

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

In the Matter of the Accusation Against:

**PACIFIC PHARMACY GROUP, INC.
DBA VALENCIA PHARMACY
23550 Lyons Ave, Ste. 111
Newhall, CA 91321
Permit No. PHY 48891**

**JAN BRUCE BALTHASAR
239 Via Lido Soud
Newport Beach, CA 92663
Original Pharmacist License No. RPH 28351**

**CHRIS CHOI
28868 Silversmith Drive
Valencia, CA 91354
Original Pharmacist License No. RPH 57620**

Respondents.

Case No. 5869

OAH No. 2017020550

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO
JAN BRUCE BALTHASAR**

DECISION AND ORDER

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

This Decision shall become effective at 5:00 p.m. on June 7, 2018.

It is so ORDERED on May 8, 2018.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____

Amy Gutierrez, Pharm.D.
Board President

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Attorney General of California
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9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
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**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO JAN
BRUCE BALTHASAR ONLY**

15 **JAN BRUCE BALTHASAR**
239 Via Lido Soud
16 Newport Beach, CA 92663
Original Pharmacist License No. RPH 28351

17 **CHRIS CHOI**
28868 Silversmith Drive
18 Valencia, CA 91354
Original Pharmacist License No. RPH 57620

20 Respondents.
21

22 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
23 entitled proceedings that the following matters are true;

24 PARTIES

25 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy
26 (Board). She brought this action solely in her official capacity and is represented in this matter by
27 Xavier Becerra, Attorney General of the State of California, by Cristina Felix, Deputy Attorney
28 General.

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

3 CULPABILITY

4 9. Respondent admits the truth of each and every charge and allegation in Accusation
5 No. 5869.

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

8 CONTINGENCY

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

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

21 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
22 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
23 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
24 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
25 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
26 writing executed by an authorized representative of each of the parties.

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1 14. In consideration of the foregoing admissions and stipulations, the parties agree that
2 the Board may, without further notice or formal proceeding, issue and enter the following
3 Disciplinary Order:

4 **DISCIPLINARY ORDER**

5 IT IS HEREBY ORDERED that Pharmacist License No. RPH 28351 issued to Respondent
6 Jan Bruce Balthasar is revoked. However, the revocation is stayed and Respondent is placed on
7 probation for five (5) years on the following terms and conditions.

8 1. **Obey All Laws**

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

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

- 12 • an arrest or issuance of a criminal complaint for violation of any provision of the
13 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
14 substances laws
- 15 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
16 criminal complaint, information or indictment
- 17 • a conviction of any crime
- 18 • discipline, citation, or other administrative action filed by any state or federal agency
19 which involves respondent's pharmacist license or which is related to the practice of
20 pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging
21 for any drug, device or controlled substance.

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

23 2. **Report to the Board**

24 Respondent shall report to the board quarterly, on a schedule as directed by the board or its
25 designee. The report shall be made either in person or in writing, as directed. Among other
26 requirements, respondent shall state in each report under penalty of perjury whether there has
27 been compliance with all the terms and conditions of probation. Failure to submit timely reports
28 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency

1 in submission of reports as directed may be added to the total period of probation. Moreover, if
2 the final probation report is not made as directed, probation shall be automatically extended until
3 such time as the final report is made and accepted by the board.

4 **3. Interview with the Board**

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

10 **4. Cooperate with Board Staff**

11 Respondent shall cooperate with the board's inspection program and with the board's
12 monitoring and investigation of respondent's compliance with the terms and conditions of his
13 probation. Failure to cooperate shall be considered a violation of probation.

14 **5. Continuing Education**

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

17 **6. Notice to Employers**

18 During the period of probation, respondent shall notify all present and prospective
19 employers of the decision in case number 5869 and the terms, conditions and restrictions imposed
20 on respondent by the decision, as follows:

21 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
22 respondent undertaking any new employment, respondent shall cause his direct supervisor,
23 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's
24 tenure of employment) and owner to report to the board in writing acknowledging that the listed
25 individual(s) has/have read the decision in case number 5869, and terms and conditions imposed
26 thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s)
27 submit timely acknowledgment(s) to the board.

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1 If respondent works for or is employed by or through a pharmacy employment service,
2 respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity
3 licensed by the board of the terms and conditions of the decision in case number 5869 in advance
4 of the respondent commencing work at each licensed entity. A record of this notification must be
5 provided to the board upon request.

6 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
7 (15) days of respondent undertaking any new employment by or through a pharmacy employment
8 service, respondent shall cause his direct supervisor with the pharmacy employment service to
9 report to the board in writing acknowledging that he has read the decision in case number 5869
10 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure
11 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

12 Failure to timely notify present or prospective employer(s) or to cause that/those
13 employer(s) to submit timely acknowledgments to the board shall be considered a violation of
14 probation.

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

19 **7. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as**
20 **Designated Representative-in-Charge, or Serving as a Consultant**

21 Respondent shall not supervise any intern pharmacist, be the pharmacist-in-charge or
22 designated representative-in-charge of any entity licensed by the board nor serve as a consultant
23 unless otherwise specified in this order. Assumption of any such unauthorized supervision
24 responsibilities shall be considered a violation of probation.

25 **8. Reimbursement of Board Costs**

26 As a condition precedent to successful completion of probation, respondent shall pay to the
27 board its costs of investigation and prosecution in the amount of \$19,701.50. Respondent is
28 jointly and severally responsible with Pacific Pharmacy Group Inc., dba Valencia Pharmacy for

1 payment in full of this total amount. Effective the date of the Decision, Jan Bruce Balthasar and
2 Pacific Pharmacy Group, Inc. dba Valencia Pharmacy shall make fifty-eight (58) monthly
3 payments in the amount of \$339.00 and one final payment of \$39.50.

