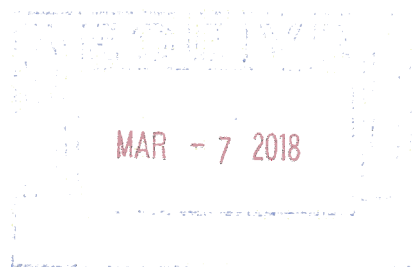


Nevada Pharmacy License was renewed on line in 2017.  
The pharmacist answered "yes" to 1 or more of the  
questions.

Copy of the discipline from the other state is attached.

To: Nevada State Board of Pharmacy  
From: Dina ElSayed  
Regarding: License number : 10629



The intent of this letter is to inform you that as of January 29, 2018, I have been placed on probation by the California State Board of Pharmacy. I signed and agreed to the probation terms on February 27, 2018.

Should you need further information regarding the case, please feel free to look up my case on the California Board of Pharmacy website. My California Pharmacy license number is 43830.

Best Regards,

Dina ElSayed



## BOARD OF PHARMACY

**Licensee Name:** EL-SAYED DINA M  
**License Type:** REGISTERED PHARMACIST  
**License Number:** 43830  
**License Status:** Probation or practice restriction Definition  
Probation Definition  
**Expiration Date:** September 30, 2018  
**Issue Date:** August 21, 1990  
**Address:** 9259 SEABISCUIT LN  
**City:** ELK GROVE  
**State:** CA  
**Zip:** 95624  
**County:** SACRAMENTO  
**Actions:** Yes

## Related Licenses/Registrations/Permits

No records returned

## Public Disclosure

### Administrative Disciplinary Actions

Current web site information on Board of Pharmacy disciplinary actions only goes as far back as *January 1998* following the effective date of the disciplinary penalty.

Disciplinary actions rendered by the Board and penalties imposed become operative on the effective date of the action except in situations where the licensee obtains a court-ordered stay through the appeal process. This may occur after the publication of the information on this website.

To obtain information prior to January 1998 or for information on specific discipline listed submit a written request to the *State Board of Pharmacy, 1625 N. Market Blvd, Suite N219, Sacramento, CA 95834, Attention Public Records Desk.*

**Case Number:** AC201500579500  
**Description of Action:** THROUGH A DISCIPLINARY ACTION OF THE BOARD, THE LICENSE IS REVOKED, THE REVOCATION IS STAYED, AND THE LICENSEE IS PLACED ON PROBATION FOR FOUR YEARS SUBJECT TO THE TERMS AND CONDITIONS IN THE DECISION.

Effective Date of        January 29, 2018  
Action:

Public documents relating to this action are available here:  
<http://www.pharmacy.ca.gov/enforcement/fy1516/ac155795>

**This information is updated Monday through Friday - Last updated: MAR-21-2018**

***Disclaimer***

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

In the Matter of the Accusation Against:

**DINA M. EL-SAYED**

**Pharmacist License No. RPH 43830**

Respondent.

Case No. 5795

OAH No. 2016120788

**CORRECTED DECISION AFTER REJECTION<sup>1</sup>**

This matter was heard before Administrative Law Judge Ed Washington, Office of Administrative Hearings, on May 10, 2017, in Sacramento, California. Deputy Attorney General Karen R. Denvir represented complainant Virginia Herold, Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs. Paul Chan, Attorney at Law, represented respondent Dina M. El-Sayed, also known as Dina Hallack, who was present at hearing.

Evidence was received, the record was closed, and the matter was submitted for decision on May 10, 2017. The administrative law judge issued a Proposed Decision on June 9, 2017.

On September 20, 2017, pursuant to section 11517 of the Government Code, the Board issued an Order Rejecting the Proposed Decision and Proposing a Waiver of Transcript. Neither party objected to waiving the transcript. Both parties timely submitted written argument.

The Board, having reviewed and considered the record (excluding the transcript), Proposed Decision and written arguments, now issues this decision.

