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

In the Matter of the Statement of Issues Against: **JENISA NUSRAT CHOWDHURY** **Pharmacist Applicant** Respondent.	Case No. 6354

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 March 7, 2019.

It is so ORDERED on February 5, 2019.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

Victor Law, R.Ph.
Board President

XAVIER BECERRA
Attorney General of California
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BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against: **JENISA NUSRAT CHOWDHURY** **Pharmacist Applicant** Respondent.	Case No. 6354 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy (Board). She brought this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by William D. Gardner, Deputy Attorney General.

2. Respondent Jenisa Nusrat Chowdhury (Respondent) is represented in this proceeding by attorney Ivan Petrzelka, whose address is 49 Discovery, Suite 240, Irvine, CA 92618-6713.

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3. In July 2017, the Board of Pharmacy, Department of Consumer Affairs, received a Pharmacist Examination and Licensure Application from Respondent. On or about July 19, 2017, Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on December 1, 2017, and Respondent timely appealed that denial.

JURISDICTION

4. Statement of Issues No. 6354 was filed before the Board, and is currently pending against Respondent. The Statement of Issues and all other statutorily required documents were properly served on Respondent on October 8, 2018.

5. A copy of Statement of Issues No. 6354 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Statement of Issues No. 6354. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Statement of Issues; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

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

CULPABILITY

9. Respondent understands and agrees that the charges and allegations in Statement of Issues No. 6354, if proven at a hearing, constitute cause for denying her application for a Pharmacist License.

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

11. Respondent agrees that her application for a Pharmacist License is subject to denial, and she agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

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

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

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

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that the application of Respondent Jenisa Nusrat Chowdhury for licensure is hereby granted. Upon successfully completing the licensure examination and all other licensing requirements including payment of all fees, a pharmacist license shall be issued to Respondent. Said license shall immediately be revoked, the order of revocation stayed, and Respondent's license shall be placed on probation for a period of three (3) years on the following terms and conditions:

1. **Obey All Laws**

Respondent shall obey all state and federal laws and regulations.

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

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

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

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2. **Report to the Board**

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

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

3. **Interview with the Board**

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

4. **Cooperate with Board Staff**

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

5. **Continuing Education**

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

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

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 6354 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

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

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause (a) Female direct supervisor, (b) Female pharmacist-in-charge, designated representative-in-charge, responsible manager, or other compliance supervisor, and (c) the owner or owner representative of Female employer, to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 6354, and terms and conditions imposed thereby. If one person serves in more than one role described in (a), (b), or (c), the acknowledgment shall so state. It shall be the respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the board. In the event of a change in the person(s) serving the role(s) described in (a), (b), or (c) during the term of probation, respondent shall cause the person(s) taking over the role(s) to report to the board in writing within fifteen (15) days of the change acknowledging that he or she has read the decision in case number 6354, and the terms and conditions imposed thereby.

If respondent works for or is employed by or through an employment service, respondent must notify the person(s) described in (a), (b), and (c) above at every entity licensed by the board of the decision in case number 6354, and the terms and conditions imposed thereby in advance of respondent commencing work at such licensed entity. A record of this notification must be provided to the board upon request.

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

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

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

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

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

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

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

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

Notwithstanding the foregoing restrictions, Respondent shall be permitted to serve as the pharmacist-in-charge of Crown Valley Pharmacy (Pharmacy Permit No. PHY 51552) after being licensed as a pharmacist for one (1) year.

9. **Probation Monitoring Costs**

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

10. **Status of License**

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

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

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

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

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

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

12. **Practice Requirement – Extension of Probation**

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacist in California for a minimum of eighty (80) hours per calendar month. Any month during which this minimum is not met shall extend the period of probation by one month. During any such period of insufficient employment, respondent must nonetheless comply with all terms and conditions of probation, unless respondent receives a waiver in writing from the board or its designee.