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

7 The filing of bankruptcy by respondent shall not relieve respondent of their responsibility to
8 reimburse the board its costs of investigation and prosecution.

9 **9. Probation Monitoring Costs**

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

14 **10. Status of License**

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

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

22 **11. License Surrender While on Probation/Suspension**

23 Following the effective date of this decision, should respondent cease practice due to
24 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
25 respondent may tender his license to the board for surrender. The board or its designee shall have
26 the discretion whether to grant the request for surrender or take any other action it deems
27 appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent
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1 will no longer be subject to the terms and conditions of probation. This surrender constitutes a
2 record of discipline and shall become a part of the respondent's license history with the board.

3 Upon acceptance of the surrender, respondent shall relinquish his pocket and wall license to
4 the board within ten (10) days of notification by the board that the surrender is accepted.
5 Respondent may not reapply for any license from the board for three (3) years from the effective
6 date of the surrender. Respondent shall meet all requirements applicable to the license sought as
7 of the date the application for that license is submitted to the board, including any outstanding
8 costs.

9 **12. Notification of a Change in Name, Residence Address, Mailing Address or**
10 **Employment**

11 Respondent shall notify the board in writing within ten (10) days of any change of
12 employment. Said notification shall include the reasons for leaving, the address of the new
13 employer, the name of the supervisor and owner, and the work schedule if known. Respondent
14 shall further notify the board in writing within ten (10) days of a change in name, residence
15 address, mailing address, or phone number.

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

18 **.13. Tolling of Probation**

19 Except during periods of suspension, respondent shall, at all times while on probation, be
20 employed as a pharmacist in California for a minimum of forty (40) hours per calendar month.
21 Any month during which this minimum is not met shall toll the period of probation, i.e., the
22 period of probation shall be extended by one month for each month during which this minimum is
23 not met. During any such period of tolling of probation, respondent must nonetheless comply
24 with all terms and conditions of probation.

25 Should respondent, regardless of residency, for any reason (including vacation) cease
26 practicing as a pharmacist for a minimum of forty (40) hours per calendar month in California,
27 respondent must notify the board in writing within ten (10) days of the cessation of practice, and
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1 must further notify the board in writing within ten (10) days of the resumption of practice. Any
2 failure to provide such notification(s) shall be considered a violation of probation.

3 It is a violation of probation for respondent's probation to remain tolled pursuant to the
4 provisions of this condition for a total period, counting consecutive and non-consecutive months,
5 exceeding thirty-six (36) months.

6 "Cessation of practice" means any calendar month during which respondent is
7 not practicing as a pharmacist for at least forty (40) hours, as defined by Business and
8 Professions Code section 4000 et seq. "Resumption of practice" means any calendar
9 month during which respondent is practicing as a pharmacist for at least forty (40)
10 hours as a pharmacist as defined by Business and Professions Code section 4000 et
11 seq.

12 14. Violation of Probation

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

18 If respondent violates probation in any respect, the board, after giving respondent notice
19 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
20 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a
21 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If
22 a petition to revoke probation or an accusation is filed against respondent during probation, the
23 board shall have continuing jurisdiction and the period of probation shall be automatically
24 extended until the petition to revoke probation or accusation is heard and decided.

25 15. Completion of Probation

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

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1 **16. Community Services Program**

2 Within sixty (60) days of the effective date of this decision, respondent shall submit to the
3 board or its designee, for prior approval, a community service program in which respondent shall
4 provide free health-care related services on a regular basis to a community or charitable facility or
5 agency for at least thirty-two (32) hours each year of probation. Within ninety (90) days of the
6 effective date of this decision, respondent shall submit documentation to the board demonstrating
7 commencement of the community service program. A record of this notification must be
8 provided to the board upon request. Respondent shall report on progress with the community
9 service program in the quarterly reports. Failure to timely submit, commence, or comply with the
10 program shall be considered a violation of probation.

11 **17. Remedial Education**

12 Within thirty (30) days of the effective date of this decision, respondent shall submit to the
13 board or its designee, for prior approval, an appropriate program of remedial education related to
14 pharmacy security and inventory management and handling and prescribing requirements. The
15 program of remedial education shall consist of a total of twenty (20) hours, and at least ten (10)
16 hours of remedial education shall be related to pharmacy security and inventory management, and
17 an additional ten (10) hours of remedial education shall be related handling and prescribing
18 requirements. The program shall be completed within one (1) year of the effective date of this
19 decision and at respondent's own expense. Fifty percent (50%) of the remedial education must be
20 in-person education. All remedial education shall be in addition to, and shall not be credited
21 toward, continuing education (CE) courses used for license renewal purposes.

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

26 Following the completion of each course, the board or its designee may require the
27 respondent, at his own expense, to take an approved examination to test the respondent's
28 knowledge of the course. If the respondent does not achieve a passing score on the examination,

1 this failure shall be considered a violation of probation. Any such examination failure shall
2 require respondent to take another course approved by the board in the same subject area.

3 **18. No New Ownership of Licensed Premises**

4 Respondent shall not acquire any new ownership, legal or beneficial interest nor serve as a
5 manager, administrator, member, officer, director, trustee, associate, or partner of any additional
6 business, firm, partnership, or corporation licensed by the board. If Respondent currently owns or
7 has any legal or beneficial interest in, or serves as a manager, administrator, member, officer,
8 director, trustee, associate, or partner of any business, firm, partnership, or corporation currently
9 or hereinafter licensed by the board, respondent may continue to serve in such capacity or hold
10 that interest, but only to the extent of that position or interest as of the effective date of this
11 decision. Violation of this restriction shall be considered a violation of probation.