**FACTUAL FINDINGS**

1. The Board issued Pharmacist License No. RPH 43830 (license) to respondent on August 21, 1990. The license was in full force and effect at all times relevant to this action, and

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<sup>1</sup> The Board issued a Decision After Rejection in this matter on December 28, 2017, setting it to become effective on January 29, 2018. The Decision after Rejection contained a clerical error in the caption, incorrectly referencing respondent's license number. Pursuant to Government Code section 11518.5, that error has been corrected in this Corrected Decision After Rejection, nunc pro tunc, by replacing the pharmacist license number in the caption with a reference to Pharmacist License No. RPH "43830." There are no other changes to the decision.

will expire on September 30, 2018, unless renewed or revoked. Respondent has also been a licensed registered pharmacist in the State of Nevada since May 10, 1991.

2. On September 16, 2016, acting solely in her official capacity, complainant issued an Accusation against respondent seeking to revoke or suspend respondent's license based on the conduct described below. The Accusation alleges the following causes for discipline:

(1) Violation of State Laws Regulating Controlled-Substances; (2) Self-administration of a Controlled Substance in a Manner Dangerous or Injurious; (3) Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption; and (4) Violation of the Pharmacy Law.

3. On May 4, 2017, respondent stipulated to the truth of all legal and factual allegations and causes for discipline contained in the Accusation. The Accusation specifies the following factual allegations:

- a. On or about March 23, 2014, while on duty at Costco, respondent verified an order for hydrocodone/acetaminophen 10/325. Respondent's work was checked and the order was found to be short three tablets. Video surveillance footage revealed respondent taking tablets from the order. Costco management subsequently interviewed respondent regarding the incident and, after confronted with video surveillance footage, she admitted that she took three tablets from the order, ingested one, and flushed the remaining tablets down the toilet.
- b. On or about April 4, 2014, "P.Y.", the pharmacist in charge for Costco, notified the Board that respondent was terminated from Costco for her alleged theft of hydrocodone including, but not limited to, [on] March 23, 2014.
- c. On or about March 3, 2015, respondent admitted to Board representatives that she stole hydrocodone tablets from Costco, one of which she self-administered that same day while at work. Respondent also admitted to stealing hydrocodone from Costco on one other occasion, admitted that she ingested hydrocodone prescribed to her husband, and that she became addicted to hydrocodone around 2006 - 2007. A review of Costco's video surveillance footage for the period [of] on or about January 27, 2014, to March 23, 2014, revealed that respondent stole tablets containing hydrocodone from Costco on multiple occasions.

#### *Evidence of Rehabilitation, Mitigation and Aggravation*

4. Respondent began working as a graduate intern with Kaiser Permanente in Roseville in 1990. She promoted to pharmacist and then to supervising pharmacist. As a supervising pharmacist she worked as the pharmacist-in-charge. She supervised 25 employees, including 12 pharmacists, and managed day-to-day pharmacy operations. In 2004, she promoted to regional pharmacy manager in Kaiser Permanente's pharmacy refill call center. As a call center pharmacy manager, she shared responsibility for authorizing and processing prescription

refills for more than 125 Kaiser Permanente pharmacies in the Northern California region. No controlled substances were maintained at the Kaiser Permanente pharmacy refill call center.

5. Prior to accepting employment at Costco, respondent was in what she described as an abusive relationship. She had been married for 18 years, and had three children. She asserted that her husband was verbally and emotionally abusive to her. Respondent was working very long hours at Kaiser at the time and did not know how to deal with the combined work and personal stressors. She turned to prescription medication to numb herself. Her husband had a valid prescription for Vicodin as part of a pain management treatment program.<sup>2</sup> Respondent began secretly taking her husband's Vicodin tablets from his prescription bottles to "escape" the difficulties of home life. She testified that she would usually take the Vicodin when she came home from work "and let the evening fly by." She became addicted. When respondent's husband discovered that she was secretly taking his prescription medication, he belittled her by teasing her and calling her names like "junkie."

6. In July 2012, respondent accepted a position as a relief pharmacist for Costco. As a relief pharmacist, respondent worked part-time on an on-call basis at the central fill pharmacy. She was reluctant to work at the Costco pharmacy because they maintained controlled substances on site. She had worked at the Kaiser Permanente pharmacy call center for years while addicted to narcotics without issue, as there were no controlled substances on site. Despite her reluctance, respondent accepted the position to earn additional income to assist with her family's financial needs. She stole controlled substances while working for Costco as described in Finding 3, above. Costco terminated her employment effective March 27, 2014.

