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

In the Matter of the Accusation Against:

**I V FAMILY PHARMACY, INC.,
DBA HOPE PHARMACY**
420 Heffernan Avenue, Suite A
Calexico, CA 92231

Pharmacy Permit No. PHY 48589

JADINE CELINA MAH
420 Heffernan Avenue, Suite A
Calexico, CA 92231

Pharmacist License No. RPH 45475

JOSE CAMILO MELENDEZ
911 Heffernan Avenue
Calexico, CA 92231

Pharmacy Technician Registration No. TCH
52678

ONOFRE MARROQUIN
401 E. 8th Street
Holtville, CA 92250

Pharmacy Technician Registration No. TCH
78446

Respondents.

Case No. 5530

**DEFAULT DECISION AND ORDER AS
TO ONOFRE MARROQUIN ONLY**

[Gov. Code, §11520]

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FINDINGS OF FACT

1
2 1. On or about September 16, 2016, Complainant Virginia K. Herold, in her official
3 capacity as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer
4 Affairs, filed Accusation No. 5530 against Onofre Marroquin (Respondent) before the Board.
5 (Accusation attached as Exhibit A.)

6 2. On or about September 17, 2007, the Board issued Pharmacy Technician Registration
7 No. TCH 78446 to Respondent. The Pharmacy Technician Registration was in full force and
8 effect at all times relevant to the charges brought in Accusation No. 5530. Pharmacy Technician
9 Registration No. TCH 78446 expired on September 30, 2015 and was cancelled pursuant to
10 Business and Professions Code section 4402(e). Pursuant to Business and Professions Code
11 (Code) sections 118(b) and 4300.1, the expiration or cancellation of a board-issued license by
12 operation of law, or by order or decision of the board, or a court of law, shall not deprive the
13 board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
14 proceeding against, the licensee or to render a decision suspending or revoking the license.

15 3. On or about September 30, 2016, Respondent was served by Certified and First Class
16 Mail copies of the Accusation No. 5530, Statement to Respondent, Notice of Defense, Request
17 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
18 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
19 section 4100, is required to be reported and maintained with the Board. Respondent's address of
20 record was and is: 401 E. 8th Street, Holtville, CA 92250.

21 4. Service of the Accusation was effective as a matter of law under the provisions of
22 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
23 124.

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

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

1 c. Code section 4301(j) and H&S Code section 11350(a) for stealing controlled
2 substances/dangerous drugs.

3 ORDER

4 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 78446 heretofore
5 issued to Respondent Onofre Marroquin is revoked.

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

10 This Decision shall become effective at 5:00 p.m. on January 16, 2017.

11 It is so ORDERED on December 16, 2016.

12
13 BOARD OF PHARMACY
14 DEPARTMENT OF CONSUMER AFFAIRS
15 STATE OF CALIFORNIA

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17
18 By _____

Amy Gutierrez, Pharm.D.
Board President

19
20 81509048.doc
21 DOJ Matter ID:SD2015801601

22 Attachment:
23 Exhibit A: Accusation

Exhibit A

Accusation

(I.V. FAMILY PHARMACY, INC., DBA HOPE PHARMACY)

1 KAMALA D. HARRIS
Attorney General of California
2 ANTOINETTE B. CINCOTTA
Supervising Deputy Attorney General
3 MARICHELLE S. TAHIMIC
Deputy Attorney General
4 State Bar No. 147392
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 783-9435
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

12 In the Matter of the Accousation Against:

Case No. 5530

13 **I V FAMILY PHARMACY, INC.,**
14 **DBA HOPE PHARMACY**
15 **420 Heffernan Avenue, Suite A**
16 **Calexico, CA 92231**

ACCUSATION

16 Pharmacy Permit No. PHY 48589

17 **JADINE CELINA MAH**
18 **1101 Emil Hashem Street**
19 **Calexico, CA 92231**