If respondent does not practice as a pharmacist in California for the minimum number of hours in any calendar month, for any reason (including vacation), respondent shall notify the board in writing within ten (10) days of the conclusion of that calendar month. This notification shall include at least: the date(s), location(s), and hours of last practice; the reason(s) for the interruption or reduction in practice; and the anticipated date(s) on which respondent will resume practice at the required level. Respondent shall further notify the board in writing within ten (10) days following the next calendar month during which respondent practices as a pharmacist in California for the minimum of hours. Any failure to timely provide such notification(s) shall be considered a violation of probation.

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

13. **Violation of Probation**

If respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent, and the board shall provide notice to respondent that probation shall automatically be extended, until all terms and conditions have been satisfied

or the board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed. The board or its designee may post a notice of the extended probation period on its website.

If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation or an accusation is filed against respondent during probation, or the preparation of an accusation or petition to revoke probation is requested from the Office of the Attorney General, the board shall have continuing jurisdiction and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

14. **Completion of Probation**

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

15. **No New Ownership**

Respondent shall not acquire any new ownership, legal or beneficial interest nor serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any additional business, firm, partnership, or corporation licensed by the board. Respondent shall be permitted to retain her current ownership in Crown Valley Pharmacy (Pharmacy Permit No. PHY 51552) and shall be permitted to acquire full ownership of Crown Valley Pharmacy during the term of probation. Violation of this restriction shall be considered a violation of probation.

16. **Ethics Course**

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

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

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney Ivan Petrzelka. 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: 10/8/18

JENISA NUSRAT CHOWDHURY
Respondent

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

DATED: October 8, 2018

IVAN PETRZELKA,
Attorney for Respondent

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ENDORSEMENT

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

Dated: 12/11/18

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ARMANDO ZAMBRANO
Supervising Deputy Attorney General

WILLIAM D. GARDNER
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Statement of Issues No. 6354

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Attorneys for Complainant

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

In the Matter of the Statement of Issues Against: **JENISA NUSRAT CHOWDHURY** **Pharmacist Applicant** Respondent.	Case No. 6354 **STATEMENT OF ISSUES**

Complainant alleges:

PARTIES

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

2. In July 2017, the Board of Pharmacy, Department of Consumer Affairs received a Pharmacist Examination and Licensure Application from Jenisa Nusrat Chowdhury ("Respondent"). On or about July 19, 2017, Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on December 1, 2017.

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Respondent's License History

3. Respondent previously held Pharmacist Intern Registration Number INT 35196, issued on December 17, 2014. The Pharmacist Intern Registration expired on June 30, 2018, was cancelled and is not eligible for renewal.

4. Respondent is the 49% owner of Crown Valley Pharmacy, which was issued Pharmacy Permit Number PHY 51552 on September 25, 2013. The Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein and will expire on March 24, 2019, unless renewed.

5. Respondent previously held Pharmacy Permit Number PHY 51015, issued September 7, 2012, as the sole proprietor of Newhall Pharmacy. On or about July 20, 2015, Newhall Pharmacy was converted from an unincorporated sole proprietorship into a corporation and became Newhall Pharmacy, Inc., dba Newhall Pharmacy. Respondent was and is the corporation's sole owner and corporate officer. On or about March 9, 2016, Respondent Newhall Pharmacy Inc., relocated to a different location, and Pharmacy Permit Number PHY 51015 was canceled. A new permit, Pharmacy Permit Number PHY 54078, was then issued to Newhall Pharmacy, Inc., dba Newhall Pharmacy. The Pharmacy Permit will expire on March 1, 2019, unless renewed.

JURISDICTION

6. This Statement of Issues 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.

STATUTORY PROVISIONS

7. Section 480, subdivision (a)(3)(A), of the Code provides that the Board may deny a license to an applicant on the grounds that the applicant has "[d]one any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license."

8. Section 4300, subdivision (c), of the Code provides, in pertinent part, that the Board "may refuse a license to any applicant guilty of unprofessional conduct."