7. Respondent learned of the Maximus Drug Diversion Program (also known as the Board's Pharmacist's Recovery Program) on the day she was terminated from employment at Costco. She contacted them that same day and asked for help. After a series of interviews, she enrolled in the recovery program May 1, 2014. Through the recovery program, respondent enrolled in a 60-day residential treatment program at Promises Treatment Center in Santa Monica. Respondent initially told her family she had checked herself into a mental hospital for care to avoid telling them of her drug addiction. When she eventually disclosed her addiction to her children, they were aware of her addiction and were supportive of her recovery efforts.

8. As a Maximus program participant, respondent abstained from mind altering substances, submitted to random drug testing, attended support group meetings twice a week, and attended Alcoholics Anonymous (AA) 12-Step meetings daily for the first 90 days of the program. Respondent prefers to attend AA meetings, rather than Narcotics Anonymous meetings, and now attends AA meetings four times a week. She completed the residential treatment program on August 6, 2014, and returned to the Sacramento area. Respondent filed for divorce in September 2014.

9. Respondent entered the Kaiser Permanente Chemical Dependency Program on September 24, 2014, and graduated March 31, 2015. After graduating from the chemical dependency program, respondent joined Kaiser's chemical codependency program to ensure she had another resource to rely upon as she went through her divorce. She attends weekly

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<sup>2</sup> Vicodin contains a combination of hydrocodone and acetaminophen.

counseling group sessions and also attends self-help group sessions no less than twice a week. Respondent is going through the 12-Steps for her third time and completes one step each month. She practices Step 10 of the program daily, by taking a personal inventory of herself and acknowledging her faults.

10. Respondent plans to "always go to AA." She has many friends in recovery and has developed a valued relationship with her sponsor. Respondent understands the Board's concern with her fitness for licensure, considering her addiction and the access pharmacists have to controlled substances. However, she feels she is safe to practice despite her history as she has taken several steps to address the "triggers" that led to her addiction. She felt her unhappy marriage was a primary trigger. She is now divorced. Through the Promises in-patient treatment program respondent learned to be more expressive about her feelings. She testified that she "learned that her silence does not help her" and that she "doesn't have to live a secretive life anymore because of her shame." Respondent currently works as a staff pharmacist for Pacific West Pharmacy, in Rocklin. She has not used controlled substances since March 23, 2014, and no longer has a desire to numb herself with medication.

11. Respondent submitted nine character reference letters, from colleagues, family, and friends, to support her fitness for licensure. Those letters consistently describe respondent as an exceptional pharmacist, a supportive friend, a loving mother, and a person dedicated to her recovery. Respondent also submitted proof of regular attendance at AA meetings, proof of 64.5 hours of continuing education completed between March 2013 and March 2016, a compliance letter from her Maximus clinical case manager, and a favorable performance evaluation from March 16, 2017. Respondent's character reference letters and additional materials were admitted as administrative hearsay and have been considered to the extent permitted under Government Code section 11513, subdivision (d).<sup>3</sup>

#### *Discipline*

12. As respondent stipulated to the truth of all facts and allegations constituting the causes for discipline in the Accusation, only the issue of discipline must be determined. The Board has adopted "Disciplinary Guidelines (Rev. 10/2007)" (Guidelines), which sets forth factors to be considered in reaching a decision on a disciplinary action. (Cal. Code Regs., tit. 16, § 1760.) The Guidelines divide the statutory and regulatory provisions pertaining to pharmacy technicians into three categories - Category I, Category II, and Category III - and provides a recommended minimum and maximum discipline for each category.

13. Of the nine statutory violations specified in the Accusation, five are Category II violations, three are Category III violations, and one violation, Business and Professions Code section 4301, subdivision (j), is listed in the Guidelines under both Category II and Category III. The Guidelines provide the following regarding these penalties:

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<sup>3</sup> Government Code section 11513, subdivision (d), provides, in pertinent part, that "[h]earsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over-objection in civil actions ...."