12 **19. Ethics Course**

13 Within sixty (60) calendar days of the effective date of this decision, respondent shall enroll
14 in a course in ethics, at respondent's expense, approved in advance by the board or its designee.
15 Failure to initiate the course during the first year of probation, and complete it within the second
16 year of probation, is a violation of probation.

17 Respondent shall submit a certificate of completion to the board or its designee within five
18 days after completing the course.

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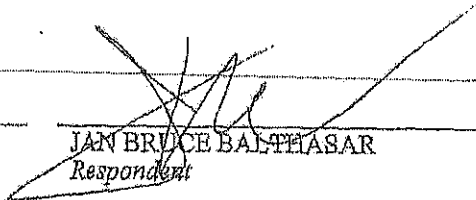
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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Noah Jussim, Esq. I understand the stipulation and the effect it will have on my Pharmacist License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 1/16/18


JAN BRUCE BALTHASAR
Respondent

I have read and fully discussed with Respondent Jan Bruce Balthasar the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.


DATED: 1/16/18


NOAH JUSSIM, ESQ.
Attorney for Respondent

ENDORSEMENT

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

Dated: 01/17/2018

Respectfully submitted,
XAVIER BECERRA
Attorney General of California
THOMAS L. RINALDI
Supervising Deputy Attorney General

CRISTINA FELIX
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 5869

1 KAMALA D. HARRIS
Attorney General of California
2 THOMAS L. RINALDI
Supervising Deputy Attorney General
3 CRISTINA FELIX
Deputy Attorney General
4 State Bar No. 195663
300 So. Spring Street, Suite 1702
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SECOND AMENDED ACCUSATION

15 **JAN BRUCE BALTHASAR**
16 **239 Via Lido Soud**
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Original Pharmacist License No. RPH 28351

17 **CHRIS CHOI**
18 **28868 Silversmith Drive**
Valencia, CA 91354
19 **Original Pharmacist License No. RPH 57620**

20 Respondent.

21
22
23 Complainant alleges:

24 **PARTIES**

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

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1 2. On or about May 22, 2008, the Board of Pharmacy issued Permit Number PHY
2 48891 to Pacific Pharmacy Group, Inc. dba Valencia Pharmacy (Respondent Valencia
3 Pharmacy). The Permit was in full force and effect at all times relevant to the charges brought
4 herein and will expire on May 1, 2017, unless renewed.

5 3. On or about July 31, 1973, the Board of Pharmacy issued Original Pharmacist
6 License Number RPH 28351 to Jan Bruce Balthasar (Respondent Balthasar). The Permit was in
7 full force and effect at all times relevant to the charges brought herein and will expire on
8 February 28, 2018, unless renewed. Respondent Balthasar has been the Pharmacist-in-Charge of
9 Respondent Valencia Pharmacy since September 25, 2014. Respondent Balthasar is, and has
10 been, the Chief Executive Officer, a shareholder, and Director since December 22, 2011.

11 4. On or about December 13, 2005, the Board of Pharmacy issued Original Pharmacist
12 License Number RPH 57620 to Chris Choi (Respondent Choi). The Permit was in full force and
13 effect at all times relevant to the charges brought herein and will expire on February 28, 2017,
14 unless renewed. Respondent Choi was the Pharmacist-in-Charge of Respondent Valencia
15 Pharmacy from June 1, 2013 to September 24, 2014.

JURISDICTION

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

20 6. Section 4300.1 of the Code states:

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

STATUTORY PROVISIONS

27 7. Section 4300, subdivision (a), states: "Every license issued may be suspended or
28 revoked."

1 8. Section 4301 of the Code states:

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

5 ...

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

10 ...”

11 9. Section 4307 of the Code states:

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

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

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

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

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

12 10. Section 4081 of the Code states:

13 "(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs
14 or dangerous devices shall be at all times during business hours open to inspection by authorized
15 officers of the law, and shall be preserved for at least three years from the date of making. A
16 current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary
17 food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital,
18 institution, or establishment holding a currently valid and unrevoked certificate, license, permit,
19 registration, or exemption under Division 2 (commencing with Section 1200) of the Health and
20 Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and
21 Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

22 ..."

23 **REGULATORY PROVISIONS**

24 11. California Code of Regulations, title 16, section 1714, states:

25 "...

26 (b) Each pharmacy licensed by the board shall maintain its facilities, space, fixtures, and
27 equipment so that drugs are safely and properly prepared, maintained, secured and distributed.

28

1 The pharmacy shall be of sufficient size and unobstructed area to accommodate the safe practice
2 of pharmacy.

3 ...

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

8 12. California Code of Regulations, title 16, section 1718, states:

9 “ ‘Current Inventory’ as used in Sections 4081 and 4332 of the Business and Professions
10 Code shall be considered to include complete accountability for all dangerous drugs handled by
11 every licensee enumerated in Sections 4081 and 4332.

12 The controlled substances inventories required by Title 21, CFR, Section 1304 shall be
13 available for inspection upon request for at least 3 years after the date of the inventory.”

14 **CONTROLLED SUBSTANCES/DANGEROUS DRUGS**

15 13. Alprazolam (generic for Xanax) is a Schedule IV controlled substance as designated
16 by Health and Safety Code section 11057, subdivisions (a) and (d)(1), and is a dangerous drug as
17 defined in section 4022.

18 14. Carisoprodol is a Schedule IV controlled substance pursuant to 21 Code of Federal
19 Regulation section 1308.14, subdivision (c)(6) and is a dangerous drug according to Business and
20 Professions Code section 4022. Its indicated use is as an adjunct to rest, physical therapy and
21 other measures for acute painful musculoskeletal conditions.

