay the applicable fee. (Code § 4210, subd. (a)(1), (3), (4).) In addition, the pharmacist must also satisfy two out of the three criteria specified in subdivision (a)(2), which are: (A) Earn certification in a relevant area of practice as specified in the statute; (B) Complete a postgraduate residency at an accredited postgraduate institution where at least 50 percent of the experience includes the provision of direct patient care services with interdisciplinary teams; and (C) Have provided clinical services to patients for at least one year under a collaborative practice agreement or protocol as specified in the statute.

Causes for Disciplinary Action

FIRST CAUSE FOR DISCIPLINE

13. Respondents are subject to disciplinary action pursuant to Code section 4301,

subdivision (f), for unprofessional conduct, in that Mr. Shans, while acting as the pharmacist-in-charge for the Pharmacy, committed acts involving dishonesty and deceit by performing an inappropriate physical examination of patient J.D. at the Pharmacy on December 17, 2018, and then making false and dishonest statements about the examination to Board Inspectors, based on Factual Findings 5-12, 21-26, and 29-41.

14. Mr. Shans' examination of patient J.D.'s stomach and back, in the back office of the Pharmacy, and pulling down her pants to examine her stomach was outside the scope of permitted functions for pharmacists and, therefore, inappropriate. The physical examination of a patient's body, including touching or palpating the patient's stomach, generally is not specifically enumerated in the permitted functions for a pharmacist in Code section 4052. However, the pharmacy profession is evolving, and certain physical examinations may be permissible under the terms of a collaborative practice agreement, a state protocol, or pursuant to Code section 4052.1 for a pharmacist acting as part of a health care treatment team in a hospital facility. A pharmacist may ask probing questions of the patient regarding their symptoms and then either (1) recommend an OTC product to address the symptoms or (2) refer the patient to contact a physician. Here, Mr. Shans did more than ask questions of patient J.D. regarding her symptoms. He conducted a physical examination of her stomach and back, in a private back room, that included touching or palpating her stomach after lowering her pants to view her stomach. He then made false and dishonest statements to the Board's inspectors who investigated the incident. The Board also is concerned that J.D., as a new patient to the pharmacy, may not have known that she could decline such a physical examination in order to obtain her prescribed antibiotic. The totality of Mr. Shans' conduct exceeded his scope of practice and constituted unprofessional conduct..

15. Moral turpitude has generally been held to mean a general "'readiness to do evil' i.e., an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule

of right and duty between man and man." (*People v. Mansfield* (1988) 200 Cal. App.3d 82, 87.) Sexual battery has been held to be a crime of moral turpitude. (*People v. Chavez* (2000) 84 Cal.App.4th 25, 29-30.) Here, complainant's evidence was insufficient to establish that Mr. Shans' physical examination of patient J.D. involved moral turpitude. Patient J.D. did not testify at this hearing. Her statements to the police and Inspector Yamada, documented in written reports, are hearsay and insufficient to establish that Mr. Shans touched her inappropriately on December 17, 2018, as she claimed. Mr. Shans' physical examination was inappropriate because it exceeded the scope of pharmacy practice. The evidence presented was not sufficient to establish his conduct involved moral turpitude.

SECOND CAUSE

16. Respondents are subject to disciplinary action pursuant to Code sections 4301, 4306.5, subdivision (a), and 4052, in that Mr. Shans inappropriately exercised his pharmacist education, training, and experience by performing an inappropriate physical examination of patient J.D. at the Pharmacy on December 17, 2018, based on Factual Findings 5-12, 21-26, 29-30, 31-34, 35-41, and 51-55.

17. The physical examination performed by Mr. Shans on patient J.D. on December 17, 2018, is not encompassed within the permitted functions of a pharmacist specified in Code section 4052. The opinion of respondents' expert witness, that Mr. Shans used his best judgment with patient J.D., was not persuasive and entitled to little weight. The expert's opinion was based solely on his review of the Accusation, as he did not review the Arrest Report or the Board's investigation report. Further, Mr. Shans cannot justify the examination as a "patient assessment" authorized under Code section 4052.6 because he is not licensed by the Board as an advanced practice pharmacist.

THIRD CAUSE

18. Respondents are subject to disciplinary action pursuant to Code section 4301, subdivision (g), in that Mr. Shans knowingly made false and dishonest statements to the

Board's inspectors about his physical examination of patient J.D. on December 17, 2018, based on Factual Findings 9-12, 20-26, 29-30, 34, and 47.

19. On October 10, 2019, Mr. Shans told the Board's inspectors patient J.D. never entered the medication area or his office in the back of the Pharmacy, and he never examined J.D. or lowered her pants. Mr. Shans also provided a written statement to the inspectors in which he claimed patient J.D. stayed in the front OTC area of the Pharmacy and never came into the dispensing area or his back office. Mr. Shans knew his statements to the Board's inspectors were false and dishonest, because during his interview with the police on December 18, 2018, the day after the incident, he told the police he performed an examination of patient J.D. in the back office of the Pharmacy, he examined J.D.'s stomach and back, he lowered her pants to view her abdominal area, and he touched and palpitated her stomach. Mr. Shans has since admitted he was not honest and forthcoming in his statements to Inspector Yamada.

FOURTH CAUSE

20. Respondents are subject to disciplinary action pursuant to Code sections 4081, subdivision (a), 4113, subdivision (c), 4300, 4301, subdivisions (j) and (o), 4302, and 4332, in conjunction with 21 Code of Federal Regulations part 1304.11(b) and (c), in that Mr. Shans, while acting as the pharmacist-in-charge for the Pharmacy, failed to take an initial inventory of controlled substances when the Pharmacy opened on February 7, 2017, and failed to conduct a biennial controlled substance inventory within two years of the initial inventory date, based on respondents' stipulation and Factual Findings 2-4 and 42-44.

FIFTH CAUSE

21. Respondents are subject to disciplinary action pursuant to Code sections 4113, subdivision (c), 4300, 4301, subdivisions (j) and (o), and 4302, in conjunction with California Code of Regulations, title 16, section 1716, in that Mr. Shans, while working at the Pharmacy on December 17, 2018, incorrectly dispensed ciprofloxacin 500 milligram to patient J.D. to be

taken once daily instead of twice daily as prescribed by the prescriber, based on respondents' stipulation and Factual Findings 2-4, 42, 43, and 45.

SIXTH CAUSE

22. Respondents are subject to disciplinary action pursuant to Code sections 4076, subdivision (a)(2), 4077, subdivision (a), 4113, subdivision (c), 4300, 4301, subdivisions (j) and (o), and 4302, in that Mr. Shans, while working at the Pharmacy on December 17, 2018, dispensed ciprofloxacin 500 milligram to patient J.D. with an incorrect prescription label for use of the drug, which incorrectly stated the drug was to be taken once daily instead of twice daily as prescribed by the prescriber, based on respondents' stipulation and Factual Findings 2-4, 42, 43, and 46.

Level of Discipline

23. The objective of a license disciplinary proceeding is to protect the public, the licensed profession or occupation, maintain integrity, high standards, and preserve public confidence in licensed professionals. (*E.g., Camacho v. Youde* (1975) 95 Cal.App.3d 161, 165; *Clerici v. Dept. of Motor Vehicles* (1990) 224 Cal.App.3d, 1016, 1030-1031.) Administrative proceedings to revoke, suspend or impose discipline on a professional license are noncriminal and nonpenal; they are not intended to punish the licensee, but rather to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 785-786.)

24. As cause for discipline against respondents' permit and license have been established, respondents bear the burden to prove sufficient rehabilitation to warrant their continued licensure. (See, *Martin v. Alcoholic Beverage Control Appeals Bd.* (1950) 52 Cal.2d 259, 264-265.)

25. The Board's Disciplinary Guidelines (Rev. 2/2017) (Guidelines) are incorporated by reference in the Board's regulations at California Code of Regulations, title 16, section 1760.

26. The Guidelines include a list of disciplinary factors to be considered when determining the level of penalty to be imposed in a given case. The factors include: actual or potential harm to the public or to any consumer; prior disciplinary record; prior warnings; number and variety of current violations; nature and severity of the act(s) or offense(s) under consideration; aggravating evidence; mitigating evidence; rehabilitation evidence; time passed since the act(s) or offense(s); whether the conduct was intentional or negligent, or demonstrated incompetence; financial benefit to the respondent from the misconduct; and other licenses held by the respondent and the license history of those licenses.

27. A. The Guidelines classify categories of violations and recommended penalties as Category I, II, III, or IV. The categories are arranged in ascending order from the least serious (Category I) to the most serious (Category IV), although any single violation in any category, or any combination of violations in one or more categories, may merit revocation. The categories assume a single violation. However, for multiple violations, the appropriate penalty shall increase accordingly. If an individual has committed violations in more than one category, the minimum and maximum penalties shall be for those recommended in the highest category.

B. Category I discipline is recommended for violations that are less serious than Category II through IV but are potentially harmful. These may include violations of recordkeeping, scope of practice, or inventory control requirements, and violations resulting from the misuse of education or licensing privileges.

C. Category II discipline is recommended for violations with serious potential for harm; violations involving disregard for public safety or for the laws or regulations pertaining to pharmacy; and violations that reflect on ethics, competence, or diligence. These may include repeat or serious violation(s) of recordkeeping, scope of practice, or inventory requirements; failure to meet compliance requirements, including pharmacist-in-charge designation and duties; violations of law governing controlled substances or dangerous drugs;

violating laws and regulations governing pharmacy; and violations resulting from the misuse of education or licensing privileges.

D. Category III discipline is recommended for violations where the potential for harm is greater, more imminent, or more serious than it is for Category II violations. Category IV discipline is recommended for the most serious violations of laws or regulations pertaining to pharmacy and/or the dispensing or distributing of controlled substances or dangerous drugs or devices.

28. Based on consideration of the Guidelines, the appropriate level of discipline in this case is a stayed revocation and three years' probation, with the optional condition of a course of remedial education related to the violations over the course of probation.

29. Mr. Shans' inappropriate physical examination caused actual harm to patient J.D., in that she felt compelled to make a police report regarding the incident. However, the evidence was insufficient to establish the nature and extent of the harm. Mr. Shans created a risk of potential harm to patient J.D. by dispensing her medications with incorrect instructions and labeling. Mr. Shans also created a risk of potential harm to the public, as his false and dishonest statements to the Board's inspectors undermined the Board's ability to ensure public protection through verifying and enforcing the Pharmacy's compliance with pharmacy laws and regulations. The Board must be able to rely on its licensees to be honest and truthful in all matters related to their licensure. Mr. Shans has acknowledged and apologized for his false and dishonest statements to the Board and its inspectors.

30. Mr. Shans performed an inappropriate physical examination of patient J.D., and then made false and dishonest statements to the Board's inspectors about it. These violations appear to be an isolated incident involving one patient. There is no evidence of Mr. Shans engaging in similar misconduct either prior to or subsequent to the December 17, 2018, incident with patient J.D. Respondents have no history of prior discipline or prior warnings with the Board. Respondents stipulated to the truth of the violations alleged in the Fourth

through Sixth Causes for Discipline, which involve compliance with inventory requirements for controlled substances and incorrect instructions and labeling for one patient's, J.D.'s, prescription. No evidence was presented that these relatively minor violations are part of a pattern of on-going violations. Complainant stipulated respondents have corrected these violations.

31. Mr. Shans demonstrated incompetence by his inappropriate physical examination of patient J.D., which was outside the scope of pharmacy practice. The Board's regulations do not include a definition for the term "incompetence." However, by analogy, the regulations governing nursing practice are instructive and provide guidance as to the plain meaning of the term. The nursing regulations define the term "incompetence" as the failure to exercise the degree of learning, skill, care, and experience ordinarily possessed and exercised by a competent nurse. (Cal. Code Regs., tit. 16, §§ 1443, 2520.) In this case, the evidence was clear and convincing that, by performing a physical examination of patient J.D., Mr. Shans failed to exercise the degree of learning, skill, care, and experience ordinarily possessed and exercised by a competent pharmacist and pharmacy owner.

32. Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Mere remorse does not demonstrate rehabilitation but can be considered as a mitigating factor. (*In re Demergian* (1989) 48 Cal.3d 284, 296.) Moreover, the evidentiary significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.) A truer indication of rehabilitation is sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.)

33. In this case, Mr. Shans has accepted responsibility and expressed remorse for his misconduct involving patient J.D. He has acknowledged his physical examination of J.D. was wrong and exceeded professional boundaries. He voluntarily completed a three-day virtual

course on professional boundaries and ethics which helped him understand the wrongfulness of his conduct with patient J.D. He has also apologized and accepted responsibility for his false and dishonest statements to the Board and to Inspector Yamada regarding the examination. Mr. Shans complied with the Board's orders of correction for the violations related to the controlled substances inventories and incorrect prescription dispensing and labeling. No evidence was presented of Mr. Shans engaging in subsequent, similar misconduct, or any complaints being made against him, since the incident with patient J.D. Based on the totality of the record, a period of probation is appropriate in this case.

34. Mr. Shans' violations in this case are appropriately classified as Category II violations. The recommended discipline for Category II violations ranges from a stayed revocation with three years' probation (five years for drug or alcohol related misconduct) to revocation.

35. In this case, a three-year period of probation under the Board's standard terms and conditions, with the optional conditions, including remedial education will ensure public protection. Because of Mr. Shans voluntary actions after this incident, including taking an ethics class and contemplating personal boundaries, the Board does not believe that a suspension of either Respondent's license is necessary for public protection. Rather, given Mr. Shans position with the respondent pharmacy, a suspension even for a short time could negatively impact operations of the pharmacy and services to patients of the pharmacy. The Board does believe, however, that a remedial education program related to the violations in the Accusation will help ensure Mr. Shans correctly understands his duties and responsibilities as a licensed pharmacist over time.

36. Condition 8 (Restrictions on Supervision and Oversight of Licensed Facilities) in the Order below uses the "Option 2" language from the Guidelines to allow Mr. Shans to continue as the pharmacist-in-charge of the Pharmacy. Mr. Shans' violations in this case are not related to his supervision or oversight of the Pharmacy's operations but, rather, stem from

a single incident of misconduct with patient J.D. and then making dishonest statements about it to the Board's inspectors.

37. As requested in the Accusation, the Order below includes the prohibition under Code section 4307, subdivision (a), but modified to exclude the Pharmacy. The Order below also includes Optional Condition 36 from the Guidelines (No Ownership or Management of Licensed Premises), using the alternative language, modified to allow Mr. Shans to continue his existing ownership of the Pharmacy.