19 Pharmacist License No. RPH 45475

20 **JOSE CAMILO MELENDEZ**
21 **911 Herrernan Avenue**
22 **Calexico, CA 92231**

22 Pharmacy Technician Registration No. TCH 52678

23 **ONOFRE MARROQUIN**
24 **401 E. 8TH Street**
25 **Holtville, CA 92250**

25 Pharmacy Technician Registration No. TCH 78446

26 Respondents.

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1 Complainant alleges:

2 PARTIES

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

5 2. On or about May 1, 2007, the Board issued Pharmacy Permit Number PHY 48589 to
6 I V Family Pharmacy, Inc., dba Hope Pharmacy (Respondent Hope Pharmacy). The Pharmacy
7 Permit was in full force and effect at all times relevant to the charges brought herein, and will
8 expire on May 1, 2017, unless renewed.

9 3. On or about August 12, 1992, the Board issued Pharmacist License Number RPH
10 45475 to Jadine Celina Mah (Respondent Mah). Respondent Mah was the Pharmacist-in-Charge
11 of Respondent Hope from May 1, 2007 to April 17, 2014, the Interim Pharmacist-in-Charge of
12 Respondent Hope from May 20, 2014 to September 25, 2014, and the Pharmacist-in-Charge of
13 Respondent Hope since September 25, 2014. The Pharmacist License was in full force and effect
14 at all times relevant to the charges brought herein, and will expire on July 31, 2018, unless
15 renewed.

16 4. On or about September 17, 2007, the Board issued Pharmacy Technician Registration
17 Number TCH 78446 to Onofre Marroquin (Respondent Marroquin). The Pharmacy Technician
18 Registration was in full force and effect at all times relevant to the charges brought herein,
19 expired on September 30, 2015, and was then cancelled pursuant to Business and Professions
20 Code section 4402, subdivision (e).

21 5. On or about November 17, 2003, the Board issued Pharmacy Technician Registration
22 Number TCH 52678 to Jose Camilo Melendez (Respondent Melendez). The Pharmacy
23 Technician Registration was in full force and effect at all times relevant to the charges brought
24 herein, and expired on March 31, 2013, and was cancelled on July 1, 2013 pursuant to Business
25 and Professions Code section 4402, subdivision (e).

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JURISDICTION

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

7. Section 4300 of the Code states:

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

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

(1) Suspending judgment.

(2) Placing him or her upon probation.

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

(4) Revoking his or her license.

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

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

(1) Medical or psychiatric evaluation.

(2) Continuing medical or psychiatric treatment.

(3) Restriction of type or circumstances of practice.

(4) Continuing participation in a board-approved rehabilitation program.

(5) Abstention from the use of alcohol or drugs.

(6) Random fluid testing for alcohol or drugs.

(7) Compliance with laws and regulations governing the practice of pharmacy.

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

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

4 8. Section 4300.1 of the Code states:

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

9 STATUTORY AUTHORITIES

10 9. Section 4059 of the Code states, in relevant part:

11 (a) A person may not furnish any dangerous drug, except upon the
12 prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
13 naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
dangerous device, except upon the prescription of a physician, dentist, podiatrist,
14 optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

15 10. Section 4060 of the Code states:

16 A person shall not possess any controlled substance, except that furnished to
17 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
18 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
19 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant
pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a
20 pharmacist pursuant to Section 4052.1, 4052.2, or 4052.6. This section does not
apply to the possession of any controlled substance by a manufacturer, wholesaler,
21 third-party logistics provider, pharmacy, pharmacist, physician, podiatrist, dentist,
optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
22 practitioner, or physician assistant, if in stock in containers correctly labeled with
the name and address of the supplier or producer.

23 This section does not authorize a certified nurse-midwife, a nurse practitioner,
24 a physician assistant, or a naturopathic doctor, to order his or her own stock of
dangerous drugs and devices.