22 15. Norco is the brand name for the combination narcotic, Hydrocodone and
23 Acetaminophen, and is a Schedule II¹ controlled substance pursuant to Health and Safety Code
24 section 11055, subdivision (b)(1) (I), and is categorized as a dangerous drug pursuant to Business
25 and Professions Code section 4022.

26 _____
27 ¹ Effective October 6, 2014, the Drug Enforcement Administration rescheduled
28 Hydrocodone combination products from schedule III to schedule II of the Controlled Substances
Act. (See 21 CFR Part 1308 § 1308.12; 21 U.S.C. 812 (c))

1 16. Oxycodone, trade name Percolone, is a synthetic opioid analgesic and a Schedule II
2 controlled substance pursuant to Health and Safety Code section 11055(b)(1)(M) and a dangerous
3 drug pursuant to Business and Professions Code section 4022(c).

4 17. Promethazine with Codeine syrup is a Schedule V controlled substance as designated
5 by Health and Safety Code section 11058, subdivision (c)(1), and is categorized as a dangerous
6 drug pursuant to section 4022 of the Code.

7 18. Section 4022 states, in pertinent part:

8 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self-use in
9 humans or animals, and includes the following:

10 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without a
11 prescription,’ ‘Rx only,’ or words of similar import.

12

13 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
14 prescription or furnished pursuant to Section 4006.”

15 **COST RECOVERY PROVISION**

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

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Failure to Maintain A Current Inventory)**

22 **(Against Respondent Valencia Pharmacy, Respondent Balthasar, Respondent Choi)**

23 20. Respondents are subject to disciplinary action under section 4301, subdivision (o), for
24 violation of section 4081, subdivision (a), as related to California Code of Regulations, title 16,
25 section 1718, for failure to maintain a current inventory of controlled substances in that they
26 could not account for inventory shortages of certain drugs. The circumstances are that an audit of
27 controlled substances at Valencia Pharmacy from June 11, 2013 to August 31, 2015 determined
28

1 that Valencia Pharmacy failed to maintain a current inventory of controlled substances in that it
2 could not account for inventory shortages of the following drugs:

- 3 (a) Oxycodone 30 mg tablets- 681 tablets;
- 4 (b) Alprazolam 2 mg tablets- 10,863 tablets;
- 5 (c) Carisoprodol 350 mg tablets – 8,720 tablets;
- 6 (d) Hydrocodone/Acetaminophen 10/325 mg tablets – 32,668 tablets;
- 7 (e) Promethazine/Codeine Syrup – 1,489 ml.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Operational Standards and Security)**

10 **(Against Respondent Valencia Pharmacy, Respondent Balthasar, Respondent Choi)**

11 21. Respondents are subject to disciplinary action under section 4301, subdivision (o), for
12 violation of California Code of Regulations, title 16, section 1714, subdivisions (b) and (d) for
13 failure to secure inventory of controlled substances in that they could not account for inventory
14 shortages of the following controlled substances:

- 15 (a) Oxycodone 30 mg tablets- 681 tablets;
- 16 (b) Alprazolam 2 mg tablets- 10,863 tablets;
- 17 (c) Carisoprodol 350 mg tablets – 8,720 tablets;
- 18 (d) Hydrocodone/Acetaminophen 10/325 mg tablets – 32,668 tablets;
- 19 (e) Promethazine/Codeine Syrup – 1,489 ml.

20 **DISCIPLINARY CONSIDERATIONS**

21 22. In order to determine the degree of discipline, if any, to be imposed on Respondent
22 Valencia Pharmacy, Complainant alleges that on or about March 27, 2013, the Board issued
23 Citation No. CI 2010 48098, against Respondent Valencia Pharmacy for violating section 4126.5,
24 subdivision (a)(4) (furnishing dangerous drugs) and section 4059, subdivision (a) (furnishing
25 dangerous drug without a prescription). That Citation is now final and is incorporated by
26 reference as if fully set forth. A copy is attached as Exhibit A.

27 ///

28

1 23. In order to determine the degree of discipline, if any, to be imposed on Respondent
2 Balthasar, Complainant alleges that on or about January 19, 2016, the Board issued Citation No.
3 CI 2015 68738, against Respondent Balthasar for violating section 4115, subdivision (f)(1)
4 (having more than one pharmacy technician performing the duties of a pharmacy technician when
5 only one pharmacist is present) and Code of Federal Regulations, title 21, section 1301.75,
6 subdivision (b)(failing to store controlled substances in a securely locked cabinet). That Citation
7 is now final and is incorporated by reference as if fully set forth. A copy is attached as Exhibit B.

8 **OWNERSHIP PROHIBITION**

9 24. As set forth above, Business and Professions Code section 4307, subdivision (a),
10 provides, in pertinent part, that any person whose license has been revoked or is under suspension
11 shall be prohibited from serving as a manager, administrator, owner, member, officer, director,
12 associate or partner of a licensee.

13 25. Pursuant to Code section 4307, if Jan Bruce Balthasar, while acting as manager,
14 administrator, owner, member, officer, director, associate, partner, or any other person with
15 management or control of, Pacific Pharmacy Group, Inc. dba Valencia Pharmacy, had knowledge
16 of, or knowingly participated in, any conduct for which Pharmacy Permit PHY 48891 was
17 revoked, suspended or placed on probation, Jan Bruce Balthasar shall be prohibited from serving
18 as manager, administrator, owner, member, officer, director, associate, or partner of a licensee for
19 five years if Pharmacy Permit Number PHY 48891 is placed on probation, or until Pharmacy
20 Permit Number PHY 48891 is reinstated if Pharmacy Permit Number PHY 48891 is revoked.