Cost Recovery

38. Pursuant to Business and Professions Code section 125.3, subdivision (a), a licensee found to have committed a violation of the applicable licensing law may be directed to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

39. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. Those factors include: (1) the licentiate's success in getting the charges dismissed or reduced; (2) the licentiate's subjective good faith belief in the merits of his or her position; (3) whether the licentiate raised a colorable challenge to the proposed discipline; (4) the licentiate's financial ability to pay; and (5) whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Zuckerman v. Board of Chiropractic Examiners, supra*, 29 Cal.4th at p. 45.)

40. The ALJ found that cause existed to direct respondents, jointly and severally, to pay the reasonable cost of investigation and enforcement of this matter pursuant to Business and Professions Code section 125.3. The ALJ found that the reasonable cost of the investigation and enforcement of this matter was \$26,530.25. (Factual Finding 58.) The ALJ also found that Respondents' evidence was insufficient to justify a reduction in costs because

there was no showing of income and expense information for Mr. Shans and the Pharmacy. Respondents shall pay the costs, ordered by the ALJ, as a condition of probation set forth in the Order below.

ORDER

A. Respondent Behshad Shans

License Number RPH 75742, issued to Behshad Shans (respondent Shans), is revoked; however, the revocation is stayed and respondent Shans is placed on probation for three years upon the following terms and conditions:

1. OBEY ALL LAWS

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

Respondent Shans 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 Shans' 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 Shans 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 Shans shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation.

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

3. INTERVIEW WITH THE BOARD

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

4. COOPERATE WITH BOARD STAFF

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

Failure to timely cooperate shall be considered a violation of probation.

5. CONTINUING EDUCATION

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

6. REPORTING OF EMPLOYMENT AND NOTICE TO EMPLOYERS

During the period of probation, respondent Shans shall notify all present and prospective employers of the decision in case number 7130 (OAH number 2021100491) and the terms, conditions and restrictions imposed on respondent Shans by the decision, as follows:

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

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent Shans undertaking any new employment, respondent Shans shall cause (a) his direct supervisor, (b) his pharmacist-in-charge, designated representative-in-charge, responsible manager, or other compliance supervisor, and (c) the owner or owner representative of his employer, to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 7130 (OAH number

2021100491), and terms and conditions imposed thereby. If one person serves in more than one role described in (a), (b), or (c), the acknowledgment shall so state. It shall be respondent Shans' responsibility to ensure that these acknowledgment(s) are timely submitted to the board. In the event of a change in the person(s) serving the role(s) described in (a), (b), or (c) during the term of probation, respondent Shans shall cause the person(s) taking over the role(s) to report to the board in writing within fifteen (15) days of the change acknowledging that he or she has read the decision in case number 7130 (OAH number 2021100491), and the terms and conditions imposed thereby.

If respondent Shans works for or is employed, by or through, an employment service, respondent Shans 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 7130 (OAH number 2021100491), and the terms and conditions imposed thereby in advance of respondent Shans commencing work at such licensed entity. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent Shans undertaking any new employment by or through an employment service, respondent Shans 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 7130 (OAH number 2021100491), and the terms and conditions imposed thereby. It shall be respondent Shans' responsibility to ensure that these acknowledgment(s) are timely submitted to the board.

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

"Employment" within the meaning of this provision includes any full-time, part-time, temporary, relief, or employment/management service position as a pharmacist, or any

position for which a pharmacist license is a requirement or criterion for employment, the respondent is an employee, independent contractor or volunteer.

7. NOTIFICATION OF CHANGE(S) IN NAME, ADDRESS(ES), OR PHONE NUMBER(S)

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

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

8. RESTRICTIONS ON SUPERVISION AND OVERSIGHT OF LICENSED FACILITIES

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

9. REIMBURSEMENT OF BOARD COSTS

As a condition precedent to successful completion of probation, respondent Shans and Respondent Pharmacy (defined below), jointly and severally, shall pay to the board its costs of investigation and prosecution in the amount of \$26,530.25. Respondent Shans and Respondent Pharmacy shall be permitted to pay these costs in a payment plan approved by the board or its designee, so long as full payment is completed no later than one (1) year prior to the end date of probation. There shall be no deviation from the payment schedule absent prior written approval by the board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

10. PROBATION MONITORING COSTS

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

11. STATUS OF LICENSE

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

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

12. LICENSE SURRENDER WHILE ON PROBATION/SUSPENSION

Following the effective date of this decision, should respondent Shans cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of

probation, respondent Shans may relinquish his 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 Shans 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 Shans' license history with the board.

Upon acceptance of the surrender, respondent Shans shall relinquish his pocket and/or wall license, including any indicia of licensure not previously provided to the board within ten (10) days of notification by the board that the surrender is accepted if not already provided.

Respondent Shans may not reapply for any license from the board for three (3) years from the effective date of the surrender. Respondent Shans shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board, including any outstanding costs.

13. PRACTICE REQUIREMENT – EXTENSION OF PROBATION

Except during periods of suspension, respondent Shans shall, at all times while on probation, be employed as a pharmacist in California for a minimum number of 80 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 Shans must nonetheless comply with all terms and conditions of probation, unless respondent Shans receives a waiver in writing from the board or its designee.

If respondent Shans does not practice as a pharmacist in California for the minimum number of hours in any calendar month, for any reason (including vacation), respondent Shans shall notify the board in writing within ten (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 Shans will resume practice at the required level. Respondent Shans shall further notify the board in writing within ten (10) days following the next calendar month during which respondent Shans practices as a pharmacist in California for the minimum of hours. Any failure to timely provide such notification(s) shall be considered a violation of probation.

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

14. VIOLATION OR PROBATION

If respondent Shans has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent Shans, and the board shall provide notice to respondent Shans 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 Shans violates probation in any respect, the board, after giving respondent Shans 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 Shans 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 Shans' license will be fully restored.

16. BUSINESS AND PROFESSIONS CODE SECTION 4307 PROHIBITION

Pursuant to Business and Professions Code section 4307, subdivision (a), respondent Shans is prohibited from serving as a manager, administrator, owner, member, officer, director, associate, partner, or in any other position with management or control of a licensee of the board other than Laurel Care Pharmacy, Inc. dba Laurel Care Pharmacy, for as long as his license remains on probation. Violation of this prohibition shall be considered a violation of probation.

17. NO OWNERSHIP OR MANAGEMENT OF LICENSED PREMISES

Respondent Shans shall not acquire any new ownership, legal or beneficial interest nor serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any additional business, firm, partnership, or corporation licensed by the board. However, since respondent Shans currently owns or has any legal or beneficial interest in, or serves as a manager, administrator, member, officer, director, trustee, associate, or partner of a business, firm, partnership, or corporation currently licensed by the board, namely Laurel Care Pharmacy Inc. dba Laurel Care Pharmacy, respondent Shans may continue to serve in such capacity or hold that interest, but only to the extent of that position or interest as of the effective date of this decision and in compliance with the other conditions of probation. Violation of this restriction shall be considered a violation of probation.

18. REMEDIAL EDUCATION

Within sixty (60) days of the effective date of this decision, respondent Shans shall submit to the board or its designee, for prior approval, an appropriate program of remedial education in subject areas related to the causes for disciplinary action contained in the Accusation. The program of remedial education shall consist of a minimum of 40 hours and shall be completed before the end of the probationary period at respondent Shans' own expense. All remedial education shall be in addition to, and shall not be credited toward,

continuing education (CE) courses used for license renewal purposes for pharmacists.

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

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

B. Respondent Laurel Care Pharmacy Inc. dba Laurel Care Pharmacy

License number PHY 55503, issued to respondent Laurel Care Pharmacy Inc. dba Laurel Care Pharmacy, is revoked; however, the revocation is stayed and respondent is placed on probation for three years on the following terms and conditions:

1. DEFINITION: RESPONDENT PHARMACY

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

2. OBEY ALL LAWS

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

Respondent Pharmacy 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; or discipline, citation, or other 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 or distributing, billing, or charging for any dangerous drug, and/or dangerous device or controlled substance.

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

3. REPORT TO THE BOARD

Respondent Pharmacy 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 Pharmacy shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation.

Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the board.

4. INTERVIEW WITH THE BOARD

Upon receipt of reasonable prior notice, Respondent Pharmacy shall appear in person

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

5. COOPERATE WITH BOARD STAFF

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

6. REIMBURSEMENT OF BOARD COSTS

As a condition precedent to successful completion of probation, Respondent Pharmacy and respondent Shans (defined above), jointly and severally, shall pay to the board its costs of investigation and prosecution in the amount of \$26,530.25.

Respondent Pharmacy and respondent Shans shall be permitted to pay these costs in a payment plan approved by the board or its designee, so long as full payment is completed no later than one (1) year prior to the end date of probation. There shall be no deviation from the payment schedule absent prior written approval by the board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

7. PROBATION MONITORING COSTS

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

deadline(s) as directed shall be considered a violation of probation.

8. STATUS OF LICENSE

Respondent Pharmacy shall, at all times while on probation, maintain a current pharmacy license with the board. Failure to maintain current licensure shall be considered a violation of probation.

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

9. LICENSE SURRENDER WHILE ON PROBATION/SUSPENSION

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

Respondent Pharmacy may not apply for any new license from the board for three (3) years from the effective date of the surrender. Respondent Pharmacy shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board.

Respondent Pharmacy further stipulates that it shall reimburse the board for its costs of investigation and prosecution prior to the acceptance of the surrender.

10. SALE OR DISCONTINUANCE OF BUSINESS

During the period of probation, should Respondent Pharmacy sell, trade or transfer all or part of the ownership of the licensed entity, discontinue doing business under the license issued to Respondent Pharmacy, or should practice at that location be assumed by another

full or partial owner, person, firm, business, or entity, under the same or a different premises license number, the board or its designee shall have the sole discretion to determine whether to exercise continuing jurisdiction over the licensed location, under the current or new premises license number, and/or carry the remaining period of probation forward to be applicable to the current or new premises license number of the new owner.

11. NOTICE TO EMPLOYEES

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

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

12. OWNERS AND OFFICERS: KNOWLEDGE OF THE LAW

Respondent Pharmacy shall provide, within thirty (30) days after the effective date of this decision, signed and dated statements from its owners, including any owner or holder of ten percent (10%) or more of the interest in Respondent Pharmacy or Respondent Pharmacy's stock, and all of its officers, stating under penalty of perjury, that said individuals have read and are familiar with state and federal laws and regulations governing the practice of

pharmacy. The failure to timely provide said statements under penalty of perjury shall be considered a violation of probation.

13. PREMISES OPEN FOR BUSINESS

Respondent Pharmacy shall remain open and engaged in its ordinary business as a pharmacy in California for a minimum of 80 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, Respondent Pharmacy must nonetheless comply with all terms and conditions of probation, unless Respondent Pharmacy is informed otherwise in writing by the board or its designee. If Respondent Pharmacy is not open and engaged in its ordinary business as a pharmacy for the minimum of 80 hours per calendar month, for any reason (including vacation), Respondent Pharmacy shall notify the board in writing within ten (10) days of the conclusion of that calendar month. This notification shall include, at minimum, all of the following: the date(s) and hours Respondent Pharmacy was open; the reason(s) for the interruption or why business was not conducted; and the anticipated date(s) on which Respondent Pharmacy will resume business as required. Respondent Pharmacy shall further notify the board in writing with ten (10) days following the next calendar month during which Respondent Pharmacy is open and engaged in its ordinary business as a pharmacy in California for the minimum number of hours determined by the board. Any failure to timely provide such notification(s) shall be considered a violation of probation.

14. POSTED NOTICE OF PROBATION

Respondent Pharmacy shall prominently post a probation notice provided by the board or its designee in a place conspicuous to and readable by the public within two (2) days of receipt thereof from the board or its designee. Failure to timely post such notice, or to maintain the posting during the entire period of probation, shall be considered a violation of

probation.

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

15. VIOLATION OF PROBATION

If Respondent Pharmacy has not complied with any term or condition of probation, the board shall have continuing jurisdiction over Respondent Pharmacy, and probation shall be automatically extended, until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If Respondent Pharmacy violates probation in any respect, the board, after giving Respondent Pharmacy 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 Pharmacy during probation, the board shall have continuing jurisdiction and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

16. COMPLETION OF PROBATION

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

17. BUSINESS AND PROFESSIONS CODE SECTION 4307 PROHIBITION

Pursuant to Business and Professions Code section 4307, subdivision (a), Respondent Pharmacy is prohibited from serving as a manager, administrator, owner, member, officer, director, associate, partner, or in any other position with management or control of a licensee of the board other than Laurel Care Pharmacy, Inc. dba Laurel Care Pharmacy, while its license remains on probation. Violation of this prohibition shall be considered a violation of

probation.

This Decision shall become effective at 5:00 p.m. on February 9, 2023.

It is so ORDERED on January 10, 2023.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

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

Seung W. Oh, Pharm.D.
Board President

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

In the Matter of the Accusation Against:

**LAUREL CARE PHARMACY INC. DBA LAUREL CARE
PHARMACY, BEHSHAD SHANS,**

Pharmacy Permit No. PHY 55503

and

BEHSHAD SHANS,

Pharmacist License No. RPH 75742

Respondents.

Agency Case No. 7130

OAH No. 2021100491

ORDER SETTING DATE FOR SUBMISSION OF WRITTEN ARGUMENT

The transcripts and 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 Proposed Decision dated July 28, 2022. 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.

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 **November 14, 2022**.

It is so ORDERED on October 14, 2022.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

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

Seung W. Oh, Pharm.D.
Board President

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

In the Matter of the Accusation Against:

**LAUREL CARE PHARMACY INC. DBA LAUREL CARE
PHARMACY, BEHSHAD SHANS,**

Pharmacy Permit No. PHY 55503

and

BEHSHAD SHANS,

Pharmacist License No. RPH 75742

Respondents.

Agency Case No. 7130

OAH No. 2021100491


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.

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 July 28, 2022.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By 
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:

**LAUREL CARE PHARMACY INC. DBA LAUREL CARE
PHARMACY, BEHSHAD SHANS,**

Permit No. PHY 55503,

and

BEHSHAD SHANS,

Pharmacist No. RPH 75742,

Respondents.

Agency Case No. 7130

OAH No. 2021100491

PROPOSED DECISION

Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on May 2 and 3, 2022.

William D. Gardner, Deputy Attorney General, represented complainant Anne Sodergren in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

Rob D. Cucher, Esq., represented Laurel Care Pharmacy Inc. dba Laurel Care Pharmacy, and Behshad Shans (collectively, respondents).