9. Section 4301 of the Code states, in pertinent part:

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

. . .

"(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.

. . .

"(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."

Pertinent State Regulatory Law

10. 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.

"(b) The owner, officer, and partner of any pharmacy, wholesaler, or veterinary food-animal drug retailer shall be jointly responsible, with the pharmacist-in-charge or representative-in-charge, for maintaining the records and inventory described in this section.

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11. Section 4333 of the Code states, in pertinent part, that all prescriptions filled by a pharmacy and all other records required by Section 4081 shall be maintained on the premises and available for inspection by authorized officers of the law for a period of at least three years.

12. Section 4105 of the Code states, in pertinent part:

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

. . .

"(c) The records required by this section shall be retained on the licensed premises for a period of three years from the date of making.

. . . .

13. Health and Safety Code section 11164 states, in pertinent part:

"Except as provided in Section 11167, no person shall prescribe a controlled substance, nor shall any person fill, compound, or dispense a prescription for a controlled substance, unless it complies with the requirements of this section.

"(a) Each prescription for a controlled substance classified in Schedule II, III, IV, or V, except as authorized by subdivision (b), shall be made on a controlled substance prescription form as specified in Section 11162.1 and shall meet the following requirements:

"(1) The prescription shall be signed and dated by the prescriber in ink and shall contain the prescriber's address and telephone number; the name of the ultimate user or research subject, or contact information as determined by the Secretary of the United States Department of Health and Human Services; refill information, such as the number of refills ordered and whether the prescription is a first-time request or a refill; and the name, quantity, strength, and directions for use of the controlled substance prescribed."

14. Health and Safety Code section 11165, subdivision (d), provides:

"For each prescription for a Schedule II, Schedule III, or Schedule IV controlled substance, as defined in the controlled substances schedules in federal law and regulations, specifically Sections 1308.12, 1308.13, and 1308.14, respectively, of Title 21 of the Code of Federal

Regulations, the dispensing pharmacy, clinic, or other dispenser shall report the following information to the Department of Justice as soon as reasonably possible, but not more than seven days after the date a controlled substance is dispensed, in a format specified by the Department of Justice:

(1) Full name, address, and, if available, telephone number of the ultimate user or research subject, or contact information as determined by the Secretary of the United States Department of Health and Human Services, and the gender, and date of birth of the ultimate user.

(2) The prescriber's category of licensure, license number, national provider identifier (NPI) number, if applicable, the federal controlled substance registration number, and the state medical license number of any prescriber using the federal controlled substance registration number of a government-exempt facility.

(3) Pharmacy prescription number, license number, NPI number, and federal controlled substance registration number.

(4) National Drug Code (NDC) number of the controlled substance dispensed.

(5) Quantity of the controlled substance dispensed.

(6) International Statistical Classification of Diseases, 9th revision (ICD-9) or 10th revision (ICD-10) Code, if available.

(7) Number of refills ordered.

(8) Whether the drug was dispensed as a refill of a prescription or as a first-time request.

(9) Date of origin of the prescription.

(10) Date of dispensing of the prescription."

15. Health and Safety Code section 11179 provides:

"A person who fills a prescription shall keep it on file for at least three years from the date of filling it."

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16. Health and Safety Code section 11205 provides:

"The owner of a pharmacy or any person who purchases a controlled substance upon federal order forms as required pursuant to the provisions of the Federal "Comprehensive Drug Abuse Prevention and Control Act of 1970," (P.L. 91-513, 84 Stat. 1236),1 relating to the importation, exportation, manufacture, production, compounding, distribution, dispensing, and control of controlled substances, and who sells controlled substances obtained upon such federal order forms in response to prescriptions shall maintain and file such prescriptions in a separate file apart from noncontrolled substances prescriptions. Such files shall be preserved for a period of three years."

17. Health and Safety Code section 11208 provides:

"In a prosecution under this division, proof that a defendant received or has had in his possession at any time a greater amount of controlled substances than is accounted for by any record required by law or that the amount of controlled substances possessed by the defendant is a lesser amount than is accounted for by any record required by law is prima facie evidence of guilt."