21 26. Pursuant to Code section 4307, if Chris Choi, while acting as manager, administrator,
22 owner, member, officer, director, associate, partner, or any other person with management or
23 control of, Pacific Pharmacy Group, Inc. dba Valencia Pharmacy, had knowledge of, or
24 knowingly participated in, any conduct for which Pharmacy Permit PHY 48891 was revoked,
25 suspended or placed on probation, Chris Choi shall be prohibited from serving as manager,
26 administrator, owner, member, officer, director, associate, or partner of a licensee for five years if
27 Pharmacy Permit Number PHY 48891 is placed on probation, or until Pharmacy Permit Number
28 PHY 48891 is reinstated if Pharmacy Permit Number PHY 48891 is revoked.

1 PRAYER

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

4 1. Revoking or suspending Permit Number PHY 48891, issued to Pacific Pharmacy
5 Group, Inc. dba Valencia Pharmacy, Original Pharmacist License Number RPH 28351, issued to
6 Jan Bruce Balthasar, and Original Pharmacist License Number RPH57620, issued to Chris Choi;

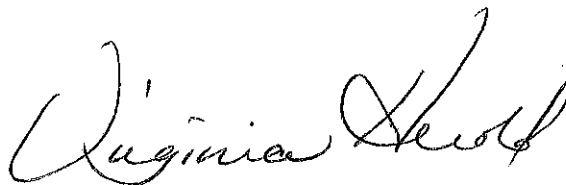
7 2. Prohibiting Jan Bruce Balthasar from serving as a manager, administrator, owner,
8 member, officer, director, associate, partner, or in any other position with management or control
9 of a licensee, for five years if Pharmacy Permit Number PHY 48891 is placed on probation, or
10 until Pharmacy Permit Number PHY 48891 is reinstated if Pharmacy Permit Number PHY 48891
11 is revoked;

12 3. Prohibiting Chris Choi from serving as a manager, administrator, owner, member,
13 officer, director, associate, partner, or in any other position with management or control of a
14 licensee, for five years if Pharmacy Permit Number PHY 48891 is placed on probation, or until
15 Pharmacy Permit Number PHY 48891 is reinstated if Pharmacy Permit Number PHY 48891 is
16 revoked;

17 4. Ordering Valencia Pharmacy, Jan Bruce Balthasar, and Chris Choi to pay the Board
18 of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to
19 Business and Professions Code section 125.3; and,

20 5. Taking such other and further action as deemed necessary and proper.

21
22
23 DATED: 8/11/17



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

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

12 In the Matter of the Accusation Against:

Case No. 5869

13 **PACIFIC PHARMACY GROUP, INC.**
14 **DBA VALENCIA PHARMACY**
15 **23550 Lyons Ave, Ste. 111**
16 **Newhall, CA 91321**
17 **Permit No. PHY 48891**

FIRST AMENDED ACCUSATION

18 **JAN BRUCE BALTHASAR**
19 **239 Via Lido Soud**
20 **Newport Beach, CA 92663**
21 **Original Pharmacist License No. RPH 28351**

22 **CHRIS CHOI**
23 **28868 Silversmith Drive**
24 **Valencia, CA 91354**
25 **Original Pharmacist License No. RPH 57620**

26 Respondent.

27 Complainant alleges:

28 **PARTIES**

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

///

1 2. On or about May 22, 2008, the Board of Pharmacy issued Permit Number PHY
2 48891 to Pacific Pharmacy Group, Inc. dba Valencia Pharmacy (Respondent Valencia
3 Pharmacy). The Permit was in full force and effect at all times relevant to the charges brought
4 herein and will expire on May 1, 2018, unless renewed.

5 3. On or about July 31, 1973, the Board of Pharmacy issued Original Pharmacist
6 License Number RPH 28351 to Jan Bruce Balthasar (Respondent Balthasar). The Permit was in
7 full force and effect at all times relevant to the charges brought herein and will expire on February
8 28, 2018, unless renewed. Respondent Balthasar has been the Pharmacist-in-Charge of
9 Respondent Valencia Pharmacy since September 25, 2014. Respondent Balthasar is, and has
10 been, the Chief Executive Officer, a shareholder, and Director since December 22, 2011.

11 4. On or about December 13, 2005, the Board of Pharmacy issued Original Pharmacist
12 License Number RPH 57620 to Chris Choi (Respondent Choi). The Permit was in full force and
13 effect at all times relevant to the charges brought herein and will expire on February 28, 2019,
14 unless renewed. Respondent Choi was the Pharmacist-in-Charge of Respondent Valencia
15 Pharmacy from June 1, 2013 to September 24, 2014.

16 **JURISDICTION**

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

20 6. Section 4300.1 of the Code states:

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

26 **STATUTORY PROVISIONS**

27 7. Section 4300, subdivision (a), states: "Every license issued may be suspended or
28 revoked."

1 8. Section 4301 of the Code states:

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

5 ...

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

10 ...”

11 9. Section 4307 of the Code states:

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

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

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

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

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

12 10. Section 4081 of the Code states:

13 "(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs
14 or dangerous devices shall be at all times during business hours open to inspection by authorized
15 officers of the law, and shall be preserved for at least three years from the date of making. A
16 current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary
17 food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital,
18 institution, or establishment holding a currently valid and unrevoked certificate, license, permit,
19 registration, or exemption under Division 2 (commencing with Section 1200) of the Health and
20 Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and
21 Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

22 ..."

23 **REGULATORY PROVISIONS**

24 11. California Code of Regulations, title 16, section 1714, states:

25 "...