Oral and documentary evidence was received. The record closed and the matter was submitted for decision on May 3, 2022.

FACTUAL FINDINGS

Jurisdictional Matters

1. On August 23, 2021, complainant filed the Accusation solely in her official capacity. On September 6, 2021, Notices of Defense were filed on behalf of respondents to request a hearing on the merits of the Accusation.

2. On October 14, 2016, the Board issued Original Pharmacist License Number RPH 75742 to Behshad Shans (Mr. Shans). The Pharmacist License is in full force and effect until February 28, 2024.

3. On February 6, 2017, the Board issued Permit Number PHY 55503 to Laurel Care Pharmacy Inc. dba Laurel Care Pharmacy (Pharmacy). The Permit is in full force and effect until February 1, 2023.

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4. Since February 6, 2017, Mr. Shans has been the pharmacist-in-charge for the Pharmacy, as well as the Chief Executive Officer, 100 percent shareholder, President, Secretary and Treasurer/Chief Financial Officer.

Arrest Notification

5. In or about January 2019, the Board received an arrest notification regarding Mr. Shans. The Board obtained an Arrest Report from the Los Angeles Police Department (LAPD) regarding the arrest. (Exhs. 6, 7.) The Arrest Report indicated Mr. Shans was arrested on December 18, 2018, for sexual battery under Penal Code section 243.4, subdivision (e)(1).

6. According to the Arrest Report, on December 18, 2018, LAPD Officers Perez and Tipping were dispatched to the Foothill station to investigate a sexual battery incident. The officers spoke with the female victim, J.D. (initials are used to protect her privacy), who was at the station to report an incident that occurred the previous day at the Pharmacy.

7. Neither Officer Perez, Officer Tipping, nor the victim J.D., testified at this hearing. The Arrest Report was considered pursuant to *Lake v. Reed* (1997) 16 Cal.4th 448. The documented observations of the police officers were admitted as direct evidence under the hearsay exception for records by public employees. (Evid. Code, § 1280.) Mr. Shans' statements to the officers documented in the Arrest Report were admitted as direct evidence under the hearsay exception for party admissions. (Evid. Code § 1220.) J.D.'s hearsay statements to the police documented in the Arrest Report are, alone, not sufficient to support a finding but may be considered to explain or supplement other evidence. (Gov. Code, § 11513, subd. (d).)

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8. According to J.D., on December 17, 2018, she went to the Pharmacy to pick up a prescription for antibiotics for her abdominal pain. Mr. Shans touched her stomach. At some point, J.D. went to the back office of the Pharmacy with Mr. Shans, where he lowered her pants, examined her abdominal area and lower back, and then gave her an ointment/cream. J.D. alleged Mr. Shans touched her inappropriately during the examination. J.D. told the officers she wanted Mr. Shans arrested and was willing to sign a private person arrest form. J.D. also told the officers that Mr. Shans telephoned her later on December 17, 2018, about an error on the instructions and prescription label for the antibiotics she picked up at the Pharmacy.

9. On December 18, 2018, after speaking with J.D. at the Foothill station, Officers Perez and Tipping went to the Pharmacy and spoke with Mr. Shans, who was identified as the pharmacist. The officers obtained Mr. Shans' statement regarding the previous day's incident with J.D.

10. Mr. Shans told the officers J.D. was at the Pharmacy to pick up a prescription. Mr. Shans asked J.D. about her medical condition, and J.D. said she was experiencing abdominal pain and was prescribed antibiotics. According to Mr. Shans, J.D. complained of stomach pain, a rash, and back pain. Mr. Shans asked J.D. if he could do an examination on her and she agreed. Mr. Shans brought J.D. to the back room in the rear of the building to conduct an examination. When the officers asked if he normally does examinations in the back room, Mr. Shans stated, "as long as they're not in the medication area it's fine." (Exh. 7, p. AG-59.) Mr. Shans also stated he checked J.D.'s stomach when he was in the front area of the Pharmacy.

11. Mr. Shans told the officers that when he brought J.D. into the back room, "he checked her back and her stomach and observed a rash." (Exh. 7, p. AG-59.) Mr. Shans told the officers "He did pull her pants down low enough so he could see the

rash during her examination” and “pulled them low enough to expose the rash but not expose her vagina.” (*Ibid.*) Mr. Shans told the officers he did not touch J.D.’s vagina. Mr. Shans stated that, after the examination, he prescribed J.D. an over-the-counter (OTC) ointment for her rash and dispensed her antibiotics. Mr. Shans told the officers he later telephoned J.D. to inform her there was a typo on the label for her medication and she needed to take her medication twice a day.

12. The Pharmacy has video surveillance inside the business but not in the back office where the incident occurred. Officers Perez and Tipping reviewed the surveillance video while at the Pharmacy on December 18, 2018. Their observations are summarized in the Arrest Report. (Exh. 7, p. AG-60.) On the video, the officers saw J.D. standing at the front counter speaking with Mr. Shans. They saw J.D.’s shirt was lifted high enough to expose her stomach and Mr. Shans started touching it. The officers saw J.D. then pulled her shirt down and she and Mr. Shans walked towards the east wall and out of frame. Mr. Shans declined the officers’ request to watch the video a second time.

13. By letter dated June 4, 2019, the Board requested Mr. Shans provide a written explanation of the facts and circumstances surrounding the December 17, 2018 incident that resulted in his arrest. (Exh. 8.)

14. On June 17, 2019, Mr. Shans responded to the Board’s inquiry in writing, indicating that no criminal charges were filed based on his arrest. Mr. Shans provided letters from his attorney and the Los Angeles City Attorney’s Office indicating the City Attorney declined to file criminal charges against him. (Exh. 9.)

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Board Investigation

15. Anna Yamada testified at the hearing. She is currently employed by the Board as an Inspector. She has been an Inspector for the Board since 2008. She has been a licensed pharmacist in California since 1999. Her educational background and professional experience as a pharmacist are summarized in her curriculum vitae (C.V.), admitted as Exhibit 31.

16. Anna Brodsky testified at the hearing. She is currently employed by the Board as an Inspector. She has been an Inspector for the Board since 2019. Inspector Brodsky has been a licensed pharmacist in California since 2010. Her educational background and professional experience as a pharmacist are summarized in her C.V., admitted as Exhibit 32.

17. Inspector Yamada conducted the Board's investigation of the December 17, 2018 incident involving Mr. Shans and patient J.D. At the time she commenced the investigation, Inspector Yamada had reviewed the Arrest Report and was aware that no criminal charges were filed against Mr. Shans. At hearing, Inspector Yamada explained her investigation focused on whether Mr. Shans' conduct in performing a physical examination of patient J.D. was beyond the scope of practice for a pharmacist.

18. As part of the investigation, Inspector Yamada interviewed witnesses, including patient J.D. and Mr. Shans; obtained and reviewed police body camera video footage; obtained and reviewed pharmacy records; and obtained written statements from Mr. Shans. In addition, on October 10, 2019, Inspectors Yamada and Brodsky conducted an on-site inspection and complaint investigation at the Pharmacy.

19. Inspector Yamada prepared a written investigation report dated June 11, 2020, which summarized the information and evidence obtained during the

investigation. (Exh. 10.) Inspector Yamada's written investigation report was considered pursuant to *Lake v. Reed, supra*. (See Factual Finding 7, above.) Inspector Brodsky prepared a written declaration of her observations at the Pharmacy on October 10, 2019. (Exh. 16.)

October 10, 2019 Complaint Investigation

20. On October 10, 2019, Inspectors Yamada and Brodsky made an unannounced visit to the Pharmacy to conduct a complaint investigation. Mr. Shans and pharmacy technician Arwzou Matinvar were present. The inspectors also conducted a routine inspection to verify compliance with pharmacy laws and regulations, discussed below.

21. During the October 10, 2019 investigation, Inspector Yamada explained to Mr. Shans that she and Inspector Brodsky were following up on an arrest notification received by the Board. Mr. Shans told the inspectors he recalled the incident with patient J.D. His statement to the inspectors is summarized in Inspector Yamada's written report. (Exh. 10, p. AG-74.)

22. Mr. Shans told the inspectors the Pharmacy primarily serviced a Spanish-speaking population, and he was fluent in Spanish. Mr. Shans told the inspectors that J.D. was a new patient to the Pharmacy. She came to the Pharmacy on December 17, 2018, with a stomachache and an antibiotic prescription, and she was grabbing her stomach. Mr. Shans stated patient J.D. complained of pain so he looked to see if there was a rash, but there was no rash. Mr. Shans stated he looked at and touched J.D.'s stomach through her shirt. Mr. Shans stated J.D. lifted her shirt and exposed her abdominal area. He looked for a rash but saw none. Mr. Shans stated he filled J.D.'s

prescription and she left the Pharmacy. Mr. Shans told the inspectors, "Nothing else happened." (Exh. 10, p. AG-74.)

23. Mr. Shans told the inspectors the police came to the Pharmacy the day after the incident. He was surprised by the visit and claimed the police did not provide him with information about any specific complaint. Mr. Shans told Inspectors Yamada and Brodsky he did not do anything, but patient J.D. claimed he touched her inappropriately. Mr. Shans stated he had no further contact with J.D. after she left the Pharmacy. Mr. Shans told Inspector Yamada "he wanted to put the incident behind him because they were false claims." (Exh. 10, p. AG-75.)

24. During the October 10, 2019 investigation, Mr. Shans stated to the inspectors that only pharmacy staff are allowed to enter the back area of the Pharmacy where medications are stored. He stated he used the back room of the Pharmacy as his office. Inspector Yamada took photographs of the Pharmacy during the October 10, 2019 investigation. (Exh. 17.) At hearing, she explained that access to the back office required passing through the area of the Pharmacy where the medication inventory was located. Inspector Yamada testified it was not appropriate for nonpharmacy staff to be in the medication area. Mr. Shans stated he conducts medication therapy management (MTM) and "brown bag reviews" of patient medications. He indicated such reviews are conducted at the Pharmacy's front counter, but sometimes he conducts reviews with patients in the back office. He denied performing any patient examinations in the office.

25. During the October 10, 2019 investigation, Mr. Shans repeatedly stated to the inspectors that patient J.D. never went into the back area of the Pharmacy or his office. Mr. Shans stated patient J.D. did not have a rash, and no ointment was purchased by or applied on J.D. When Inspector Yamada asked if he touched any part

of patient J.D., Mr. Shans said, "the stomach." Mr. Shans denied that he told the police he examined patient J.D. or lowered her pants. When Inspector Yamada asked Mr. Shans if he ever recommended or prescribed an OTC product for patient J.D., Mr. Shans stated he could not recall.

26. During the October 10, 2019 investigation, at Inspector Yamada's request, Mr. Shans handwrote and signed a sworn statement regarding the incident with patient J.D. (Exh. 19.) In the statement, which is dated October 10, 2019, Mr. Shans claimed patient J.D. came to the Pharmacy complaining of abdominal pain and rash, she lifted her shirt to expose her abdominal area, and he saw no rash present on her stomach. He claimed an antibiotic was dispensed to patient J.D. and she never returned to or contacted the Pharmacy, and he never saw or spoke with J.D. again. Mr. Shans also claimed patient J.D. only stayed in the front OTC area of the Pharmacy and never came into the dispensing area or the back office. Mr. Shans claimed the police officers who came to the Pharmacy never told him the details of J.D.'s complaint or the specific allegations made against him.

Police Body Camera Video

27. Later in the day on October 10, 2019, after the visit to the Pharmacy was completed, Inspector Yamada spoke by telephone with LAPD Officer Tipping. Officer Tipping's statements to Inspector Yamada were consistent with the summary of the incident in the Arrest Report. Officer Tipping informed Inspector Yamada body camera video from the officers' interview of Mr. Shans was available.

28. On November 6, 2019, in response to an investigative subpoena, LAPD provided Inspector Yamada with a link for the body camera video from Officers Tipping and Perez showing their interviews and investigation of the incident involving

Mr. Shans. Inspector Yamada downloaded and saved the videos on four DVDs. Inspector Yamada reviewed the videos and included summaries and transcriptions of the videos in her written report.

29. At hearing, respondents stipulated that Inspector Yamada's transcription of the police body camera video of Mr. Shans' interview with Officers Tipping and Perez on December 18, 2018 is true and accurate. (Exh. 10, pp. AG-82 to AG-88.) The body camera video of Mr. Shans' interview with the police confirmed he made statements to the police indicating the following:

A. Mr. Shans occasionally performs physical examinations of patients. When Officer Tipping asked Mr. Shans if he could do physical examinations, Mr. Shans said, "Yes, if they [patients] show me a rash or whatever I can definitely check those out yeah." (Exh. 10, p. AG-83.)

B. Mr. Shans pulled J.D.'s pants down to look for rashes on her abdomen. When Officer Tipping asked Mr. Shans if he pulled J.D.'s pants off, Mr. Shans responded, "I pulled her pants down to look at her abdominal area I guess." (Exh. 10, p. AG-87.) Officer Tipping then asked Mr. Shans, "How far down did you pull?" (*Ibid.*) Inspector Yamada's summary and transcription indicates Mr. Shans was outside the frame but could be seen "briefly gesturing with his hands to his hip area under his waist." (*Ibid.*) Mr. Shans stated he pulled down J.D.'s pants to see the "[r]ashes she was complaining about." (*Ibid.*)

C. Mr. Shans physically examined J.D. in the back office of the Pharmacy. Inspector Yamada's summary and transcription indicates Mr. Shans and the two officers walked to the back office through the Pharmacy's drug dispensing area. Officer Perez then asked Mr. Shans, "Where do you do the check-up? In here?" (Exh. 10, p.

AG-84.) Mr. Shans responded, "Yeah." (*Ibid.*) Officer Tipping asked Mr. Shans, "Is it normal for you to bring patients back here to do examinations?" (*Ibid.*) Mr. Shans responded, "As long as they are not in the medication area, that's ok." (*Ibid.*)

D. Mr. Shans checked J.D.'s stomach and back. After the two officers scrolled through the Pharmacy's video surveillance footage and located J.D., they asked Mr. Shans what type of examination he performed on J.D. Mr. Shans responded, "Okay, so I did check stomach, I did check her back, she was complaining of back pain as well." (Exh. 10, p. AG-85.) Officer Perez asked Mr. Shans, "You brought her in here [the back office] when you did all that?" (*Ibid.*) Mr. Shans said, "Correct." (*Ibid.*)

E. Mr. Shans palpitated J.D.'s stomach. Officer Tipping asked Mr. Shans, "Now when you do an examination like the one you did on her what do you typically do?" Mr. Shans responded, "I typically feel, palpitate, look for rashes." (Exh. 10, p. AG-85.) When asked if he felt or saw anything on J.D., Mr. Shans indicated J.D. was bloated and had a little bit of rash on her stomach. (*Ibid.*)

F. Mr. Shans prescribed an OTC "pain cream" or ointment to J.D. (Exh. 10, pp. AG-83; AG-86.) He told the police he "gave" J.D. the ointment for free. (*Ibid.*)

30. Based on her review of the police body camera video, Inspector Yamada found inconsistencies between Mr. Shans' statements to the police and his statements to the Board's inspectors during the October 10, 2019 investigation.