The recommended penalty for a Category II violation is:

Minimum: Revocation; Revocation stayed, three years probation (five years probation where self-administration or diversion of controlled substances is involved). All standard terms and conditions shall be included and optional terms and conditions as appropriate.

Maximum: Revocation

[¶] ... [¶]

The recommended penalty for a Category III violation is:

Minimum: Revocation; Revocation stayed, 90 days actual suspension, three years probation (five years probation where self-administration or diversion of controlled substances is involved). All standard terms and conditions shall be included and optional terms and conditions as appropriate.

Maximum: Revocation

[¶] ... [¶]

Section 4300 of the Business and Professions Code provides that the board may discipline the holder of, and suspend or revoke, any certificate, license or permit issued by the board.

In determining whether the minimum, maximum, or an intermediate penalty is to be imposed in a given case, factors such as the following should be considered:

1. actual or potential harm to the public
2. actual or potential harm to any consumer
3. prior disciplinary record, including level of compliance with disciplinary order(s)
4. prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s)
5. number and/or variety of current violations
6. nature and severity of the act(s), offense(s) or crime(s) under consideration
7. aggravating evidence
8. mitigating evidence

9. rehabilitation evidence
10. compliance with terms of any criminal sentence, parole, or probation
11. overall criminal record
12. if applicable, evidence of proceedings for case being set aside and dismissed pursuant to Section 1203.4 of the Penal Code
13. time passed since the act(s) or offense(s)
14. whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct
15. financial benefit to the respondent from the misconduct.

No single one or combination of the above factors is required to justify the minimum and/or maximum penalty in a given case, as opposed to an intermediate one.

14. Respondent violated multiple provisions of the Pharmacy Law by stealing tablets containing hydrocodone from Costco, and from her husband, and ingesting them, including while on duty as a pharmacist. There was no evidence that she had a valid prescription for the controlled substances. Taking medication from a prescription bottle to be provided to a patient prevents the patient from receiving his or her medication in the quantity prescribed – the patient could run out of medicine too soon and may not be able to fill or refill the prescription timely. In addition, her actions placed her employer's pharmacy license at risk. Moreover, the risk to the public associated with a licensed pharmacist distributing any drugs while under the influence of a controlled substance is indisputable.

15. Respondent has no history of discipline or warnings by the Board. She recognized that she needed help with her addiction when she was caught stealing medication from her employer, and took immediate and appropriate steps to overcome her addiction and begin recovery. Respondent voluntarily enrolled in the Maximus program, she completed a 60-day in-patient residential treatment program, and also completed an 18-month chemical dependency program. She has been clean for more than three years and actively participates in AA. Her character reference letters were strong and supportive. Respondent has removed the "triggers" from her life that contributed to her desire to use drugs, and has developed a support system to rely upon during challenging times. She expressed sincere remorse for her actions and has made significant progress in regaining the trust of her friends, family, and colleagues. When all the evidence is considered, given the factors identified in Business and Professions Code section 4300, respondent submitted sufficient evidence of rehabilitation to demonstrate that the public health, safety and welfare would be adequately protected if respondent is placed on probation for four years under the terms and conditions set forth below.

16. While the Guidelines specify that the minimum recommended discipline for at least two of the established causes of action is a 90-day license suspension with five years of probation, that level of discipline is not appropriate under these circumstances. Respondent self-

referred to the Maximus program in May 2014, and has remained in full compliance with its requirements for more than two years. The steps she has taken, by her own initiative, to address her addiction are praiseworthy. She should be given appropriate credit for her efforts and their results. Her efforts do not, however, mean that she should not be subject to terms. If or when she is released from the Maximus program, which may well be before she is done with probation, to protect the public, the Board must have terms to require her ongoing abstinence and to continue to monitor her through drug testing.