26 (b) Each pharmacy licensed by the board shall maintain its facilities, space, fixtures, and
27 equipment so that drugs are safely and properly prepared, maintained, secured and distributed.

28

1 The pharmacy shall be of sufficient size and unobstructed area to accommodate the safe practice
2 of pharmacy.

3 . . .

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

8 12. California Code of Regulations, title 16, section 1718, states:

9 “ ‘Current Inventory’ as used in Sections 4081 and 4332 of the Business and Professions
10 Code shall be considered to include complete accountability for all dangerous drugs handled by
11 every licensee enumerated in Sections 4081 and 4332.

12 The controlled substances inventories required by Title 21, CFR, Section 1304 shall be
13 available for inspection upon request for at least 3 years after the date of the inventory.”

14 **CONTROLLED SUBSTANCES/DANGEROUS DRUGS**

15 13. Alprazolam (generic for Xanax) is a Schedule IV controlled substance as designated
16 by Health and Safety Code section 11057, subdivisions (a) and (d)(1), and is a dangerous drug as
17 defined in section 4022.

18 14. Carisoprodol is a Schedule IV controlled substance pursuant to 21 Code of Federal
19 Regulation section 1308.14, subdivision (c)(6) and is a dangerous drug according to Business and
20 Professions Code section 4022. Its indicated use is as an adjunct to rest, physical therapy and
21 other measures for acute painful musculoskeletal conditions.

22 15. Norco is the brand name for the combination narcotic, Hydrocodone and
23 Acetaminophen, and is a Schedule II¹ controlled substance pursuant to Health and Safety Code
24 section 11055, subdivision (b)(1) (I), and is categorized as a dangerous drug pursuant to Business
25 and Professions Code section 4022.

26
27 ¹ Effective October 6, 2014, the Drug Enforcement Administration rescheduled
28 Hydrocodone combination products from schedule III to schedule II of the Controlled Substances
Act. (See 21 CFR Part 1308 § 1308.12; 21 U.S.C. 812 (c))

1 16. Oxycodone, trade name Percolone, is a synthetic opioid analgesic and a Schedule II
2 controlled substance pursuant to Health and Safety Code section 11055(b)(1)(M) and a dangerous
3 drug pursuant to Business and Professions Code section 4022(c).

4 17. Promethazine with Codeine syrup is a Schedule V controlled substance as designated
5 by Health and Safety Code section 11058, subdivision (c)(1), and is categorized as a dangerous
6 drug pursuant to section 4022 of the Code.

7 18. Section 4022 states, in pertinent part:

8 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self-use in
9 humans or animals, and includes the following:

10 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without a
11 prescription,’ ‘Rx only,’ or words of similar import.

12

13 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
14 prescription or furnished pursuant to Section 4006.”

15 **COST RECOVERY PROVISION**

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

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Failure to Maintain A Current Inventory)**

22 **(Against Respondent Valencia Pharmacy, Respondent Balthasar, Respondent Choi)**

23 20. Respondents are subject to disciplinary action under section 4301, subdivision (o), for
24 violation of section 4081, subdivision (a), as related to California Code of Regulations, title 16,
25 section 1718, for failure to maintain a current inventory of controlled substances in that they
26 could not account for inventory shortages of certain drugs. The circumstances are that an audit of
27 controlled substances at Valencia Pharmacy from June 11, 2013 to August 31, 2015 determined
28

1 that Valencia Pharmacy failed to maintain a current inventory of controlled substances in that it
2 could not account for inventory shortages of the following drugs:

- 3 (a) Oxycodone 30 mg tablets- 681 tablets;
- 4 (b) Alprazolam 2 mg tablets- 10,863 tablets;
- 5 (c) Carisoprodol 350 mg tablets – 8,720 tablets;
- 6 (d) Hydrocodone/Acetaminophen 10/325 mg tablets – 32,668 tablets;
- 7 (e) Promethazine/Codeine Syrup – 1,489 ml.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Operational Standards and Security)**

10 **(Against Respondent Valencia Pharmacy, Respondent Balthasar, Respondent Choi)**

11 21. Respondents are subject to disciplinary action under section 4301, subdivision (o), for
12 violation of California Code of Regulations, title 16, section 1714, subdivisions (b) and (d) for
13 failure to secure inventory of controlled substances in that they could not account for inventory
14 shortages of the following controlled substances:

- 15 (a) Oxycodone 30 mg tablets- 681 tablets;
- 16 (b) Alprazolam 2 mg tablets- 10,863 tablets;
- 17 (c) Carisoprodol 350 mg tablets – 8,720 tablets;
- 18 (d) Hydrocodone/Acetaminophen 10/325 mg tablets – 32,668 tablets;
- 19 (e) Promethazine/Codeine Syrup – 1,489 ml.

20 **DISCIPLINARY CONSIDERATIONS**

21 19. In order to determine the degree of discipline, if any, to be imposed on Respondent
22 Valencia Pharmacy, Complainant alleges that on or about March 27, 2013, the Board issued
23 Citation No. CI 2010 48098, against Respondent Valencia Pharmacy for violating section 4126.5,
24 subdivision (a)(4) (furnishing dangerous drugs) and section 4059, subdivision (a) (furnishing
25 dangerous drug without a prescription). That Citation is now final and is incorporated by
26 reference as if fully set forth. A copy is attached as Exhibit A.

27 ///

28

1 19. In order to determine the degree of discipline, if any, to be imposed on Respondent
2 Balthasar, Complainant alleges that on or about January 19, 2016, the Board issued Citation No.
3 CI 2015 68738, against Respondent Balthasar for violating section 4115, subdivision (f)(1)
4 (having more than one pharmacy technician performing the duties of a pharmacy technician when
5 only one pharmacist is present) and Code of Federal Regulations, title 21, section 1301.75,
6 subdivision (b)(failing to store controlled substances in a securely locked cabinet). That Citation
7 is now final and is incorporated by reference as if fully set forth. A copy is attached as Exhibit B.