A. Mr. Shans stated to Inspector Yamada he could not recall if he recommended or prescribed any OTC product to patient J.D. (Exh. 10, p. AG-76.) However, Mr. Shans told the police officers he gave patient J.D. an OTC "pain cream" or ointment along with her antibiotic prescription. (*Id.*, pp. AG-83, AG-86.)

B. Mr. Shans repeatedly stated to Inspectors Yamada and Brodsky that patient J.D. never went into the back area of the Pharmacy or his office. (*Id.*, p. AG-75, AG-77, AG-78; Exh. 16, p. AG-131.) However, Mr. Shans told the police officers that patient J.D. went into his back office, which was where he performed his examination of J.D. (Exh. 10, p. AG-84.)

C. Mr. Shans stated to Inspector Yamada that he never examined patient J.D. (Exh. 10, p. AG-76.) However, Mr. Shans told the police officers that he examined patient J.D. in his back office and checked her stomach and back. (*Id.*, p. AG-83.)

D. Mr. Shans told Inspector Yamada that he never lowered J.D.'s pants. (Exh. 10, p. AG-76.) However, Mr. Shans told the police officers that he "pulled her pants down to look at her abdominal area" and, in the police body camera video, Mr. Shans is seen gesturing with his hands to his hip area under his waist. (*Id.*, p. AG-0087.)

Mr. Shans' Written Statements

31. As noted above, Mr. Shans provided the Board's inspectors with a sworn statement during the October 10, 2019 investigation. (Exh. 19.) Seven days later, Mr. Shans submitted a second written statement to the Board dated October 17, 2019. (Exh. 20.) In the second statement, which is unsworn, Mr. Shans claimed that J.D. came to the Pharmacy complaining of abdominal pain and a rash in her abdominal area, she lifted her shirt to show him her abdominal area, and then she asked Mr. Shans "for consultation in regards to the rash and abdominal pain, asking if the antibiotics prescribed will relieve her pain and remove the rash." (*Ibid.*) Mr. Shans wrote that no visible rash was noted and he consulted with J.D. "to seek her primary care physician for her complaints." (*Ibid.*)

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32. On May 19, 2020, Inspector Yamada spoke with Mr. Shans and informed him she was issuing written notices of non-compliance for the following violations: (1) dispensing J.D.'s medication with incorrect dosage information and an incorrect prescription label; (2) making false and dishonest verbal and written statements to the Board's inspectors during the October 10, 2019 inspection, specifically that J.D. never entered the back area of the Pharmacy, Mr. Shans never examined J.D., and Mr. Shans never touched or examined J.D. or lowered her pants; and (3) Mr. Shans performed a physical examination of J.D. and lowered her pants, which was beyond the scope of pharmacy practice.

33. Four months later, Mr. Shans submitted a third written statement dated September 17, 2020, addressed to Inspector Yamada. (Exh. 27.) In this statement, Mr. Shans noted that he successfully completed a three-day Professional Boundaries and Ethics course that took place virtually in September 2020. (See Exh. 105.) Mr. Shans claimed he took the course to better understand his boundaries, vulnerabilities, and risk factors as a community pharmacist in relation to his interactions with patient J.D. Mr. Shans acknowledged he should not have examined J.D.'s abdominal area and he accepted "full responsibility that [his] actions were wrong." (*Id.*, p. AG-171.) Mr. Shans admitted: "I crossed a professional boundary when JD asked me to examine her abdominal area and I touched her abdomen looking for a rash." (*Id.*) He also wrote, in part: "I now understand that I did cross a professional boundary with JD. If given the opportunity, I would deeply apologize to JD for having crossed this boundary." (*Id.*, p. AG-172.)

34. In the September 17, 2020 statement, Mr. Shans also admitted he was not truthful in his statements to Inspector Yamada regarding the incident with patient J.D., writing in part:

Inspector Yamada, when you asked me what happened, I was scared because I already knew it was wrong to have examined JD. I was not honest with you about what happened. I sincerely regret not being forthcoming with you. It was my duty to put the profession of pharmacy first, not myself, and tell the truth but I put myself first, and did not tell the truth.

(Exh. 27, p. AG-172.)

Scope of Pharmacy Practice

35. Based on her investigation, Inspector Yamada concluded that Mr. Shans conducted a physical examination of patient J.D. on December 17, 2018, which was beyond the scope of pharmacy practice. Inspector Yamada opined that Mr. Shans' lowering of J.D.'s pants to check for a rash was inappropriate behavior for a pharmacist and outside the scope of practice.

36. Inspector Yamada testified regarding the scope of pharmacy practice. Inspector Yamada explained that if a patient comes in complaining about a rash, a pharmacist does not do diagnosing but can make recommendations based on the symptoms reported by the patient. If the patient complains of a rash, it is appropriate for the pharmacist to ask questions about the symptoms, e.g., is the patient itching, and then recommend a product to address the symptoms. It is not appropriate for a pharmacist to diagnose the patient's condition. If, for example, a patient complains of a cough, it is appropriate for the pharmacist to ask about the patient's symptoms and recommend a cough syrup depending on the type of cough. It is not appropriate for

the pharmacist to diagnose the patient's condition by, for example, listening to the patient's lungs or touching or feeling the patient.

37. Inspector Yamada testified that, while pharmacists are not permitted to diagnose conditions of patients, a pharmacist can do an assessment of the patient's condition by taking the patient's temperature, blood pressure, and pulse. On cross-examination, Inspector Yamada explained the difference between an assessment versus an examination of a patient. An assessment is a review and analysis of information, such as blood pressure, temperature, and pulse rate. An examination involves a physical examination of parts of the patient's body, which is not within the scope of pharmacy practice. If, for example, a patient has swelling, it is not appropriate for the pharmacist to touch the swollen part of the patient's body. The pharmacist can ask probing questions about the patient's symptoms and then recommend a product or medication to address the symptoms, e.g., an anti-inflammatory to address the swelling. If the symptoms are more serious, the pharmacist refers the patient to a physician. If a patient with a rash wants to show it to the pharmacist, Inspector Yamada explained it is appropriate for the pharmacist to look at it. She explained that a pharmacist typically will not touch a rash because of the risk of contagion.

38. According to Inspector Yamada, the four years of training required to obtain a Doctor of Pharmacy degree does not include training on how to conduct physical examinations of patients. Inspector Yamada is not aware of any continuing education courses that train pharmacists on performing physical examinations of patients.

39. Inspector Brodsky testified that conducting a physical examination of a patient is not appropriate for a pharmacist and is outside the scope of pharmacy practice. The purpose of a physical examination is to diagnose a condition.

40. Inspector Brodsky explained that patient consultation is within the realm of pharmacy. The regulations require a pharmacist to give consultation to a patient for a new prescription or when a patient asks for a consultation. Inspector Brodsky noted there are specific requirements for consultations. Inspector Brodsky explained that a consultation is a back-and-forth exchange of information between a patient and a pharmacist. For example, if the pharmacist is dispensing a new medication for the patient, the pharmacist must explain the medication and may ask if the patient knows why they are taking the medication.

41. Inspector Brodsky testified that a patient assessment is within the scope of pharmacy practice. An assessment involves a basic judgment on the facts or statements the patient presents to the pharmacist. For example, if a patient tells a pharmacist they have a rash and asks for a recommendation, the pharmacist makes an assessment of the information provided by the patient. Inspector Brodsky testified that 99 percent of the time a pharmacist never touches a patient. The pharmacist can ask probing questions to obtain further information, such as when did the rash start, how long has the patient had the rash, etc., and then typically OTC hydrocortisone is recommended. Inspector Brodsky opined that if a patient raises her shirt to show a pharmacist a rash on her stomach, it is not necessary to bring the patient to a private location for a further examination if the pharmacist could already see the rash.

Fourth through Sixth Causes for Discipline

42. On October 10, 2019, Inspectors Yamada and Brodsky conducted a routine inspection to verify the Pharmacy's compliance with pharmacy laws and regulations. Inspector Yamada, in testimony, explained that Board inspectors typically conduct a routine inspection when visiting pharmacies that have not been inspected in the preceding three years.

43. The Fourth, Fifth, and Sixth Causes for Discipline in the Accusation are based on violations disclosed by the October 10, 2019 inspection. At hearing, respondents conceded and admitted that the factual allegations of the Fourth, Fifth, and Sixth Causes for Discipline are true. Both parties further stipulated that the Board issued orders of correction and respondents complied with all such orders.

44. A. The undisputed evidence established that Mr. Shans, while acting as the pharmacist-in-charge for the Pharmacy, failed to take an initial inventory of controlled substances when the Pharmacy first opened on February 7, 2017, and failed to conduct a biennial controlled substance inventory within two years of the initial inventory date, as required by 21 Code of Federal Regulations part 1304.11(b) and (c). (Accusation, ¶ 36, Fourth Cause for Discipline.)

B. During the October 10, 2019 inspection, Mr. Shans provided Inspector Yamada with a CII (Schedule II) perpetual inventory binder when she asked about the DEA biennial controlled substance inventory. Mr. Shans stated to the inspectors his belief that the recording of the acquisition and disposition of Schedule II medications in a Schedule II inventory binder satisfied the requirement for biennial inventory records. That was incorrect. Inspector Yamada had to explain to him that the biennial inventory was a federal law requirement and separate from the perpetual inventory count he was doing at the Pharmacy. (See Exh. 16, p. AG-130; Exh. 10, p. AG-73.)

45. The undisputed evidence established that Mr. Shans, while working at the Pharmacy on December 17, 2018, incorrectly dispensed ciprofloxacin 500 milligram to patient J.D. to be taken once daily instead of twice daily as prescribed by the prescriber. (Accusation, ¶ 37, Fifth Cause for Discipline.)

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46. The undisputed evidence established that Mr. Shans, while working at the Pharmacy on December 17, 2018, dispensed ciprofloxacin 500 milligrams to patient J.D. with an incorrect prescription label for use of the drug. The prescription label incorrectly stated the drug was to be taken once daily instead of twice daily as prescribed by the prescriber. (Accusation, ¶ 38, Sixth Cause for Discipline.)

Respondents' Other Evidence

47. Mr. Shans testified at the hearing and explained that he simply wanted to help patient J.D. At the time of the December 17, 2018 incident, Mr. Shans thought he was merely giving an opinion that was requested by J.D., which he thought was proper based on his education and training. Mr. Shans testified that, at the time of his interview with the police, he believed he had done nothing wrong. But after speaking with the Board inspectors, he felt "guilty" about what he told the inspectors because he was not "forthcoming." That motivated him to enroll in a course on professional boundaries and ethics in September 2020, so he could better understand what he did wrong with patient J.D. (See Exh. 105.) Mr. Shans testified he wrote his September 17, 2020 letter to apologize to Inspector Yamada and the Board for "not being completely forthcoming" and to better explain his interaction with patient J.D. (Exh. 27.)

48. Mr. Shans testified that patient J.D. asked him for a consultation about a rash and pain in her abdominal area. Mr. Shans testified J.D. "clearly mentioned" a rash and pain. This was at the front counter of the Pharmacy. He testified J.D. voluntarily lifted her shirt to show her abdominal area. Mr. Shans did not see a rash. Mr. Shans testified J.D. asked if he could take a closer look and she asked for privacy. Mr. Shans testified that J.D. walked ahead of him to the back of the Pharmacy. Mr. Shans testified the door to the back office was open and J.D. could have left the office at any time. Mr. Shans testified J.D. lowered her pants and then he adjusted them so he could view her

stomach. He did not see anything he would call a rash. Mr. Shans testified that the interaction with J.D. in the back office of the Pharmacy lasted less than one minute.

49. Mr. Shans testified he does not recall if he told the police he prescribed medications. Mr. Shans testified he does not prescribe medications but only recommends OTC products, which is something he does regularly. For example, if a patient has a rash on their face or hands, he will inspect and look at it to determine the correct OTC product to recommend for the patient.

50. Mr. Shans testified he had a criminal attorney at the time of the October 10, 2019 inspection and complaint investigation by Inspectors Yamada and Brodsky. Mr. Shans testified he "mentioned" to the inspectors he wanted to speak with his criminal attorney. Mr. Shans testified that, at the time he gave his statement to the inspectors at the October 10, 2019 inspection, he felt he was "under pressure" from having two inspectors walk in and interrogate him. He was scared and shocked. Mr. Shans admitted, in his testimony, he was not honest with the Board inspectors about touching patient J.D. and bringing her to the back office. Mr. Shans explained he felt the "pressure of the time" and did not want to speak with the inspectors because of his criminal attorney's recommendation that he not discuss the case with anyone. On cross-examination, Mr. Shans admitted neither of the Board's inspectors dissuaded him from contacting his attorney.

51. Fred G. Weissman testified as an expert witness for respondents. Mr. Weissman previously worked for the University of Southern California School of Pharmacy before retiring on June 30, 2021. His qualifications are summarized in his C.V., admitted as Exhibit 106. Mr. Weissman was originally licensed as a pharmacist in California in 1963. Mr. Weissman also graduated with a law degree from Loyola Law School, which he attended from 1985 to 1989.

52. Mr. Weissman testified the only document he reviewed for his testimony was the Accusation. He did not review the Arrest Report for Mr. Shans' arrest or the Board's investigation report prepared by Inspector Yamada.

53. Mr. Weissman testified that it is sometimes acceptable for a pharmacist to have contact with a patient, for example, when taking the patient's blood pressure or giving an injection. Mr. Weissman testified if a patient voluntarily shows an area of their body to a pharmacist, the pharmacist is allowed to evaluate the condition "within reasonable boundaries." If the rash is in the patient's vaginal area, the pharmacist should not get involved. If the rash is on the patient's abdominal area, whether the pharmacist should evaluate depends on where the rash is located on the abdomen. Mr. Weissman opined there was nothing wrong with Mr. Shans providing a pain cream to patient J.D., based on his assessment of her condition.