25 11. Section 4081 of the Code states, in relevant part:

26 (a) All records of manufacture and of sale, acquisition, receipt, shipment, or
27 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
28 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,

1 pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist,
2 veterinarian, laboratory, clinic, hospital, institution, or establishment holding a
3 currently valid and unrevoked certificate, license, permit, registration, or
4 exemption under Division 2 (commencing with Section 1200) of the Health and
5 Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the
6 Welfare and Institutions Code who maintains a stock of dangerous drugs or
7 dangerous devices.

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9 (b) The owner, officer, and partner of a pharmacy, wholesaler, third-party
10 logistics provider, or veterinary food-animal drug retailer shall be jointly
11 responsible, with the pharmacist-in-charge, responsible manager, or designated
12 representative-in-charge, for maintaining the records and inventory described in
13 this section.

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17 12. Section 4104 of the Code states, in relevant part:

18 (a) Every pharmacy shall have in place procedures for taking action to
19 protect the public when a licensed individual employed by or with the pharmacy is
20 discovered or known to be chemically, mentally, or physically impaired to the
21 extent it affects his or her ability to practice the profession or occupation
22 authorized by his or her license, or is discovered or known to have engaged in the
23 theft, diversion, or self-use of dangerous drugs.

24 (b) Every pharmacy shall have written policies and procedures for
25 addressing chemical, mental, or physical impairment, as well as theft, diversion, or
26 self-use of dangerous drugs, among licensed individuals employed by or with the
27 pharmacy.

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31 13. Section 4105 of the Code states, in relevant part:

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

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38 14. Section 4125 of the Code states, in relevant part:

39 (a) Every pharmacy shall establish a quality assurance program that shall, at
40 a minimum, document medication errors attributable, in whole or in part, to the
41 pharmacy or its personnel. The purpose of the quality assurance program shall be
42 to assess errors that occur in the pharmacy in dispensing or furnishing prescription
43 medications so that the pharmacy may take appropriate action to prevent a
44 recurrence.

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15. Section 4301 of the Code states, in relevant part:

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

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

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

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

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1 16. Section 4307 of the Code states:

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

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

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

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

21 (c) The provisions of subdivision (a) may be alleged in any pleading filed
22 pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3
23 of the Government Code. However, no order may be issued in that case except
24 as to a person who is named in the caption, as to whom the pleading alleges the
25 applicability of this section, and where the person has been given notice of the
26 proceeding as required by Chapter 5 (commencing with Section 11500) of Part
27 1 of Division 3 of the Government Code. The authority to proceed as provided
28 by this subdivision shall be in addition to the board's authority to proceed under
Section 4339 or any other provision of law.

REGULATIONS

17. Title 16, California Code of Regulations (CCR), section 1714, states in relevant part:

22 (c)(1) Each quality assurance program shall be managed in accordance with
23 written policies and procedures maintained in the pharmacy in an immediately
24 retrievable form.

25 (2) When a pharmacist determines that a medication error has occurred, a
26 pharmacist shall as soon as possible:

27 (A) Communicate to the patient or the patient's agent the fact that a
28 medication error has occurred and the steps required to avoid injury or mitigate the
error.

(B) Communicate to the prescriber the fact that a medication error has
occurred.

1 (3) The communication requirement in paragraph (2) of this subdivision
2 shall only apply to medication errors if the drug was administered to or by the
3 patient, or if the medication error resulted in a clinically significant delay in
therapy.

4 (4) If a pharmacist is notified of a prescription error by the patient, the
5 patient's agent, or a prescriber, the pharmacist is not required to communicate with
6 that individual as required in paragraph (2) of this subdivision.

7 18. Title 16, CCR, section 1714, states in relevant part:
8

9 (b) Each pharmacy licensed by the board shall maintain its facilities, space,
10 fixtures, and equipment so that drugs are safely and properly prepared, maintained,
11 secured and distributed. The pharmacy shall be of sufficient size and unobstructed
area to accommodate the safe practice of pharmacy.