8 **OWNERSHIP PROHIBITION**

9 As set forth above, Business and Professions Code section 4307, subdivision (a), provides,
10 in pertinent part, that any person whose license has been revoked or is under suspension shall be
11 prohibited from serving as a manager, administrator, owner, member, officer, director, associate
12 or partner of a licensee.

13 Pursuant to Code section 4307, if Jan Bruce Balthasar, while acting as the manager,
14 administrator, owner, member, officer, director, associate, or partner of Pacific Pharmacy Group,
15 Inc. dba Valencia Pharmacy, had knowledge of, or knowingly participated in, any conduct for
16 which Pharmacy Permit PHY 48891 was revoked, suspended or placed on probation, Jan Bruce
17 Balthasar shall be prohibited from serving as manager, administrator, owner, member, officer,
18 director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 48891
19 is placed on probation, or until Pharmacy Permit Number PHY 48891 is reinstated if Pharmacy
20 Permit Number PHY 48891 is revoked.

21 **PRAYER**

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

- 24 1. Revoking or suspending Permit Number PHY 48891, issued to Pacific Pharmacy
25 Group, Inc. dba Valencia Pharmacy, Original Pharmacist License Number RPH 28351, issued to
26 Jan Bruce Balthasar, and Original Pharmacist License Number RPH57620, issued to Chris Choi;


1 2. Prohibiting Jan Bruce Balthasar from serving as a manager, administrator, owner,
2 member, officer, director, associate, or partner of a licensee if her license is revoked or is under
3 suspension;

4 3. Prohibiting Jan Bruce Balthasar from serving as a manager, administrator, owner,
5 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit
6 Number PHY 48891 is placed on probation or until Pharmacy Permit Number PHY 48891 is
7 reinstated if Pharmacy Permit Number PHY 48891 is revoked;

8 4. Ordering Valencia Pharmacy, Jan Bruce Balthasar, and Chris Choi to pay the Board
9 of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to
10 Business and Professions Code section 125.3; and,

11 5. Taking such other and further action as deemed necessary and proper.

12
13 DATED: 7/7/17



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

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

11 In the Matter of the Accusation Against:
12 **PACIFIC PHARMACY GROUP, INC.**
DBA VALENCIA PHARMACY
13 **23550 Lyons Ave, Ste. 111**
Newhall, CA 91321
14 **Permit No. PHY 48891**
15 **JAN BRUCE BALTHASAR**
239 Via Lido Soud
16 **Newport Beach, CA 92663**
Original Pharmacist License No. RPH 28351
17 **CHRIS CHOI**
18 **28868 Silversmith Drive**
Valencia, CA 91354
19 **Original Pharmacist License No. RPH 57620**
20
21 Respondent.

Case No. 5869

ACCUSATION

22 Complainant alleges:

23 **PARTIES**

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

26 ///

1 2. On or about May 22, 2008, the Board of Pharmacy issued Permit Number PHY
2 48891 to Pacific Pharmacy Group, Inc. dba Valencia Pharmacy (Respondent Valencia
3 Pharmacy). The Permit was in full force and effect at all times relevant to the charges brought
4 herein and will expire on May 1, 2017, unless renewed.

5 3. On or about July 31, 1973, the Board of Pharmacy issued Original Pharmacist
6 License Number RPH 28351 to Jan Bruce Balthasar (Respondent Balthasar). The Permit was in
7 full force and effect at all times relevant to the charges brought herein and will expire on
8 February 28, 2018, unless renewed. Respondent Balthasar has been the Pharmacist-in-Charge of
9 Respondent Valencia Pharmacy since September 25, 2014.

10 4. On or about December 13, 2005, the Board of Pharmacy issued Original Pharmacist
11 License Number RPH 57620 to Chris Choi (Respondent Choi). The Permit was in full force and
12 effect at all times relevant to the charges brought herein and will expire on February 28, 2017,
13 unless renewed. Respondent Choi was the Pharmacist-in-Charge of Respondent Valencia
14 Pharmacy from June 1, 2013 to September 24, 2014.

15 **JURISDICTION**

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

19 6. Section 4300.1 of the Code states:
20 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by
21 operation of law or by order or decision of the board or a court of law, the placement of a license
22 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
23 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
24 proceeding against, the licensee or to render a decision suspending or revoking the license."

25 **STATUTORY PROVISIONS**

26 7. Section 4300, subdivision (a), states: "Every license issued may be suspended or
27 revoked."

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8. Section 4301 of the Code states:

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

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

...

(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.

..."

9. Section 4081 of the Code states:

"(a) All records of manufacture and of sale, acquisition, 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, pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, 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.

..."

REGULATORY PROVISIONS

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

"...

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

1 ...

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

6 11. California Code of Regulations, title 16, section 1718, states:

7 “ ‘Current Inventory’ as used in Sections 4081 and 4332 of the Business and Professions
8 Code shall be considered to include complete accountability for all dangerous drugs handled by
9 every licensee enumerated in Sections 4081 and 4332.

10 The controlled substances inventories required by Title 21, CFR, Section 1304 shall be
11 available for inspection upon request for at least 3 years after the date of the inventory.”

12 **CONTROLLED SUBSTANCES/DANGEROUS DRUGS**

13 12. Alprazolam (generic for Xanax) is a Schedule IV controlled substance as designated
14 by Health and Safety Code section 11057, subdivisions (a) and (d)(1), and is a dangerous drug as
15 defined in section 4022.