54. On cross-examination, Mr. Weissman was asked if changes in pharmacy law have expanded the scope of pharmacy practice to allow a pharmacist to perform a physical examination of a patient's body. Mr. Weissman testified he would not say a physical examination is permitted, but he would say evaluation or assessment of a condition is permitted. Mr. Weissman explained a pharmacist may assess a condition by looking at it and evaluating it in order to advise the patient about an OTC medication or to refer the patient to their doctor.

55. Mr. Weissman testified that touching is appropriate within reasonable boundaries. Mr. Weissman testified it is a judgment call for a pharmacist to determine how to evaluate and assess a patient's complaint about their condition. Mr. Weissman was asked if there was anything wrong with a pharmacist placing their hand on the stomach of a patient complaining of abdominal pain. Mr. Weissman opined that if the patient said their stomach really hurt, the pharmacist could assess by placing the back

of their hand or palm on the patient's stomach to see if there is excessive warmth, which could be indicative of infection. Whether merely asking the patient about their symptoms is a sufficient assessment is a "judgment call" by the pharmacist. Mr. Weissman explained that a pharmacist must exercise their judgment to determine if the assessment should be done in a private area, as opposed to a more public area of a pharmacy. Mr. Weissman opined that Mr. Shans used his best judgment during the December 17, 2018 incident with patient J.D.

56. A. Mr. Shans presented two character reference letters. One letter is dated March 2, 2022, by Omid Matinvar, Pharm.D. (Exh. 101.) The other letter is dated March 3, 2022, by Rabbi Shimon Mahpari. (Exh. 102.)

B. Mr. Matinvar has known Mr. Shans for 25 years as a friend and pharmacist colleague. In his letter, Mr. Matinvar wrote: "I also have worked as a pharmacist myself with Behshad on many occasions and have observed how he approaches each patient as an individual, with kindness and compassion." (Exh. 101.) In his letter, Rabbi Mahpari described Mr. Shans as an "outstanding and very active member of our community," and commended Mr. Shans for his service to the community, both in the temple and outside, especially to those less fortunate and in need. Rabbi Mahpari further wrote: "I can personally attest that Behshad is kind hearted, caring and a true professional." (Exh. 102) Neither Mr. Matinvar nor Rabbi Mahpari make reference to the incident with patient J.D., or Mr. Shans' efforts at rehabilitation, in their letters.

57. Mr. Shans presented certificates of completion for three courses. He completed a three-day course titled, "PBI Professional Boundaries and Ethics Course," on September 14-16, 2020. (Exh. 105.) In March 2022, Mr. Shans completed a course titled, "Creating a Culture of Safety in the Pharmacy: Reducing Medication Errors," and

another course titled, "Balancing Accountability and Patient Safety in a Just Culture."
(Exhs. 103, 104.)

Cost Recovery

58. The Board incurred reasonable costs in the investigation (\$13,305.25) and enforcement (\$13,225) of the case, in the total amount of \$26,530.25. (Exhs. 3, 4.)

59. Mr. Shans testified he is the sole financial support for his family, consisting of his wife and their three minor children who range in age from five months old to eight years old. Mr. Shans' wife stays at home to care for their five-month-old baby. Mr. Shans also takes care of his elderly parents. Mr. Shans has no other source of income besides the Pharmacy.

LEGAL CONCLUSIONS

Legal Principles

1. Complainant has the burden of proving by clear and convincing evidence to a reasonable certainty that respondents engaged in the misconduct alleged in the Accusation. (*Sternberg v. California State Board of Pharmacy* (2015) 239 Cal.App.4th 1159, 1171, citing *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-856 [the standard of proof applicable to the discipline of professional licenses is "*clear and convincing proof to a reasonable certainty*"], italics in original.) "The courts have defined clear and convincing evidence as evidence which is so clear as to leave no substantial doubt and as sufficiently strong to command the unhesitating assent of every reasonable mind. [Citations.] It has been said that a

preponderance calls for probability, while clear and convincing proof demands a *high probability* [citations]." (*In re Terry D.* (1978) 83 Cal.App.3d 890, 899, italics original.)

2. Pursuant to Business and Professions Code (Code) section 4300, subdivision (a), every license issued by the Board may be suspended or revoked.

3. Code section 4036.5 defines "pharmacist-in-charge" to mean "a pharmacist proposed by a pharmacy and approved by the Board as the supervisor or manager responsible for ensuring the pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy."

4. Code section 4113, subdivision (c), provides: "The pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy."

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

6. Code section 4301 provides, in pertinent part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, any of the following:

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or

otherwise, and whether the act is a felony or misdemeanor or not.

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

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

(o) Violating or attempting to violate, directly or indirectly, 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.

7. Code section 4306.5, subdivision (a), provides that unprofessional conduct for a pharmacist also includes: "Acts or omissions that involve, in whole or in part, the inappropriate exercise of his or her education, training, or experience as a pharmacist."

8. Under Government Code section 11513, subdivision (d), hearsay evidence, when objected to and not otherwise admissible, may be used to supplement or explain other evidence but may not, by itself, support a factual finding. This is often referred to as "administrative hearsay." Therefore, evidence that is not hearsay can be used for any purpose, but evidence that is administrative hearsay can only be used for these limited purposes.

Scope of Pharmacy Practice

9. The Legislature has declared “the practice of pharmacy to be a profession,” and “pharmacists are health care providers who have the authority to provide health care services.” (Code § 4050, subds. (a), (c).) “Pharmacy practice is a dynamic, patient-oriented health service that applies a scientific body of knowledge to improve and promote patient health by means of appropriate drug use, drug-related therapy, and communication for clinical and consultative purposes. Pharmacy practice is continually evolving to include more sophisticated and comprehensive patient care activities.” (Code § 4050, subd. (b).)

10. Code section 4052, subdivision (a), sets forth the permitted functions for pharmacists, and limitations, in pertinent part, as follows:

Notwithstanding any other law, a pharmacist may:

- (1) Furnish a reasonable quantity of compounded drug product to a prescriber for office use by the prescriber.
- (2) Transmit a valid prescription to another pharmacist.
- (3) Administer drugs and biological products that have been ordered by a prescriber.
- (4) Perform procedures or functions in a licensed health care facility as authorized by Section 4052.1.
- (5) Perform procedures or functions as part of the care provided by a health care facility, a licensed home health agency, a licensed clinic in which there is a [s/c] physician

oversight, a provider who contracts with a licensed health care service plan, or a physician, as authorized by Section 4052.2.

(6) Perform procedures or functions as authorized by Section 4052.6 [advanced practice pharmacist].

(7) Manufacture, measure, fit to the patient, or sell and repair dangerous devices, or furnish instructions to the patient or the patient's representative concerning the use of those devices.

(8) Provide consultation, training, and education to patients about drug therapy, disease management, and disease prevention.

(9) Provide professional information, including clinical or pharmacological information, advice, or consultation to other health care professionals, and participate in in multidisciplinary review of patient progress, including appropriate access to medical records.

(10) Furnish the medications described in paragraph (A) [i.e., specified contraception, nicotine replacement products, medications for individuals traveling outside the United States, and specified HIV prophylaxis] in accordance with paragraph (B).

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(11) Administer immunizations pursuant to a protocol with a prescriber.

(12) Order and interpret tests for the purpose of monitoring and managing the efficacy and toxicity of drug therapies.

11. A pharmacist who is recognized by the Board as an “advanced practice pharmacist” may also perform the functions specified in Code section 4052.6, subdivision (a), which provides in pertinent part:

A pharmacist recognized by the board as an advanced practice pharmacist may do all of the following:

(1) Perform patient assessments.

(2) Order and interpret drug therapy-related tests.

(3) Refer patients to other health care providers.

(4) Participate in the evaluation and management of diseases and health conditions in collaboration with other health care providers.

(5) Initiate, adjust, or discontinue drug therapy in the manner specified in [Section 4052.2, subdivision (a)(4)].

12. A pharmacist who seeks to be recognized by the Board as an advanced practice pharmacist must satisfy all of the requirements under Code section 4210, subdivision (a)(1) through (4). The pharmacist must hold a valid license in good standing issued by the Board, file an application with the Board, and pay the applicable fee. (Code § 4210, subd. (a)(1), (3), (4).) In addition, the pharmacist must also

satisfy two out of the three criteria specified in subdivision (a)(2), which are: (A) Earn certification in a relevant area of practice as specified in the statute; (B) Complete a postgraduate residency at an accredited postgraduate institution where at least 50 percent of the experience includes the provision of direct patient care services with interdisciplinary teams; and (C) Have provided clinical services to patients for at least one year under a collaborative practice agreement or protocol as specified in the statute.

Causes for Disciplinary Action

FIRST CAUSE FOR DISCIPLINE

13. Respondents are subject to disciplinary action pursuant to Code section 4301, subdivision (f), for unprofessional conduct, in that Mr. Shans, while acting as the pharmacist-in-charge for the Pharmacy, committed acts involving dishonesty and deceit by performing an inappropriate physical examination of patient J.D. at the Pharmacy on December 17, 2018, and then making false and dishonest statements about the examination to Board Inspectors, based on Factual Findings 5-12, 21-26, and 29-41.

14. Mr. Shans' examination of patient J.D.'s stomach and back, in the back office of the Pharmacy, was outside the scope of permitted functions for pharmacists and, therefore, inappropriate. The physical examination of a patient's body, including touching or palpating the patient's stomach, is not encompassed by the permitted functions for pharmacists enumerated in Code section 4052. A pharmacist may ask probing questions of the patient regarding their symptoms and then either (1) recommend an OTC product to address the symptoms or (2) refer the patient to contact a physician. Here, Mr. Shans did more than ask questions of patient J.D.

regarding her symptoms. He conducted a physical examination of her stomach and back, in the back office, that included touching or palpating her stomach and lowering her pants to view her stomach. He then made false and dishonest statements to the Board's inspectors who investigated the incident. The totality of Mr. Shans' conduct constituted unprofessional conduct for a pharmacist.

15. Moral turpitude has generally been held to mean a general "'readiness to do evil' i.e., an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." (*People v. Mansfield* (1988) 200 Cal. App.3d 82, 87.) Sexual battery has been held to be a crime of moral turpitude. (*People v. Chavez* (2000) 84 Cal.App.4th 25, 29-30.) Here, complainant's evidence was insufficient to establish that Mr. Shans' physical examination of patient J.D. involved moral turpitude. Patient J.D. did not testify at this hearing. Her statements to the police and Inspector Yamada, documented in written reports, are hearsay and insufficient to establish that Mr. Shans touched her inappropriately on December 17, 2018, as she claimed. Mr. Shans' physical examination was inappropriate because it exceeded the scope of pharmacy practice. The evidence presented was not sufficient to establish his conduct involved moral turpitude.

SECOND CAUSE

16. Respondents are subject to disciplinary action pursuant to Code sections 4301, 4306.5, subdivision (a), and 4052, in that Mr. Shans inappropriately exercised his pharmacist education, training, and experience by performing an inappropriate physical examination of patient J.D. at the Pharmacy on December 17, 2018, based on Factual Findings 5-12, 21-26, 29-30, 31-34, 35-41, and 51-55.

17. The physical examination performed by Mr. Shans on patient J.D. on December 17, 2018, is not encompassed within the permitted functions of a pharmacist specified in Code section 4052. The opinion of respondents' expert witness, that Mr. Shans used his best judgment with patient J.D., was not persuasive and entitled to little weight. The expert's opinion was based solely on his review of the Accusation, as he did not review the Arrest Report or the Board's investigation report. Further, Mr. Shans cannot justify the examination as a "patient assessment" authorized under Code section 4052.6 because he is not licensed by the Board as an advanced practice pharmacist.

THIRD CAUSE

18. Respondents are subject to disciplinary action pursuant to Code section 4301, subdivision (g), in that Mr. Shans knowingly made false and dishonest statements to the Board's inspectors about his physical examination of patient J.D. on December 17, 2018, based on Factual Findings 9-12, 20-26, 29-30, 34, and 47.

19. On October 10, 2019, Mr. Shans told the Board's inspectors patient J.D. never entered the medication area or his office in the back of the Pharmacy, and he never examined J.D. or lowered her pants. Mr. Shans also provided a written statement to the inspectors in which he claimed patient J.D. stayed in the front OTC area of the Pharmacy and never came into the dispensing area or his back office. Mr. Shans knew his statements to the Board's inspectors were false and dishonest, because during his interview with the police on December 18, 2018, the day after the incident, he told the police he performed an examination of patient J.D. in the back office of the Pharmacy, he examined J.D.'s stomach and back, he lowered her pants to view her abdominal area, and he touched and palpitated her stomach. Mr. Shans has since admitted he was not honest and forthcoming in his statements to Inspector Yamada.

FOURTH CAUSE

20. Respondents are subject to disciplinary action pursuant to Code sections 4081, subdivision (a), 4113, subdivision (c), 4300, 4301, subdivisions (j) and (o), 4302, and 4332, in conjunction with 21 Code of Federal Regulations part 1304.11(b) and (c), in that Mr. Shans, while acting as the pharmacist-in-charge for the Pharmacy, failed to take an initial inventory of controlled substances when the Pharmacy opened on February 7, 2017, and failed to conduct a biennial controlled substance inventory within two years of the initial inventory date, based on respondents' stipulation and Factual Findings 2-4 and 42-44.

FIFTH CAUSE

21. Respondents are subject to disciplinary action pursuant to Code sections 4113, subdivision (c), 4300, 4301, subdivisions (j) and (o), and 4302, in conjunction with California Code of Regulations, title 16, section 1716, in that Mr. Shans, while working at the Pharmacy on December 17, 2018, incorrectly dispensed ciprofloxacin 500 milligram to patient J.D. to be taken once daily instead of twice daily as prescribed by the prescriber, based on respondents' stipulation and Factual Findings 2-4, 42, 43, and 45.

SIXTH CAUSE

22. Respondents are subject to disciplinary action pursuant to Code sections 4076, subdivision (a)(2), 4077, subdivision (a), 4113, subdivision (c), 4300, 4301, subdivisions (j) and (o), and 4302, in that Mr. Shans, while working at the Pharmacy on December 17, 2018, dispensed ciprofloxacin 500 milligram to patient J.D. with an incorrect prescription label for use of the drug, which incorrectly stated the drug was

to be taken once daily instead of twice daily as prescribed by the prescriber, based on respondents' stipulation and Factual Findings 2-4, 42, 43, and 46.