18. Health and Safety Code section 11209, subdivision (a), provides in pertinent part:

"No person shall deliver Schedule II, III, or IV controlled substances to a pharmacy or pharmacy receiving area, nor shall any person receive controlled substances on behalf of a pharmacy unless, at the time of delivery, a pharmacist or authorized receiving personnel signs a receipt showing the type and quantity of the controlled substances received."

19. California Code of Regulations, title 16, section 1714, states in pertinent part:

"(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.

. . .

(d) Each pharmacist while on duty shall be responsible for the security of the prescription department, including provisions for effective control against theft or diversion of dangerous

drugs and devices, and records for such drugs and devices. Possession of a key to the pharmacy where dangerous drugs and controlled substances are stored shall be restricted to a pharmacist.

. . .

Pertinent Federal Regulatory Law

20. United States Code, title 21, section 829, subdivision (a), provides:

"Except when dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled substance in schedule II, which is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act [21 U.S.C.A. § 301 et seq.], may be dispensed without the written prescription of a practitioner . . . ."

21. Federal Code of Regulations, title 21, section 1304.04, subdivision (h), provides in pertinent part:

"Each registered pharmacy shall maintain the inventories and records of controlled substances as follows:

(1) Inventories and records of all controlled substances listed in Schedule I and II shall be maintained separately from all other records of the pharmacy.

. . .

22. Federal Code of Regulations, title 21, section 1304.11, provides:

"(a) General requirements. Each inventory shall contain a complete and accurate record of all controlled substances on hand on the date the inventory is taken, and shall be maintained in written, typewritten, or printed form at the registered location. An inventory taken by use of an oral recording device must be promptly transcribed. Controlled substances shall be deemed to be "on hand" if they are in the possession of or under the control of the registrant, including substances returned by a customer, ordered by a customer but not yet invoiced, stored in a warehouse on behalf of the registrant, and substances in the possession of employees of the registrant and intended for distribution as complimentary samples. A separate inventory shall be made for each registered location and each independent activity registered, except as provided in paragraph (e)(4) of this section. In the event controlled substances in the possession or under the control of the registrant are stored at a location for which he/she is not registered, the substances

shall be included in the inventory of the registered location to which they are subject to control or to which the person possessing the substance is responsible. The inventory may be taken either as of opening of business or as of the close of business on the inventory date and it shall be indicated on the inventory.

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

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

FACTUAL BACKGROUND

Respondent's Ownership of Crown Valley Pharmacy & Newhall Pharmacy

23. Crown Valley Pharmacy has been in operation since September 2013. At all times relevant to the allegations set forth herein, Respondent was a 49% owner of Crown Valley Pharmacy. Between September 7, 2012, and July 20, 2015, Respondent owned Newhall Pharmacy as a sole proprietorship. On or about July 20, 2015, Newhall Pharmacy was incorporated and became Newhall Pharmacy, Inc. Respondent is Newhall Pharmacy's sole owner and corporate officer. Although Respondent was a substantial owner of Crown Valley Pharmacy and the sole owner of Newhall Pharmacy during the relevant time period, she was attending Pharmacy School in Utah and was, at most times, not physically present at either pharmacy. At all times relevant to the allegations set forth herein, Charles M. Zandberg served as the pharmacist- in-charge of Crown Valley Pharmacy and Newhall Pharmacy, and licensed pharmacist Moazzem Chowdhury served as the manager of both pharmacies.

24. On or about April 14, 2015, the Board received an anonymous online complaint involving Crown Valley Pharmacy's and Newhall Pharmacy's acquisition and dispensing of

certain controlled substances. Among other things, the complaint alleged that the pharmacies were selling oxycodone pills and a codeine-laced cough syrup (i.e., promethazine with codeine) to people without a prescription. Oxycodone and promethazine with codeine are commonly abused controlled substances with significant "street values."