12 19. Title 16, CCR, section 1770, states:

13 For the purpose of denial, suspension, or revocation of a personal or facility
14 license pursuant to Division 1.5 (commencing with Section 475) of the Business
15 and Professions Code, a crime or act shall be considered substantially related to the
16 qualifications, functions or duties of a licensee or registrant if to a substantial
degree it evidences present or potential unfitness of a licensee or registrant to
perform the functions authorized by his license or registration in a manner
consistent with the public health, safety, or welfare.

17 COST RECOVERY

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

22 DRUGS

23 21. Norco, hydrocodone 10mg combined with acetaminophen 325mg, is a Schedule III
24 controlled substance pursuant to Health and Safety Code section 11056, subdivision (e)(4), and a
25 dangerous drug pursuant to Business and Professions Code section 4022.

26 22. Phenergan with codeine, also known as promethazine with codeine, is a Schedule V
27 controlled substance pursuant to Health and Safety Code section 11058(c)(1), and a dangerous
28 drug pursuant to Business and Professions Code section 4022.

1 substance prescriptions were received in Respondent Hope Pharmacy via fax without being
2 converted into verbal orders.

3 28. During the November 6, 2014 inspection, the Board's inspectors reviewed
4 Respondent Hope Pharmacy's security and business practice. Technician staff took out the trash.
5 The office was unorganized, with loose papers and folders all over Respondent Mah's desk.
6 There were invoices and bottles of CII medications on the counter when the inspectors arrived.
7 When asked for documentation related to the routine inspection such as invoices and self-
8 assessment, because of the disorganization, it took Respondent Mah some time to locate the
9 responsive documents. Respondent Hope Pharmacy was more organized than Respondent Mah's
10 office. However, there were drugs still located in shipping boxes scattered throughout the office
11 and pharmacy, as well as a recently received order from their wholesaler left open on the floor of
12 Respondent Hope Pharmacy.

13 29. During the November 6, 2014 inspection, the Board's inspectors questioned
14 Respondent Mah about the reported loss. Respondent Mah was not sure exactly how the loss
15 occurred, but believed some drugs were stolen from will call. She knew there were three former
16 employees involved in the loss, including two pharmacy technicians, Respondents Melendez and
17 Marroquin, and an unlicensed pharmacy clerk. Respondent Mah stated the ScriptPro computer
18 software tracks the location of where a prescription is in the filling process. One Monday,
19 Respondent Mah looked for a prescription to consolidate with a prescription for the same patient
20 filled on the previous Friday. According to the computer software, the last person who had
21 handled the prescription was Respondent Melendez, who was not working that day. Respondent
22 Mah called and spoke with Respondent Melendez, who told her the prescription should be in will
23 call, but it was not. Later that same day, Respondent Mah noticed the prescription status in the
24 computer had been changed again, this time to return to stock (RTS). The initials of the person
25 completing the change belonged to Respondent Melendez. Since Respondent Melendez was not
26 working, Respondent Mah had to guess as to who had used Respondent Melendez's login to
27 change the prescription status. The unlicensed pharmacy clerk admitted to Respondent Mah that
28 he logged in using Respondent Melendez's login, and changed the status of the prescription to

1 RTS, at Respondent Melendez's request. Respondent Mah also noticed some prescriptions
2 coming from the ScriptPro Automated Filling Robot had been designated RTS in the computer,
3 but had not been actually returned to stock. Respondent Marroquin worked with the filling robot.
4 When confronted, all three employees admitted stealing to Respondent Mah, and signed
5 admission statements. Respondent Mah did not recall anything about the loss of promethazine
6 with codeine, other than the unlicensed pharmacy clerk was involved. After Respondent
7 Melendez was fired, Respondent Mah alerted Farmacia Del Pueblo, where Respondent Melendez
8 also worked, that he had been fired for theft from Respondent Hope Pharmacy. After she
9 discovered the theft, Respondent Mah filed police reports. Respondents Melendez and Marroquin
10 did not seem to be under the influence of controlled substances.