Level of Discipline

23. The objective of a license disciplinary proceeding is to protect the public, the licensed profession or occupation, maintain integrity, high standards, and preserve public confidence in licensed professionals. (*E.g., Camacho v. Youde* (1975) 95 Cal.App.3d 161, 165; *Clerici v. Dept. of Motor Vehicles* (1990) 224 Cal.App.3d, 1016, 1030-1031.) Administrative proceedings to revoke, suspend or impose discipline on a professional license are noncriminal and nonpenal; they are not intended to punish the licensee, but rather to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 785-786.)

24. As cause for discipline against respondents' permit and license have been established, respondents bear the burden to prove sufficient rehabilitation to warrant their continued licensure. (See, *Martin v. Alcoholic Beverage Control Appeals Bd.* (1950) 52 Cal.2d 259, 264-265.)

25. The Board's Disciplinary Guidelines (Rev. 2/2017) (Guidelines) are incorporated by reference in the Board's regulations at California Code of Regulations, title 16, section 1760.

26. The Guidelines include a list of disciplinary factors to be considered when determining the level of penalty to be imposed in a given case. The factors include: actual or potential harm to the public or to any consumer; prior disciplinary record; prior warnings; number and variety of current violations; nature and severity of the act(s) or offense(s) under consideration; aggravating evidence; mitigating evidence; rehabilitation evidence; time passed since the act(s) or offense(s); whether the conduct

was intentional or negligent, or demonstrated incompetence; financial benefit to the respondent from the misconduct; and other licenses held by the respondent and the license history of those licenses.

27. A. The Guidelines classify categories of violations and recommended penalties as Category I, II, III, or IV. The categories are arranged in ascending order from the least serious (Category I) to the most serious (Category IV), although any single violation in any category, or any combination of violations in one or more categories, may merit revocation. The categories assume a single violation. However, for multiple violations, the appropriate penalty shall increase accordingly. If an individual has committed violations in more than one category, the minimum and maximum penalties shall be for those recommended in the highest category.

B. Category I discipline is recommended for violations that are less serious than Category II through IV but are potentially harmful. These may include violations of recordkeeping, scope of practice, or inventory control requirements, and violations resulting from the misuse of education or licensing privileges.

C. Category II discipline is recommended for violations with serious potential for harm; violations involving disregard for public safety or for the laws or regulations pertaining to pharmacy; and violations that reflect on ethics, competence, or diligence. These may include repeat or serious violation(s) of recordkeeping, scope of practice, or inventory requirements; failure to meet compliance requirements, including pharmacist-in-charge designation and duties; violations of law governing controlled substances or dangerous drugs; violating laws and regulations governing pharmacy; and violations resulting from the misuse of education or licensing privileges.

D. Category III discipline is recommended for violations where the potential for harm is greater, more imminent, or more serious than it is for Category II violations. Category IV discipline is recommended for the most serious violations of laws or regulations pertaining to pharmacy and/or the dispensing or distributing of controlled substances or dangerous drugs or devices.

28. Based on consideration of the Guidelines, the appropriate level of discipline in this case is a stayed revocation and three years' probation, with an actual suspension of seven days to be served on dates set by the Board.

29. Mr. Shans' inappropriate physical examination caused actual harm to patient J.D., in that she felt compelled to make a police report regarding the incident. However, the evidence was insufficient to establish the nature and extent of the harm. Mr. Shans created a risk of potential harm to patient J.D. by dispensing her medications with incorrect instructions and labeling. Mr. Shans also created a risk of potential harm to the public, as his false and dishonest statements to the Board's inspectors undermined the Board's ability to ensure public protection through verifying and enforcing the Pharmacy's compliance with pharmacy laws and regulations. The Board must be able to rely on its licensees to be honest and truthful in all matters related to their licensure. Mr. Shans has acknowledged and apologized for his false and dishonest statements to the Board and its inspectors.

30. Mr. Shans performed an inappropriate physical examination of patient J.D., and then made false and dishonest statements to the Board's inspectors about it. These violations appear to be an isolated incident involving one patient. There is no evidence of Mr. Shans engaging in similar misconduct either prior to or subsequent to the December 17, 2018 incident with patient J.D. Respondents have no history of prior discipline or prior warnings with the Board. Respondents stipulated to the truth of the

violations alleged in the Fourth through Sixth Causes for Discipline, which involve compliance with inventory requirements for controlled substances and incorrect instructions and labeling for one patient's, J.D.'s, prescription. No evidence was presented that these relatively minor violations are part of a pattern of on-going violations. Complainant stipulated that respondents have corrected these violations.

31. Mr. Shans demonstrated incompetence by his inappropriate physical examination of patient J.D., which was outside the scope of pharmacy practice. The Board's regulations do not include a definition for the term "incompetence." However, by analogy, the regulations governing nursing practice are instructive and provide guidance as to the plain meaning of the term. The nursing regulations define the term "incompetence" as the failure to exercise the degree of learning, skill, care, and experience ordinarily possessed and exercised by a competent nurse. (Cal. Code Regs., tit. 16, §§ 1443, 2520.) In this case, the evidence was clear and convincing that, by performing a physical examination of patient J.D., Mr. Shans failed to exercise the degree of learning, skill, care, and experience ordinarily possessed and exercised by a competent pharmacist and pharmacy owner.

32. Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Mere remorse does not demonstrate rehabilitation but can be considered as a mitigating factor. (*In re Demergian* (1989) 48 Cal.3d 284, 296.) Moreover, the evidentiary significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.) A truer indication of rehabilitation is sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.)

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33. In this case, Mr. Shans has accepted responsibility and expressed remorse for his misconduct involving patient J.D. He has acknowledged his physical examination of J.D. was wrong and exceeded professional boundaries. He voluntarily completed a three-day virtual course on professional boundaries and ethics which helped him understand the wrongfulness of his conduct with patient J.D. He has also apologized and accepted responsibility for his false and dishonest statements to the Board and to Inspector Yamada regarding the examination. Mr. Shans complied with the Board's orders of correction for the violations related to the controlled substances inventories and incorrect prescription dispensing and labeling. No evidence was presented of Mr. Shans engaging in subsequent, similar misconduct, or any complaints being made against him, since the incident with patient J.D. Based on the totality of the record, a period of probation is appropriate in this case.

34. Mr. Shans' violations in this case are appropriately classified as Category II violations. The recommended discipline for Category II violations ranges from a stayed revocation with three years' probation (five years for drug or alcohol related misconduct) to revocation.

35. In this case, a three-year period of probation under the Board's standard terms and conditions, with the optional conditions for suspension and remedial education, will ensure public protection. An actual suspension of respondents' license and permit for a period of seven days will give Mr. Shans time to reflect on and reinforce his understanding of his responsibilities and duties as a Board licensee to be honest and truthful in all matters related to his licensure, and to update his business practices as necessary to prevent or reduce the likelihood of future noncompliance with pharmacy laws and regulations. The Guidelines recommend minimum suspension periods of 30 days for individuals and 14 days for licensed premises. Based on the

record in this case, imposing those suspension periods would be unduly punitive. A seven-day suspension for Mr. Shans and the Pharmacy is appropriate. Further, a remedial education program related to the violations in the Accusation will help ensure Mr. Shans correctly understands his duties and responsibilities as a licensed pharmacist.

36. Condition 8 (Restrictions on Supervision and Oversight of Licensed Facilities) in the Order below uses the “Option 2” language from the Guidelines to allow Mr. Shans to continue as the pharmacist-in-charge of the Pharmacy. Mr. Shans’ violations in this case are not related to his supervision or oversight of the Pharmacy’s operations but, rather, stem from a single incident of misconduct with patient J.D. and then making dishonest statements about it to the Board’s inspectors.

37. As requested in the Accusation, the Order below includes the prohibition under Code section 4307, subdivision (a), but modified to exclude the Pharmacy. The Order below also includes Optional Condition 36 from the Guidelines (No Ownership or Management of Licensed Premises), using the alternative language, modified to allow Mr. Shans to continue his existing ownership of the Pharmacy.

Cost Recovery

38. Pursuant to Business and Professions Code section 125.3, subdivision (a), a licensee found to have committed a violation of the applicable licensing law may be directed to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

39. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and

Professions Code section 125.3. Those factors include: (1) the licentiate's success in getting the charges dismissed or reduced; (2) the licentiate's subjective good faith belief in the merits of his or her position; (3) whether the licentiate raised a colorable challenge to the proposed discipline; (4) the licentiate's financial ability to pay; and (5) whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Zuckerman v. Board of Chiropractic Examiners, supra*, 29 Cal.4th at p. 45.)

40. Cause exists to direct respondents, jointly and severally, to pay the reasonable cost of investigation and enforcement of this matter pursuant to Business and Professions Code section 125.3. The reasonable cost of the investigation and enforcement of this matter is \$26,530.25. (Factual Finding 58.) Respondents' evidence was insufficient to justify a reduction in costs because there was no showing of income and expense information for Mr. Shans and the Pharmacy. Respondents shall pay the costs as a condition of probation set forth in the Order below.

ORDER

A. Respondent Behshad Shans

License Number RPH 75742, issued to Behshad Shans (respondent Shans), is revoked; however, the revocation is stayed and respondent Shans is placed on probation for three years upon the following terms and conditions:

1. SUSPENSION

As part of probation, respondent Shans is suspended from practice as a pharmacist for seven (7) days beginning on a date set by the board or its designee.

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During suspension, respondent Shans 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 Shans shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent Shans 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 Shans shall not engage in any activity that requires the professional judgment of and/or licensure as a pharmacist. Respondent Shans 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 Shans shall obey all state and federal laws and regulations.

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

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- 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 Shans' 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 Shans 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 Shans shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation.

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

4. INTERVIEW WITH THE BOARD

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

5. COOPERATE WITH BOARD STAFF

Respondent Shans shall timely cooperate with the board's inspection program and with the board's monitoring and investigation of respondent Shans' compliance with the terms and conditions of his 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. CONTINUING EDUCATION

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

7. REPORTING OF EMPLOYMENT AND NOTICE TO EMPLOYERS

During the period of probation, respondent Shans shall notify all present and prospective employers of the decision in case number 7130 (OAH number 2021100491) and the terms, conditions and restrictions imposed on respondent Shans by the decision, as follows:

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

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent Shans undertaking any new employment, respondent Shans shall cause (a) his direct supervisor, (b) his pharmacist-in-charge, designated representative-in-charge, responsible manager, or other compliance supervisor, and (c) the owner or owner representative of his employer, to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 7130 (OAH number 2021100491), and terms and conditions imposed thereby. If one

person serves in more than one role described in (a), (b), or (c), the acknowledgment shall so state. It shall be respondent Shans' responsibility to ensure that these acknowledgment(s) are timely submitted to the board. In the event of a change in the person(s) serving the role(s) described in (a), (b), or (c) during the term of probation, respondent Shans shall cause the person(s) taking over the role(s) to report to the board in writing within fifteen (15) days of the change acknowledging that he or she has read the decision in case number 7130 (OAH number 2021100491), and the terms and conditions imposed thereby.

If respondent Shans works for or is employed by or through an employment service, respondent Shans 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 7130 (OAH number 2021100491), and the terms and conditions imposed thereby in advance of respondent Shans commencing work at such licensed entity. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent Shans undertaking any new employment by or through an employment service, respondent Shans 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 7130 (OAH number 2021100491), and the terms and conditions imposed thereby. It shall be respondent Shans' responsibility to ensure that these acknowledgment(s) are timely submitted to the board.

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

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

8. NOTIFICATION OF CHANGE(S) IN NAME, ADDRESS(ES), OR PHONE NUMBER(S)

Respondent Shans shall further notify the board in writing within ten (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.

9. RESTRICTIONS ON SUPERVISION AND OVERSIGHT OF LICENSED FACILITIES

During the period of probation, respondent Shans shall not supervise any intern pharmacist or serve as a consultant to any entity licensed by the board. Respondent Shans may be a pharmacist-in-charge, designated representative-in-charge, responsible manager or other compliance supervisor of Laurel Care Pharmacy Inc. dba Laurel Care Pharmacy (entity), but only if respondent Shans or that entity retains, at his expense, an independent consultant who shall be responsible for reviewing the operations of the entity on a quarterly basis for compliance by respondent Shans and the entity with state and federal laws and regulations governing the practice of the entity, and compliance by respondent Shans with the obligations of his supervisory position. Respondent Shans may serve in such a position at the entity, only upon approval by the board or its designee. Any such approval shall be site specific. The

consultant shall be a pharmacist licensed by and not on probation with the board, who has been approved by the board or its designee to serve in this position. Respondent Shans shall submit the name of the proposed consultant to the board or its designee for approval within thirty (30) days of the effective date of the decision or prior to assumption of duties allowed in this term. Assumption of any unauthorized supervision responsibilities shall be considered a violation of probation. In addition, failure to timely seek approval for, timely retain, or ensure timely reporting by the consultant shall be considered a violation of probation.

10. REIMBURSEMENT OF BOARD COSTS

As a condition precedent to successful completion of probation, respondent Shans and Respondent Pharmacy (defined below), jointly and severally, shall pay to the board its costs of investigation and prosecution in the amount of \$26,530.25. Respondent Shans and Respondent Pharmacy shall be permitted to pay these costs in a payment plan approved by the board or its designee, so long as full payment is completed no later than one (1) year prior to the end date of probation. There shall be no deviation from the payment 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.

11. PROBATION MONITORING COSTS

Respondent Shans 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.

12. STATUS OF LICENSE

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

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

13. LICENSE SURRENDER WHILE ON PROBATION/SUSPENSION

Following the effective date of this decision, should respondent Shans cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent Shans may relinquish his 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 Shans 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 Shans' license history with the board.

Upon acceptance of the surrender, respondent Shans shall relinquish his pocket and/or wall license, including any indicia of licensure not previously provided to the board within ten (10) days of notification by the board that the surrender is accepted if not already provided.

Respondent Shans may not reapply for any license from the board for three (3) years from the effective date of the surrender. Respondent Shans 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.

14. PRACTICE REQUIREMENT – EXTENSION OF PROBATION

Except during periods of suspension, respondent Shans shall, at all times while on probation, be employed as a pharmacist in California for a minimum number of hours per calendar month as determined by the board. 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 Shans must nonetheless comply with all terms and conditions of probation, unless respondent Shans receives a waiver in writing from the board or its designee.