25. Oxycodone is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(M) and is a dangerous drug pursuant to Code section 4022.

26. Promethazine with codeine is a Schedule V controlled substance pursuant to Health and Safety Code section 11058, subdivision (c) and is a dangerous drug pursuant to Code section 4022.

Inspection of Crown Valley Pharmacy

27. On or about August 13, 2015, a Board inspector performed an inspection of Crown Valley Pharmacy. Federal law requires pharmacies to complete and maintain an "initial inventory" of any and all controlled substances in its stock as of the first day on which the pharmacy begins dispensing controlled substances and also requires that subsequent "biennial inventories" be performed at least every two (2) years thereafter. (See 21 CFR § 1304.) Among other things, the inspector asked to review Crown Valley's initial controlled substance inventory. Although Crown Valley had been in operation and dispensed controlled substances prior to January 30, 2014, the initial controlled substance inventory was not performed and/or completed until January 30, 2014. In addition, the inventory for Schedule II controlled substances was not maintained separately from all other records of the pharmacy as required by federal law. The inspector advised Crown Pharmacy's pharmacist-in-charge, Respondent Zandberg, that a complete and compliant inventory should be performed and provided to the Board. The Board received a copy of the newly completed controlled substance inventory the following day.

28. The inspector also obtained a variety of records related to Crown Valley Pharmacy's acquisition and dispensing of: (1) oxycodone; (2) oxycodone with acetaminophen (hereinafter, "oxycodone/apap"); and (3) promethazine with codeine between September 2013 and August 2015. Those documents included acquisition records from pharmaceutical wholesalers used by Crown Valley Pharmacy, the pharmacy's own dispensing records, records related to the

pharmacy's transactions with a reverse distributor, original prescriptions, and reports from the Controlled Substance Utilization Review and Evaluation System ("CURES.)[1]

29. These records revealed a vast disparity between the pharmacy's actual inventory of certain controlled substances and the legally documented inventory that should have been present. Specifically, the records demonstrated that Crown Valley was short in its inventory of oxycodone 30 mg by 3,666 pills, short in its inventory of oxycodone 10 mg by 326 pills, and short in its inventory of promethazine with codeine by 63 bottles (i.e. approximately 30,000 ml). Moreover, the records revealed that Crown Valley Pharmacy also could not account for the presence of massive amounts of other controlled substances in its inventory. For example, Crown Valley's inventory included 5,196 oxycodone/apap 5-325 mg pills for which there were no acquisition records, 22,579 oxycodone/apap 10-325 mg pills for which there were no acquisition records, 1,233 oxycodone 5 mg pills for which there were no acquisition records, 433 oxycodone/apap 7.5-325 mg pills for which there were no acquisition records, 148 oxycodone 20 mg pills for which there were no acquisition records, and 34 oxycodone 15 mg pills for which there were no acquisition records.

30. The inspector's analysis of the records also revealed multiple discrepancies between the quantities of oxycodone and oxycodone/apap dispensed pursuant to actual prescriptions versus the quantity dispensed pursuant to the pharmacy's dispensing records and the number of prescriptions and quantity dispensed as reported to CURES. In addition, Crown Valley Pharmacy could not produce the original prescriptions for six (6) purported prescriptions of oxycodone and oxycodone/apap that it had filled and fifteen (15) purported prescriptions of promethazine with codeine, indicating that the pharmacy had dispensed the drugs without prescriptions.

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[1] CURES is a system for monitoring patient controlled substance history information. California Health and Safety Code section 11165 requires pharmacies to report within 7 days to the California Department of Justice every schedule II, III and IV drug prescription that is written or dispensed, and the information provided establishes the CURES database, which includes information about the drug dispensed, drug quantity and strength, patient name, address, prescriber name, and prescriber authorization number including DEA number and prescription number.