16 13. Carisoprodol is a Schedule IV controlled substance pursuant to 21 Code of Federal
17 Regulation section 1308.14, subdivision (c)(6) and is a dangerous drug according to Business and
18 Professions Code section 4022. Its indicated use is as an adjunct to rest, physical therapy and
19 other measures for acute painful musculoskeletal conditions.

20 14. Norco is the brand name for the combination narcotic, Hydrocodone and
21 Acetaminophen, and is a Schedule II¹ controlled substance pursuant to Health and Safety Code
22 section 11055, subdivision (b)(1) (I), and is categorized as a dangerous drug pursuant to Business
23 and Professions Code section 4022.

24 ///

25
26
27 ¹ Effective October 6, 2014, the Drug Enforcement Administration rescheduled
28 Hydrocodone combination products from schedule III to schedule II of the Controlled Substances
Act. (See 21 CFR Part 1308 § 1308.12; 21 U.S.C. 812 (c))

1 15. Oxycodone, trade name Percolone, is a synthetic opioid analgesic and a Schedule II
2 controlled substance pursuant to Health and Safety Code section 11055(b)(1)(M) and a dangerous
3 drug pursuant to Business and Professions Code section 4022(c).

4 16. Promethazine with Codeine syrup is a Schedule V controlled substance as designated
5 by Health and Safety Code section 11058, subdivision (c)(1), and is categorized as a dangerous
6 drug pursuant to section 4022 of the Code.

7 17. Section 4022 states, in pertinent part:

8 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self-use in
9 humans or animals, and includes the following:

10 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without a
11 prescription,’ ‘Rx only,’ or words of similar import.

12

13 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
14 prescription or furnished pursuant to Section 4006.”

15 **COST RECOVERY PROVISION**

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

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Failure to Maintain A Current Inventory)**

22 **(Against Respondent Valencia Pharmacy, Respondent Balthasar, Respondent Choi)**

23 19. Respondents are subject to disciplinary action under section 4301, subdivision (o), for
24 violation of section 4081, subdivision (a), as related to California Code of Regulations, title 16,
25 section 1718, for failure to maintain a current inventory of controlled substances in that they
26 could not account for inventory shortages of certain drugs. The circumstances are that an audit of
27 controlled substances at Valencia Pharmacy from June 11, 2013 to August 31, 2015 determined
28

1 that Valencia Pharmacy failed to maintain a current inventory of controlled substances in that it
2 could not account for inventory shortages of the following drugs:

- 3 (a) Oxycodone 30 mg tablets- 681 tablets;
- 4 (b) Alprazolam 2 mg tablets- 10,863 tablets;
- 5 (c) Carisoprodol 350 mg tablets – 8,720 tablets;
- 6 (d) Hydrocodone/Acetaminophen 10/325 mg tablets – 32,668 tablets;
- 7 (e) Promethazine/Codeine Syrup – 1,489 ml.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Operational Standards and Security)**

10 **(Against Respondent Valencia Pharmacy, Respondent Balthasar, Respondent Choi)**

11 20. Respondents are subject to disciplinary action under section 4301, subdivision (o), for
12 violation of California Code of Regulations, title 16, section 1714, subdivisions (b) and (d) for
13 failure to secure inventory of controlled substances in that they could not account for inventory
14 shortages of the following controlled substances:

- 15 (a) Oxycodone 30 mg tablets- 681 tablets;
- 16 (b) Alprazolam 2 mg tablets- 10,863 tablets;
- 17 (c) Carisoprodol 350 mg tablets – 8,720 tablets;
- 18 (d) Hydrocodone/Acetaminophen 10/325 mg tablets – 32,668 tablets;
- 19 (e) Promethazine/Codeine Syrup – 1,489 ml.

20 **DISCIPLINARY CONSIDERATIONS**

21 19. In order to determine the degree of discipline, if any, to be imposed on Respondent
22 Valencia Pharmacy, Complainant alleges that on or about March 27, 2013, the Board issued
23 Citation No. CI 2010 48098, against Respondent Valencia Pharmacy for violating section 4126.5,
24 subdivision (a)(4) (furnishing dangerous drugs) and section 4059, subdivision (a) (furnishing
25 dangerous drug without a prescription). That Citation is now final and is incorporated by
26 reference as if fully set forth. A copy is attached as Exhibit A.

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1 19. In order to determine the degree of discipline, if any, to be imposed on Respondent
2 Balthasar, Complainant alleges that on or about January 19, 2016, the Board issued Citation No.
3 CI 2015 68738, against Respondent Balthasar for violating section 4115, subdivision (f)(1)
4 (having more than one pharmacy technician performing the duties of a pharmacy technician when
5 only one pharmacist is present) and Code of Federal Regulations, title 21, section 1301.75,
6 subdivision (b)(failing to store controlled substances in a securely locked cabinet). That Citation
7 is now final and is incorporated by reference as if fully set forth. A copy is attached as Exhibit B.

8 **PRAYER**

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

- 11 1. Revoking or suspending Permit Number PHY 48891, issued to Pacific Pharmacy
12 Group, Inc. dba Valencia Pharmacy, Original Pharmacist License Number RPH 28351, issued to
13 Jan Bruce Balthasar, and Original Pharmacist License Number RPH57620, issued to Chris Choi;
- 14 2. Ordering Valencia Pharmacy, Jan Bruce Balthasar, and Chris Choi to pay the Board
15 of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to
16 Business and Professions Code section 125.3; and,
- 17 3. Taking such other and further action as deemed necessary and proper.

18
19
20 DATED: _____

11/30/16



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

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