If respondent Shans does not practice as a pharmacist in California for the minimum number of hours in any calendar month as determined by the board, for any reason (including vacation), respondent Shans shall notify the board in writing within ten (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 Shans will resume practice at the required level. Respondent Shans shall further notify the board in writing within ten (10) days following the next calendar month during which respondent Shans practices as a pharmacist in California for the minimum of hours. Any failure to timely provide such notification(s) shall be considered a violation of probation.

///

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

15. VIOLATION OR PROBATION

If respondent Shans has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent Shans, and the board shall provide notice to respondent Shans 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 Shans violates probation in any respect, the board, after giving respondent Shans 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 Shans 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.

16. COMPLETION OF PROBATION

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

17. BUSINESS AND PROFESSIONS CODE SECTION 4307 PROHIBITION

Pursuant to Business and Professions Code section 4307, subdivision (a), respondent Shans is prohibited from serving as a manager, administrator, owner, member, officer, director, associate, partner, or in any other position with management or control of a licensee of the board other than Laurel Care Pharmacy, Inc. dba Laurel Care Pharmacy, for a period of three years. Violation of this prohibition shall be considered a violation of probation.

18. NO OWNERSHIP OR MANAGEMENT OF LICENSED PREMISES

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

19. REMEDIAL EDUCATION

Within sixty (60) days of the effective date of this decision, respondent Shans shall submit to the board or its designee, for prior approval, an appropriate program of remedial education in subject areas related to the causes for disciplinary action contained in the Accusation. The program of remedial education shall consist of a number of hours determined by the board or its designee and shall be completed

according to a schedule set by the board or its designee at respondent Shans' own expense. All remedial education shall be in addition to, and shall not be credited toward, continuing education (CE) courses used for license renewal purposes for pharmacists.

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

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

B. Respondent Laurel Care Pharmacy Inc. dba Laurel Care Pharmacy

License number PHY 55503, issued to respondent Laurel Care Pharmacy Inc. dba Laurel Care Pharmacy, is revoked; however, the revocation is stayed and respondent is placed on probation for three years on the following terms and conditions:

1. DEFINITION: RESPONDENT PHARMACY

For the purposes of these terms and conditions, "Respondent Pharmacy" shall refer to Laurel Care Pharmacy Inc. dba Laurel Care Pharmacy. All terms and conditions stated herein shall bind and be applicable to the licensed premises and to all owners, managers, officers, administrators, members, directors, trustees, associates, or partners

thereof. For purposes of compliance with any term or condition, any report, submission, filing, payment, or appearance required to be made by Respondent Pharmacy to or before the board or its designee shall be made by an owner or executive officer with authority to act on behalf of and legally bind the licensed entity.

2. SUSPENSION

As part of probation, Respondent Pharmacy's license to operate a pharmacy is suspended for seven (7) days beginning on a date set by the board or its designee. Respondent Pharmacy shall cease all operations as a pharmacy during the period of suspension. Failure to comply with this suspension shall be considered a violation of probation.

3. OBEY ALL LAWS

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

Respondent Pharmacy 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; or

- discipline, citation, or other 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 or distributing, billing, or charging for any dangerous drug, and/or dangerous device or controlled substance.

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

4. REPORT TO THE BOARD

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

5. INTERVIEW WITH THE BOARD

Upon receipt of reasonable prior notice, Respondent Pharmacy shall appear in person for interviews with the board or its designee, at such intervals and locations as are determined by the board or its designee. Failure to appear for any scheduled interview without prior notification to board staff, or failure to appear for two (2) or

more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

6. COOPERATE WITH BOARD STAFF

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

7. REIMBURSEMENT OF BOARD COSTS

As a condition precedent to successful completion of probation, Respondent Pharmacy and respondent Shans (defined above), jointly and severally, shall pay to the board its costs of investigation and prosecution in the amount of \$26,530.25. Respondent Pharmacy and respondent Shans shall be permitted to pay these costs in a payment plan approved by the board or its designee, so long as full payment is completed no later than one (1) year prior to the end date of probation. There shall be no deviation from the payment 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 Pharmacy 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 Pharmacy shall, at all times while on probation, maintain a current pharmacy license with the board. Failure to maintain current licensure shall be considered a violation of probation.

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

10. LICENSE SURRENDER WHILE ON PROBATION/SUSPENSION

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

Respondent Pharmacy may not apply for any new license from the board for three (3) years from the effective date of the surrender. Respondent Pharmacy shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board.

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Respondent Pharmacy further stipulates that it shall reimburse the board for its costs of investigation and prosecution prior to the acceptance of the surrender.

11. SALE OR DISCONTINUANCE OF BUSINESS

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

12. NOTICE TO EMPLOYEES

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

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

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

13. OWNERS AND OFFICERS: KNOWLEDGE OF THE LAW

Respondent Pharmacy shall provide, within thirty (30) days after the effective date of this decision, signed and dated statements from its owners, including any owner or holder of ten percent (10%) or more of the interest in Respondent Pharmacy or Respondent Pharmacy's stock, and all of its officers, stating under penalty of perjury that said individuals have read and are familiar with state and federal laws and regulations governing the practice of pharmacy. The failure to timely provide said statements under penalty of perjury shall be considered a violation of probation.

14. PREMISES OPEN FOR BUSINESS

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

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

15. POSTED NOTICE OF PROBATION

Respondent Pharmacy shall prominently post a probation notice provided by the board or its designee in a place conspicuous to and readable by the public within two (2) days of receipt thereof from the board or its designee. Failure to timely post such notice, or to maintain the posting during the entire period of probation, shall be considered a violation of probation.

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

16. VIOLATION OF PROBATION

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

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

If Respondent Pharmacy violates probation in any respect, the board, after giving Respondent Pharmacy 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 Pharmacy during probation, the board shall have continuing jurisdiction and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

17. COMPLETION OF PROBATION

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

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18. BUSINESS AND PROFESSIONS CODE SECTION 4307 PROHIBITION

Pursuant to Business and Professions Code section 4307, subdivision (a), Respondent Pharmacy is prohibited from serving as a manager, administrator, owner, member, officer, director, associate, partner, or in any other position with management or control of a licensee of the board other than Laurel Care Pharmacy, Inc. dba Laurel Care Pharmacy, for a period of three years. Violation of this prohibition shall be considered a violation of probation.

DATE: 06/15/2022

Erlinda G. Shrenger
Erlinda G. Shrenger (Jun 15, 2022 09:56 PDT)

ERLINDA G. SHRENGER

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. 7130

13 **LAUREL CARE PHARMACY INC. DBA**
14 **LAUREL CARE PHARMACY, BEHSHAD**
15 **SHANS**
16 **13678 Van Nuys Boulevard**
Pacoima, CA 91331

ACCUSATION

17 **Permit No. PHY 55503,**

18 **and**

19 **BEHSHAD SHANS**
20 **411 N. Edinburgh Avenue**
Los Angeles, CA 90048

21 **Pharmacist No. RPH 75742**

22 Respondents.
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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 (Board), Department of Consumer Affairs.

4 2. On February 6, 2017, the Board issued Permit Number PHY 55503 to Laurel Care
5 Pharmacy Inc. dba Laurel Care Pharmacy, Behshad Shans ("Respondent Laurel Care Pharmacy"
6 or "the pharmacy"). Behshad Shans is and has been the Chief Executive Officer, President,
7 100% shareholder, Secretary and Treasurer/Chief Financial Officer Respondent Laurel Care
8 Pharmacy since February 6, 2017. The Permit was in full force and effect at all times relevant to
9 the charges brought in this Accusation and will expire on February 1, 2022, unless renewed.

10 3. On October 14, 2016, the Board issued Pharmacist Number RPH 75742 to Behshad
11 Shans ("Respondent Shans" or "PIC Shans"). The Pharmacist License was in full force and
12 effect at all times relevant to the charges brought in this Accusation and will expire on February
13 28, 2022, unless renewed. Respondent Shans is and has been the Pharmacist-in-Charge (PIC) of
14 Respondent Laurel Care Pharmacy since February 6, 2017.

15 **JURISDICTION**

16 4. This Accusation is brought before the Board, under the authority of the following
17 laws. All section references are to the Business and Professions Code unless otherwise indicated.

18 5. Section 4300 provides that every license issued by the Board is subject to discipline,
19 including suspension or revocation.

20 6. Section 4300.1 states:

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

27 7. Section 4302 states:

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

1 8. Section 4307 states:

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

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

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

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

23

24 STATUTORY PROVISIONS

25 9. Section 4036.5 states: “‘Pharmacist-in-charge’ means a pharmacist proposed by a
26 pharmacy and approved by the board as the supervisor or manager responsible for ensuring the
27 pharmacy’s compliance with all state and federal laws and regulations pertaining to the practice
28 of pharmacy.”

10 10. Section 4052 states:

11 (a) Notwithstanding any other law, a pharmacist may:

12 (1) Furnish a reasonable quantity of compounded drug product to a prescriber
13 for office use by the prescriber.

14 (2) Transmit a valid prescription to another pharmacist.

15 (3) Administer drugs and biological products that have been ordered by a
16 prescriber.

17 (4) Perform procedures or functions in a licensed health care facility as
18 authorized by Section 4052.1.

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1 (5) Perform procedures or functions as part of the care provided by a health care
2 facility, a licensed home health agency, a licensed clinic in which there is a
3 physician oversight, a provider who contracts with a licensed health care
4 service plan with regard to the care or services provided to the enrollees of that
5 health care service plan, or a physician, as authorized by Section 4052.2.

6 (6) Perform procedures or functions as authorized by Section 4052.6.

7 (7) Manufacture, measure, fit to the patient, or sell and repair dangerous
8 devices, or furnish instructions to the patient or the patient's representative
9 concerning the use of those devices.

10 (8) Provide consultation, training, and education to patients about drug therapy,
11 disease management, and disease prevention.

12 (9) Provide professional information, including clinical or pharmacological
13 information, advice, or consultation to other health care professionals, and
14 participate in multidisciplinary review of patient progress, including appropriate
15 access to medical records.

16 (10) Furnish the medications described in subparagraph (A) in accordance with
17 subparagraph (B):

18 (A)(i) Emergency contraception drug therapy and self-administered
19 hormonal contraceptives, as authorized by Section 4052.3.

20 (ii) Nicotine replacement products, as authorized by Section 4052.9.

21 (iii) Prescription medications not requiring a diagnosis that are
22 recommended by the federal Centers for Disease Control and Prevention
23 for individuals traveling outside of the United States.

24 (iv) HIV preexposure prophylaxis, as authorized by Section 4052.02.

25 (v) HIV postexposure prophylaxis, as authorized by Section 4052.03.

26 (B) The pharmacist shall notify the patient's primary care provider of any
27 drugs or devices furnished to the patient, or enter the appropriate
28 information in a patient record system shared with the primary care
29 provider, as permitted by that primary care provider. If the patient does not
30 have a primary care provider, the pharmacist shall provide the patient with
31 a written record of the drugs or devices furnished and advise the patient to
32 consult a physician of the patient's choice.

33 (11) Administer immunizations pursuant to a protocol with a prescriber.

34 (12) Order and interpret tests for the purpose of monitoring and managing the
35 efficacy and toxicity of drug therapies. A pharmacist who orders and interprets
36 tests pursuant to this paragraph shall ensure that the ordering of those tests is
37 done in coordination with the patient's primary care provider or diagnosing
38 prescriber, as appropriate, including promptly transmitting written notification
39 to the patient's diagnosing prescriber or entering the appropriate information in
40 a patient record system shared with the prescriber, when available and as
41 permitted by that prescriber.

(b) A pharmacist who is authorized to issue an order to initiate or adjust a controlled substance therapy pursuant to this section shall personally register with the federal Drug Enforcement Administration.

(c) This section does not affect the applicable requirements of law relating to either of the following:

(1) Maintaining the confidentiality of medical records.

(2) The licensing of a health care facility.

11. Section 4076 states, in pertinent part, that:

(a) A pharmacist shall not dispense any prescription except in a container that meets the requirements of state and federal law and is correctly labeled with all of the following:

....

(2) The directions for the use of the drug.

12. Section 4077, subdivision (a), states: "Except as provided in subdivisions (b) and (c), no person shall dispense any dangerous drug upon prescription except in a container correctly labeled with the information required by Section 4076."

13. Section 4081, subdivision (a), states: "All records of manufacture and of sale, acquisition, receipt, shipment, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, third-party logistics provider, pharmacy, veterinary food-animal drug retailer, outsourcing facility, physician, dentist, podiatrist, veterinarian, laboratory, licensed correctional clinic, as defined in Section 4187, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices."

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

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1 15. Section 4301 states, in pertinent part, that:

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

5

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

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

11

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

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

19

20 16. Section 4306.5 states, in pertinent part, that:

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

22 (a) Acts or omissions that involve, in whole or in part, the inappropriate
23 exercise of his or her education, training, or experience as a pharmacist, whether or
24 not the act or omission arises in the course of the practice of pharmacy or the

25 ownership, management, administration, or operation of a pharmacy or other entity
26 licensed by the board.

27

28 17. Section 4332 states: “Any person who fails, neglects, or refuses to maintain the
records required by Section 4081 or who, when called upon by an authorized officer or a member
of the board, fails, neglects, or refuses to produce or provide the records within a reasonable time,
or who willfully produces or furnishes records that are false, is guilty of a misdemeanor.”

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1 **CALIFORNIA REGULATIONS**

2 18. California Code of Regulations, title 16, section 1716, states, in pertinent part:
3 “Pharmacists shall not deviate from the requirements of a prescription except upon the prior
4 consent of the prescriber or to select the drug product in accordance with Section 4073 of the
5 Business and Professions Code.”

6 **FEDERAL REGULATIONS**

7 19. Code of Federal Regulations, title 21, section 1304.11 states, in pertinent part:

8

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

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

15

16 (e) Inventories of manufacturers, distributors, registrants that reverse distribute,
17 importers, exporters, chemical analysts, dispensers, researchers, and collectors. Each
18 person registered or authorized (by 1301.13, 1307.11, 1307.13, or part 1317 of this
chapter) to manufacture, distribute, reverse distribute, dispense, import, export,
conduct research or chemical analysis with controlled substances, or collect
controlled substances from ultimate users, and required to keep records pursuant to
1304.03 shall include in the inventory the information listed below.