Inspection of Newhall Pharmacy

31. On or about August 13, 2015, a Board inspector performed an inspection of Newhall Pharmacy. Among other things, the inspector asked to review Newhall Pharmacy's controlled substance inventories. Although Newhall Pharmacy had been in operation since September 2012 and had been dispensing controlled substances since that time, the pharmacy never performed an initial controlled substance inventory, and the only controlled substance inventory available was an *incomplete* inventory dated May 1, 2015. The inspector issued a notice of non-compliance to the pharmacy related to the controlled substance inventory violations and admonished the pharmacy to perform a complete controlled substance inventory immediately and to provide a copy of that inventory to the Board. Newhall Pharmacy provided a complete controlled substance inventory to the Board on August 17, 2015.

32. The inspector also obtained a variety of records related to Newhall Pharmacy's acquisition and dispensing of: (1) oxycodone; (2) oxycodone with acetaminophen (hereinafter, "oxycodone/apap"); and (3) promethazine with codeine between September 2012 and August 2015. Those documents included acquisition records from pharmaceutical wholesalers used by Newhall Pharmacy, the pharmacy's own dispensing records, records related to the pharmacy's transactions with a reverse distributor, original prescriptions, and reports from CURES.

33. These records revealed a vast disparity between the pharmacy's actual inventory of certain controlled substances and the legally documented inventory that should have been present. Specifically, the records demonstrated that Newhall Pharmacy was short in its inventory of oxycodone 30 mg by 2,748 pills, short in its inventory of oxycodone/apap 7.5-325 mg by 400 pills, short in its inventory of oxycodone 10 mg by 85 pills, short in its inventory of oxycodone 15 mg pills by 40 pills, and short in its inventory of promethazine with codeine by 322 bottles (i.e. more than 152,000 ml). Moreover, the records revealed that Newhall Pharmacy also could not account for the presence of large amounts of other controlled substances in its inventory. For example, Newhall Pharmacy's inventory included 1,025 oxycodone/apap 10-325 mg pills for which there were no acquisition records and 828 oxycodone/apap 5-325 mg pills for which there were no acquisition records.

34. The inspector's analysis of the records also revealed multiple discrepancies between the quantities of oxycodone/apap dispensed pursuant to actual prescriptions versus the quantity dispensed pursuant to the pharmacy's dispensing records and the number of prescriptions and quantity dispensed as reported to CURES. In addition, Newhall Pharmacy could not produce the original prescriptions for three (3) purported prescriptions of oxycodone/apap that it had filled, indicating that the pharmacy had dispensed the drugs without prescriptions.

35. As a result of the Board's inspections and subsequent investigations of Crown Valley Pharmacy and Newhall Pharmacy, Case No. 6041 (*In the Matter of the Accusation Against Newhall Pharmacy Inc., et al.*) and Case No 6042 (*In the Matter of the Accusation Against Crown Valley Pharmacy, et al,*) were filed against the pharmacy permits owned by Respondent and against her personal pharmacist intern registration.

FIRST CAUSE FOR DENIAL OF APPLICATION

(Unprofessional Conduct)

36. Respondent's application is subject to denial under Code section 480, subdivision (c)(3)(A), and Code section 4300, subdivision (c), in conjunction with Code section 4301 in that Respondent engaged in unprofessional conduct with respect to her ownership of Crown Valley Pharmacy and Newhall Pharmacy. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 23 through 35, inclusive, as though set forth fully herein.

SECOND CAUSE FOR DENIAL OF APPLICATION

(Violation of Pharmacy Law: Acquisition & Disposition Records)

37. Respondent's application is subject to denial under Code section 480, subdivision (c)(3)(A), and Code section 4300, subdivision (c), in conjunction with Code section 4301, subdivision (o), Code section 4081 and Code section 4105 in that Respondent failed to maintain acquisition, sale and/or disposition records related to thousands of oxycodone and oxycodone /apap pills as well as dozens of bottles of promethazine with codeine. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 23 through 35, inclusive, as though set forth fully herein.