11 30. During the November 6, 2014 inspection, the Board inspectors verified with
12 Respondent Mah that her original loss reported to the DEA was much smaller than the loss she
13 identified after completing her audit. The inspectors also discussed technicians being able to
14 order the medications, and then steal them after they were ordered. According to Respondent
15 Mah, there was no a particular technician who always ordered or put away the order. During the
16 discussion, Respondent Mah stated she believed that Respondents Melendez and Marroquin and
17 the unlicensed pharmacy clerk may have stolen some of the drugs via ordering them, and taking
18 the drugs when they came in. The inspectors discussed the technicians placing drugs in the trash
19 and then stealing them after taking out the trash, as well as physical security for the pharmacy.
20 When asked about what changes had been made to Respondent Hope Pharmacy's operations to
21 prevent further theft, Respondent Mah included HPAP being locked in the controlled cabinet,
22 retaining a hard copy of the patient signed prescription delivery slips listing the medications
23 received from deliveries to patients, and that controlled substances were now double counted.

24 31. On November 6, 2014, the Board inspectors interviewed another pharmacy technician
25 at Respondent Hope Pharmacy who had known Respondent Melendez for multiple years, and she
26 stated that she would never have suspected Respondent Melendez to steal medication. This
27 pharmacy technician further confirmed that Respondent Melendez never seemed to be under the
28 influence of controlled substances.

1 32. On November 13, 2014, in response to further questions from the Board's inspectors,
2 Respondent Mah e-mailed to the Board that she became interim Pharmacist-in-Charge of
3 Respondent Hope Pharmacy because she was submitting an application for a new site location of
4 a pharmacy, and could not be a Pharmacist-in-Charge of both locations as the other pharmacy is
5 located beyond the allowable distance (50 miles). She named herself as the Pharmacist-in-Charge
6 of the new pharmacy since she did not have one for the new site at the time of submitting the
7 application. In the meantime, she was hoping to find a replacement Pharmacist-in-Charge for
8 Respondent Hope Pharmacy, but failed to do so before the 120 day limit.

9 33. On November 13, 2014, Respondent Mah responded to questions from the Board's
10 inspectors about the three terminated employees.

11 a. Respondent Mah reported that Respondent Melendez was no longer a pharmacy
12 technician because she discovered when she did the pharmacy self-assessment that his license had
13 lapsed. His main job function was inputting prescriptions. Respondent Melendez was not
14 allowed to fill, or do anything that only a licensed technician could do. Respondent Melendez did
15 have access to ordering or keying an item to any orders that were open, especially since there was
16 a computer that was often used next to him. Many employees are cross-trained, and worked as a
17 team on a lot of tasks. 90% of Respondent Melendez's time was inputting prescriptions and
18 answering the phones. Respondent Melendez did help put away the orders on occasions.
19 Respondent Melendez was terminated on January 20, 2014.

20 b. Respondent Mah reported that Marroquin's main job duties were filling, putting away
21 the order, answering the phones, and filling the robot. Respondent Marroquin could order if need
22 be. Respondent Marroquin was terminated on February 12, 2014.

23 c. Respondent Mah reported that the unlicensed technician's main job duties were
24 customer service in the front, i.e. checking out customers, sorting prescriptions into alphabetical
25 order in will call, answering phones, closing out the register at the end of the day, and on rare
26 occasions, delivering prescriptions when needed. The unlicensed technician was terminated on
27 February 12, 2014.

28

1 34. On November 26, 2014, the Board's inspectors received additional documents from
2 Respondent Mah including: policy and procedures for interpretive services, language line
3 instructions, impaired employee policy, and a temporary absence of pharmacist policy; acquisition
4 records from wholesalers; and disposition records. Respondent Mah indicated that she had found
5 the policies and procedures for theft and impairment shortly after the inspection.