19 **COST RECOVERY**

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

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BOARD INVESTIGATION REPORT DATED JUNE 20, 2019

21. On December 18, 2018, two officers from the Los Angeles Police Department (the “officers”) investigated an alleged sexual battery reported by the victim, J. D.¹ J. D. informed the officers that she went to Respondent Laurel Care Pharmacy on December 17, 2018, to pick up a prescription for antibiotics. The suspect, later identified as Respondent Shans, asked J. D. about her medical conditions. J. D. told Respondent Shans that she was experiencing abdominal pain. Respondent Shans pulled J. D.’s shirt up and touched her stomach. Respondent Shans then took J. D. to an office at back of the pharmacy, and pulled J. D.’s pants and underwear down. Respondent Shans applied an ointment to J. D.’s stomach, lower back and allegedly touched her vaginal area. Respondent Shans told J. D. “Everything looks good, put on your pants and you could go home.” J. D. took her prescription and left the pharmacy. Respondent Shans called J. D. later that day and asked “if there was anything he could do for her to return.”

22. The officers went to Respondent Laurel Care Pharmacy and contacted Respondent Shans, who confirmed that J. D. came into the pharmacy for her prescription. Respondent Shans admitted to taking J. D. to a back room for “an examination.” When asked if he regularly examined customers, Respondent Shans replied: “As long as they’re not in the medication area it’s fine . . . to give patients privacy.” Respondent Shans stated that he checked J. D.’s stomach and pulled her pants down low enough to see a rash. Respondent Shans denied touching J. D.’s vaginal area. After the examination, Respondent Shans prescribed an ointment for J. D.’s rash and dispensed her antibiotics. Respondent Shans also related that he called J. D. after she left the pharmacy, but only to inform her of an error on the medication label.

23. The officers then observed video surveillance of the pharmacy from December 17, 2018, which showed Respondent Shans talking to J. D. in front of a counter. The video surveillance also showed J. D.’s shirt pulled up slightly and Respondent Shans touching her stomach. Respondent Shans was arrested for violation of Penal Code section 243.4, subdivision (e)(1) (assault and battery).

¹ Initials are used to protect the individual’s identify.

1 24. On June 4, 2019, the Board sent a letter to Respondent Shans requesting an
2 explanation of the facts and circumstances surrounding his arrest on December 18, 2018.
3 On June 18, 2019, the Board received a letter from Respondent Shans's attorney stating that the
4 Los Angeles City Attorney's Office rejected the case, and a letter from the Los Angeles City
5 Attorney's Office indicating that they declined to file criminal charges. In his written
6 explanation, Respondent Shans stated: "No criminal charges were ever filed as a result of the
7 above arrest. All charges were dropped." Respondent Shans did not provide any information or
8 details about the incident.

9 **BOARD INVESTIGATION REPORT DATED JUNE 11, 2020**

10 25. On September 6, 2019, a Board Inspector ("the Board Inspector") interviewed J. D.
11 with the assistance of a Spanish language interpreter. When asked to explain the events on
12 December 17, 2018, J. D. stated the following: (1) PIC Shans tried to abuse me; (2) I went to the
13 pharmacy to pick up my prescription. I told PIC Shans I had a stomach infection and he asked if
14 he could check my stomach. PIC Shans had me go to another room in the back of the pharmacy
15 like an office because I saw a desk. He told me to go in so he could see where I had my infection;
16 (3) PIC Shans walked behind me and pulled down my pants and underwear down to the floor as
17 we walked into the room. He grabbed me and tried to touch my vagina to see my infection;
18 (4) I told him my infection was not in my vagina and it was my stomach, and I told him he was
19 not allowed to touch my vagina; and (5) my stomach was hot and inflamed.

20 26. J. D. also related that: (1) PIC Shans initiated her examination and told her to go to
21 the back room; (2) she did not have a rash, only stomach pain; and (3) PIC Shans did not apply
22 any cream on her. PIC Shans told J. D. that he was going to see if she had a vaginal infection and
23 then brushed over the top of her vagina. PIC Shans stated that everything was fine and that she
24 could pull up her pants and go. PIC Shans asked J. D. if she wanted to work for him before she
25 left the pharmacy. PIC Shans later called J. D. three to four times from a private number, but she
26 did not answer. J. D. answered one of PIC Shans's calls and he asked if everything was okay,
27 then hung up. J. D. also related that PIC Shans was fluent in Spanish.

1 27. On October 10, 2019, Board Inspectors completed an inspection and complaint
2 investigation at Respondent Laurel Care Pharmacy. The inspection revealed PIC Shans failed to
3 complete an initial controlled substance inventory when the pharmacy first opened, and failed to
4 complete a biennial controlled substance inventory two years after the pharmacy opened. The
5 Board issued a written notice of non-compliance to Respondent Laurel Care Pharmacy pursuant
6 to Code of Federal Regulations, title 21, section 1304.11, subdivision (b), as it relates to Code of
7 Federal Regulations, title 21, section 1304.11, subdivision (c), for failing to complete a biennial
8 controlled substance inventory.

9 28. Respondent Shans told the Board Inspectors that J. D. came into the pharmacy
10 complaining of stomach pain. J. D. lifted her shirt and exposed her abdomen area. Respondent
11 Shans touched J. D.'s stomach, but did not apply any ointment. Respondent Shans filled J. D.'s
12 prescription for ciprofloxacin and she left the pharmacy without any complainants. Respondent
13 Shans also denied calling J. D. after she left the pharmacy. Respondent Shans confirmed that he
14 used the back room in the pharmacy as his office, but occasionally conducted medication therapy
15 management or reviews of patient medication with patients in his office. Respondent Shans
16 denied that J. D. came into his office, or that he lowered her pants. J. D. remained in the over-
17 the-counter area and did not go to the back office.

18 29. On October 18, 2019, Respondent Shans provided copies of the following to the
19 Board Inspector: (1) corrected patient centered prescription label; (2) DEA (Drug Enforcement
20 Agency) CII-CV biennial inventory conducted on October 10, 2019; (3) corrected verbiage on
21 theft and impairment policy to notify the Board within 14 days; and (4) J. D.'s ciprofloxacin
22 prescription. Respondent Shans also produced a written statement of the incident with J. D.,
23 which stated, in pertinent part, that:

24 on 12/17/2018, patient JD came to the pharmacy with a prescription for
25 antibiotics. Patient JD was also complaining of abdominal pain and rash in
26 abdominal area. Patient JD lifted her shirt to show her abdominal area.
27 Patient JD then asked me, Behshad Shans, for consultation in regards to the
28 rash and abdominal pain, asking if the antibiotics prescribed will relieve her
pain and remove the rash. No visible rash however, was noted and patient was
consulted to seek her primary care physician for her complaints. Patient JD
picked up her antibiotic prescription and left the pharmacy. Shortly upon

review of the antibiotic prescription of patient JD, it was realized that the Spanish translation directions of the prescription was in error, dictating to take the antibiotic once daily while the actual prescription was for twice daily. Patient JD was shortly contacted via phone to note the error and advised to take the correct dose of two times daily. After that day, patient JD was never contacted by the pharmacy, she never returned to the pharmacy nor contacted the pharmacy herself

30. The Board Inspector obtained the officers' body wear video of their interviews with J. D. and Respondent Shans. The video confirmed the following statements made by Respondent Shans to the officers: (1) Respondent Shans occasionally performs physical examination of patients; (2) Respondent Shans pulled J. D.'s pants down to look for rashes on her abdomen; (3) Respondent Shans physically examined J. D. in the back office; (4) Respondent Shans checked J. D.'s stomach and back; (5) Respondent Shan palpitated J. D.'s stomach; and (6) Respondent Shans prescribed over-the-counter pain cream to J. D.

31. On May 19, 2020, the Board issued a written notice of non-compliance to Respondent Shans pursuant to: (1) California Code of Regulations, title 16, section 1716, for incorrectly dispensing ciprofloxacin to J. D., to be taken once daily instead of twice daily as prescribed by her physician; (2) Business and Profession Code sections 4077 and 4076, subdivision (a)(2), for dispensing ciprofloxacin to J. D., with a prescription container labeled with incorrect directions to be taken once daily instead of twice daily as prescribed by her physician; (3) Business and Professions Code section 4301, subdivisions (f) and (g), for providing false/dishonest responses and statements to Board Inspectors on October 10, 2019; and (4) Business and Professions Code sections 4306.5, subdivision (a), and 4052, for lowering J. D.'s pants and performing an examination, which was beyond the scope of pharmacy practice.

32. On September 18, 2020, Respondent Shans submitted an additional statement to the Board Inspector: (1) admitting that he should have declined to examine J. D.; (2) accepting responsibility for crossing professional boundaries; and (3) for making dishonest statements to the Board Inspector regarding his examination of J. D.

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FIRST CAUSE FOR DISCIPLINE
**(Respondent Behshad Shans and Respondent Laurel Care Pharmacy
Unprofessional Conduct - Acts Involving Moral Turpitude, Dishonesty,
Fraud, Deceit or Corruption)**

33. Respondent Shans and Respondent Laurel Care Pharmacy are subject to disciplinary action under section 4301, subdivision (f), in that Respondent Shans committed acts involving moral turpitude, dishonesty, fraud, deceit or corruption, by: (1) performing an inappropriate physical examination of J. D. at Respondent Laurel Care Pharmacy on December 17, 2018; and (2) making false and dishonest statements about the examination to Board Inspectors. The allegations in paragraphs 21-32 are incorporated here by reference.

SECOND CAUSE FOR DISCIPLINE
**(Respondent Behshad Shans and Respondent Laurel Care Pharmacy
Unprofessional Conduct – Acts Involving Inappropriate
Exercise of Education, Training or Experience)**

34. Respondent Shans and Respondent Laurel Care Pharmacy are subject to disciplinary action under sections 4306.5, subdivision (a), and 4052, in that Respondent Shans inappropriately exercised his pharmacist education, training, or experience by performing an inappropriate physical examination of J. D. at Respondent Laurel Care Pharmacy on December 17, 2018. The allegations in paragraphs 21-32 are incorporated here by reference.

THIRD CAUSE FOR DISCIPLINE
**(Respondent Behshad Shans and Respondent Laurel Care Pharmacy
Unprofessional Conduct – Making False Statements)**

35. Respondent Shans and Respondent Laurel Care Pharmacy are subject to disciplinary action under section 4301, subdivision (g), in that Respondent Shans knowingly made false and dishonest statements to Board Inspectors about his physical examination of J. D. at Respondent Laurel Care Pharmacy on December 17, 2018. The allegations in paragraphs 21-32 are incorporated here by reference.

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FOURTH CAUSE FOR DISCIPLINE
**(Respondent Behshad Shans and Respondent Laurel Care Pharmacy
Failure to Conduct Controlled Substances Inventory)**

36. Respondent Shans and Respondent Laurel Care Pharmacy are subject to disciplinary action under sections 4081, subdivision (a), 4113, subdivision (c), 4300, 4301 subdivisions (j) and (o), 4302 and 4332, in conjunction with Code of Federal Regulations, title 21, section 1304.11, subdivisions (b)-(c), in that Respondent Shans, while acting as the PIC for Respondent Laurel Care Pharmacy, failed to take an initial inventory of controlled substances when the pharmacy opened on or about February 7, 2017 and failed to conduct a biennial controlled substance inventory within two years of the initial inventory date. The allegations in paragraphs 21-32 are incorporated here by reference.

FIFTH CAUSE FOR DISCIPLINE
**(Respondent Behshad Shans and Respondent Laurel Care Pharmacy
Variation from Prescription)**

37. Respondent Shans and Respondent Laurel Care Pharmacy are subject to disciplinary action under sections 4113, subdivision (c), 4300, 4301 subdivisions (j) and (o), and 4302, in conjunction with California Code of Regulations, title 16, section 1716, in that Respondent Shans, while working at Respondent Laurel Care Pharmacy on December 17, 2018, incorrectly dispensed ciprofloxacin 500 milligram to J. D., to be taken once daily instead of twice daily as prescribed by the prescriber. The allegations in paragraphs 21-32 are incorporated here by reference.

SIXTH CAUSE FOR DISCIPLINE
**(Respondent Behshad Shans and Respondent Laurel Care Pharmacy
Failure to Correctly Label Prescription Container)**

38. Respondent Shans and Respondent Laurel Care Pharmacy are subject to disciplinary action under sections 4076, subdivision (a)(2), 4077, subdivision (a), 4113, subdivision (c), 4300, 4301 subdivisions (j) and (o), and 4302, in that Respondent Shans, while working at Respondent Laurel Care Pharmacy on December 17, 2018, dispensed ciprofloxacin 500 milligram to J. D., with an incorrect prescription label for use of the drug. The prescription label stated that the drug

1 was to be taken once daily instead of twice daily as prescribed by the prescriber. The allegations
2 in paragraphs 21-32 are incorporated here by reference.

3 **OTHER MATTERS**

4 39. Pursuant to section 4307, if discipline is imposed on Permit Number PHY 55503
5 issued to Respondent Laurel Care Pharmacy while Respondent Shans has been an officer,
6 director, or owner and had knowledge of or knowingly participated in any conduct for which the
7 licensee was disciplined, Respondent Laurel Care Pharmacy and Respondent Shans shall be
8 prohibited from serving as a manager, administrator, owner, member, officer, director, associate,
9 partner, or in any other position with management or control of a licensee for five years if Permit
10 Number PHY 55503 is placed on probation or until Pharmacy Permit Number PHY 55503 is
11 reinstated, if it is revoked.

12 **PRAYER**

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

15 1. Revoking or suspending Permit Number PHY 55503, issued to Laurel Care Pharmacy
16 Inc. dba Laurel Care Pharmacy, Behshad Shans;

17 2. Revoking or suspending Pharmacist Number RPH 75742, issued to Behshad Shans;

18 3. Prohibiting Laurel Care Pharmacy Inc. dba Laurel Care Pharmacy, Behshad Shans,
19 from serving as a manager, administrator, owner, member, officer, director, associate, or partner
20 of a licensee for five years if Permit Number PHY 55503 is placed on probation, or until Permit
21 Number PHY 55503 is reinstated if Permit Number PHY 55503 is revoked;

22 4. Prohibiting Behshad Shans from serving as a manager, administrator, owner,
23 member, officer, director, associate, or partner of a licensee for five years if Pharmacist Number
24 RPH 75742 is placed on probation, or until Pharmacist Number RPH 75742 is reinstated if
25 Pharmacist Number RPH 75742 is revoked;

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1 5. Ordering Laurel Care Pharmacy Inc. dba Laurel Care Pharmacy and Behshad Shans
2 to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this
3 case, jointly and severally, pursuant to Business and Professions Code section 125.3; and,

4 6. Taking such other and further action as deemed necessary and proper.
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7 DATED: 8/23/2021

Signature on File

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

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