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THIRD CAUSE FOR DENIAL OF APPLICATION

(Violation of Pharmacy Law: Operational Standards)

38. Respondent's application is subject to denial under Code section 480, subdivision (c)(3)(A), and Code section 4300, subdivision (c), in conjunction with Code section 4301, subdivision (o), and California Code of Regulations, title 16, section 1714, in that Respondent failed maintain Crown Valley Pharmacy's and Newhall Pharmacy's facilities, space, fixtures, and equipment such that drugs were safely and properly maintained, secured and distributed as evidenced by the vast discrepancies between its in-stock inventory and the inventory denoted by its acquisition and dispensing records. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 23 through 35, inclusive, as though set forth fully herein.

FOURTH CAUSE FOR DENIAL OF APPLICATION

(Violation of Pharmacy Law: Original Prescriptions)

39. Respondent's application is subject to denial under Code section 480, subdivision (c)(3)(A), and Code section 4300, subdivision (c), in conjunction with Code section 4301, subdivision (o), and Code section 4333 in that Respondent failed to maintain the original prescriptions for purported prescriptions of oxycodone, oxycodone/apap and promethazine with codeine that were filled by Crown Valley Pharmacy and Newhall Pharmacy. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 23 through 35, inclusive, as though set forth fully herein.

FIFTH CAUSE FOR DENIAL OF APPLICATION

(Violation Drug Law: Controlled Substance Prescriptions)

40. Respondent's application is subject to denial under Code section 480, subdivision (c)(3)(A), and Code section 4300, subdivision (c), in conjunction with Code section 4301, subdivision (j), and Health and Safety Code sections 11205 and 11179 in that Respondent failed to maintain the original prescriptions for purported prescriptions of oxycodone, oxycodone/apap and promethazine with codeine that were filled by Crown Valley Pharmacy and Newhall

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Pharmacy. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 23 through 35, inclusive, as though set forth fully herein.

SIXTH CAUSE FOR DENIAL OF APPLICATION

(Violation of Drug Law: Dispensing Controlled Substances Without a Prescription)

41. Respondent's application is subject to denial under Code section 480, subdivision (c)(3)(A), and Code section 4300, subdivision (c), in conjunction with Code section 4301, subdivision (j), California Health and Safety Code section 11164, and U.S. Code, title 21, section 829, in that Crown Valley Pharmacy and Newhall Pharmacy dispensed oxycodone, oxycodone/apap and promethazine with codeine to patients without a prescription. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 23 through 35, inclusive, as though set forth fully herein.

SEVENTH CAUSE FOR DENIAL OF APPLICATION

(Violation of Drug Law: Failure to Report to CURES)

42. Respondent's application is subject to denial under Code section 480, subdivision (c)(3)(A), and Code section 4300, subdivision (c), in conjunction with Code section 4301, subdivision (j), in conjunction with California Health and Safety Code section 11165, in that Crown Valley Pharmacy and Newhall Pharmacy failed to report information to the Department of Justice regarding their dispensing of Schedule II controlled substances as required by state and federal law. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 23 through 35, inclusive, as though set forth fully herein.

EIGHTH CAUSE FOR DENIAL OF APPLICATION

(Violation of Drug Law: Controlled Substance Inventories)

43. Respondent's application is subject to denial under Code section 480, subdivision (c)(3)(A), and Code section 4300, subdivision (c), in conjunction with Code section 4301, subdivision (j), and Code of Federal Regulations, title 21, section 1304.11, in that Crown Valley Pharmacy failed to maintain separate inventory records for its Schedule II controlled substances as required under federal law, and Newhall Pharmacy failed to complete an initial inventory of controlled substances or to timely complete a biennial inventory of controlled substances as

required under federal law. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 23 through 35, inclusive, as though set forth fully herein.

PRAYER

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

1. Denying the application of Jenisa Nusrat Chowdhury for a Pharmacist License;
2. Taking such other and further action as deemed necessary and proper.

DATED: 10/8/18

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

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