6 35. The Board's inspectors sent letters to Respondents Melendez and Marroquin. Only
7 Respondent Marroquin responded. Respondent Marroquin reported that he worked at Respondent
8 Hope Pharmacy from March 2009 to February 2014. Respondent Marroquin reported that he took
9 Vicodin from Respondent Hope Pharmacy for self-use, and did so from 2013 to 2014.
10 Respondent Marroquin reported that he was aware that Respondent Melendez was also taking
11 drugs from Respondent Hope Pharmacy, but he did not know if he sold them or took them
12 himself. Respondent Marroquin reported that he took the drugs because they "[m]ade me feel
13 good, accessable [sic], easy to get." Respondent Marroquin reported taking about 300 pills within
14 a year. Respondent Marroquin explained how he took the drugs from Respondent Hope
15 Pharmacy: "When patients didn't want their Vicodin I would (sometimes) take them. 30 at a time
16 [sic], because they fit in my pocket and were easy to take out." Respondent Marroquin reported
17 that he was not arrested or prosecuted. Respondent Marroquin reported that he was sorry about
18 what happened, ashamed of himself, and was no longer seeking employment in a pharmacy.

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Failure to Safely and Properly Prepare, Maintain, Secure and Distribute Drugs --**

21 **Respondents Hope Pharmacy and Mah)**

22 36. Respondents Hope Pharmacy and Mah are subject to disciplinary action under section
23 4301, subdivision (j), of the Code, in that Respondents could not account for the loss of 16,919
24 tablets of hydrocodone/acetaminophen 5/500 mg, 19,043 ml's of promethazine with codeine, and
25 16,814 tablets of hydrocodone/acetaminophen 10/325 mg between October 26, 2011 and May 7,
26 2014 in violation of California Code of Regulations, title 16, section 1714, subdivision (b), as set
27 forth in paragraphs 24 through 35, which are incorporated here by this reference.

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1 SECOND CAUSE FOR DISCIPLINE

2 (Failure to Maintain Records of Acquisition, Disposition, and Current Drug Inventory --
3 Respondents Hope Pharmacy and Mah)

4 37. Respondents Hope Pharmacy and Mah are subject to disciplinary action under section
5 4301, subdivision (j), of the Code, in that Respondents could not account for the loss of 16,919
6 tablets of hydrocodone/acetaminophen 5/500 mg, 19,043 ml's of promethazine with codeine; and
7 16,814 tablets of hydrocodone/acetaminophen 10/325 mg between October 26, 2011 and May 7,
8 2014 in violation of sections 4081, subdivision (a), and 4105, subdivision (a) of the Code, as set
9 forth in paragraphs 24 through 35, which are incorporated here by this reference.

10 THIRD CAUSE FOR DISCIPLINE

11 (Failure to Maintain Theft and Impairment Policies and Procedures --
12 Respondents Hope Pharmacy and Mah)

13 38. Respondents Hope Pharmacy and Mah are subject to disciplinary action under section
14 4301, subdivision (o), of the Code, in that during an inspection on October 17, 2011, theft and
15 impairment policies were not available and a correction was issued, and during an inspection on
16 November 6, 2014, theft and impairment policies were again not located in violation of section
17 4104, subdivisions (a) and (b), of the Code, as set forth in paragraphs 24 through 35, which are
18 incorporated here by this reference.

19 FOURTH CAUSE FOR DISCIPLINE

20 (Unlawful Possession of Controlled Substances -- Respondents Melendez and Marroquin)

21 39. Respondents Melendez and Marroquin are subject to disciplinary action under section
22 4059, subdivision (a), and 4060 of the Code, in that Respondents obtained controlled
23 substances/dangerous drugs from Respondent Hope Pharmacy, without a prescription, as set forth
24 in paragraphs 24 through 35, which are incorporated here by this reference.

25 FIFTH CAUSE FOR DISCIPLINE

26 (Possession of Controlled Substances -- Respondents Melendez and Marroquin)

27 40. Respondents Melendez and Marroquin are subject to disciplinary action under section
28 4301, subdivision (o), of the Code, in that Respondents possessed controlled substances without a

1 prescription which they stole from Respondent Hope Pharmacy, in violation of Health and Safety
2 Code section 11350, subdivision (a), as set forth in paragraphs 24 through 35, which are
3 incorporated here by this reference.

4 **SIXTH CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct: Controlled Substances, Dangerous Drug Violations**
6 **– Respondents Melendez and Marroquin)**

7 41. Respondents Melendez and Marroquin are subject to disciplinary action under section
8 4301, subdivision (j), of the Code, in that Respondents Melendez and Marroquin stole controlled
9 substances/dangerous drugs from Respondent Hope Pharmacy, in violation of Health and Safety
10 Code section 11350, subdivision (a), as set forth in paragraphs 24 through 35, which are
11 incorporated here by this reference.

12 **SEVENTH CAUSE FOR DISCIPLINE**

13 **(May 24, 2016 Conviction of Embezzlement and Furnishing a Dangerous Drug Without a**
14 **Prescription – Respondent Melendez)**

15 42. Respondent Melendez is subject to disciplinary action under section 4301,
16 subdivision (l), of the Code for conviction of a crime substantially related to the qualifications,
17 functions and duties of a pharmacy technician in that on May 24, 2016, in *People v. State of*
18 *California v. Jose Melendez*, Imperial County Superior Court, Brawley Jail Department, Case No.
19 JCF35644, Respondent was convicted on his guilty plea of violation of Penal Code section 504,
20 embezzlement, and Code section 4059(a), furnishing a dangerous drug without a prescription, as
21 set forth in paragraphs 24 through 35, which are incorporated here by this reference.

22 43. As a result of his conviction, Respondent Melendez was placed on formal probation
23 for three years, sentenced to County Jail for 4 days, required to participate in
24 counseling/educational program, abstain from the possession or use of any drugs, narcotics, or
25 other illicit substances, submit to alcohol/drug testing, to have no contact with Respondent Mah
26 and was prohibited from entering the premises or grounds of Hope Pharmacy, among other terms
27 and conditions.

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1 subdivision (c), for failing to have written policies and procedures for a quality assurance as it
2 pertains to medication errors during an inspection on October 17, 2011. The Citation ordered
3 Respondent Mah to pay \$1,000.00 in civil penalties. That Citation is now final, and is
4 incorporated by reference as if fully set forth.

5 48. To determine the degree of discipline, if any, to be imposed on Respondents,
6 Complainant alleges that on or about December 17, 2015, in a prior action, the Board of
7 Pharmacy issued Citation Number CI 2014 64917 to Respondent Hope Pharmacy for violation of
8 title 16, CCR, section 1716. The circumstances are that on October 24, 2014, pharmacist V.N.
9 while working at Hope Pharmacy, deviated from the requirements of a prescription without prior
10 consent of the prescriber. That Citation is now final, and is incorporated by reference as if fully
11 set forth.

12 PRAYER

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

15 1. Revoking or suspending Pharmacy Permit Number PHY 48589 issued to Respondent
16 Hope Pharmacy;

17 2. Revoking or suspending Pharmacist License Number Pharmacist License No. RPH
18 45475 issued to Respondent Mah;

19 3. Revoking or suspending Pharmacy Technician Registration No. TCH 52678 issued to
20 Respondent Melendez;

21 4. Revoking or suspending Pharmacy Technician Registration No. TCH 78446 issued to
22 Respondent Marroquin;

23 5. Ordering Respondents to pay the Board of Pharmacy the reasonable costs of the
24 investigation and enforcement of this case, pursuant to Business and Professions Code section
25 125.3; and,

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

DATED: 9/16/16

Virginia Herold

VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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