#### *Reasonable Costs*

17. Complainant has requested that respondent be ordered to pay the Board's costs for investigation and enforcement in the amount of \$14,071.50. The costs for prosecuting this matter are supported by a Certification of Costs and a declaration of the Deputy Attorney General. Attached to the certification is a computer printout of the tasks the Attorney General's Office performed, the amount of time spent performing those tasks, and the amounts charged. The investigative costs are specified in a Certification of Investigative Costs, and a declaration from the Board investigator that specifies the investigative tasks performed, the number of hours spent on each task and the hourly rate for those services. Respondent did not object to the costs requested by complainant. The requested costs are reasonable, given the allegations and issues in this matter. Complainant's request for costs is addressed in the Legal Conclusions below.

#### LEGAL CONCLUSIONS

1. To discipline respondent's license, complainant must prove cause for disciplinary action by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-856.)

2. Business and Professions Code section 4300, subdivision (a), provides that "[e]very license issued may be suspended or revoked." The Board's responsibility, and its highest priority, is to protect the public. (Bus. & Prof. Code §§ 4001.1, 4313.)

3. Business and Professions Code section 4021 provides that "[c]ontrolled substance" means any substance listed in Chapter 2 (commencing with section 11053) of Division 10 of the Health and Safety Code.

4. Business and Professions Code section 4022 provides:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following: (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import. (b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a \_\_\_\_," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device. (c) Any other drug or device that by federal or state law can be lawfully

dispensed only on prescription or furnished pursuant to Section 4006.

5. Pursuant to Business and Professions Code section 4301, the Board may discipline any holder of a license who has engaged in unprofessional conduct. Unprofessional conduct includes, but is not limited to, any of the following:

[¶] ... [¶]

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

[¶] ... [¶]

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

[¶] ... [¶]

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

6. Health and Safety Code section 11173, subdivision (a), provides in part: "No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact. ..."

7. Complainant established cause to discipline respondent's license pursuant to Business and Professions Code section 4301, subdivision (f), and Health and Safety Code section 11173, subdivision (a), by reason of the matters set forth in Finding 3. Complainant established

through clear and convincing evidence that respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption when she stole tablets containing hydrocodone from both her husband and Costco and ingested them.

8. Business and Professions Code section 4060 provides:

A person shall not possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to Section 4052.1, 4052.2, or 4052.6.

9. Health and Safety Code section 11350, subdivision (a), provides:

Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code.

10. Complainant established cause to discipline respondent's license pursuant to Business and Professions Code section 4060, and Health and Safety Code section 11350, subdivision (a), by reason of the matters set forth in Finding 3. Complainant established through clear and convincing evidence that respondent possessed a controlled substance that was not obtained pursuant to a valid prescription, when she stole tablets containing hydrocodone from both her husband and Costco and ingested them.

11. Business and Professions Code section 4059, subdivision (a), provides that "[a] person may not furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7."

12. Health and Safety Code section 11170 provides that "[n]o person shall prescribe, administer, or furnish a controlled substance for himself."

13. Complainant established cause to discipline respondent's license for unprofessional conduct pursuant to Business and Professions Code sections 4301, subdivision (h), and 4059, subdivision (a), and Health and Safety Code section 11170, by reason of the

matters set forth in Finding 3. Complainant established through clear and convincing evidence that respondent administered a dangerous drug or controlled substance to herself to an extent or in a manner that was dangerous or injurious to her or any other person or the public.

14. Health and Safety Code section 11173, subdivision (a), provides in part: "No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact..."

15. Complainant established cause to discipline respondent's license for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivision (j), by reason of the matters set forth in Finding 3. Complainant established through clear and convincing evidence that respondent attempted to obtain a dangerous drug and controlled substance by theft and deceit, in violation of Health and Safety Code section 11173, subdivision (a), and Business and Professions Code section 4022.

16. Complainant established cause to discipline respondent's license for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivision (o), by reason of the matters set forth in Finding 3. Complainant established through clear and convincing evidence that respondent violated provisions of the applicable federal and state laws and regulations governing pharmacy.

17. As set forth in Finding 15, respondent submitted sufficient evidence of rehabilitation to demonstrate that it would be consistent with the public health, safety and welfare to allow her to retain her certificate on a probationary basis subject to the terms and conditions set forth below. As a condition of probation respondent must continue to participate in the Board's Pharmacist Recovery Program (Maximus).

18. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated a licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal. 4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include whether the licensee has succeeded at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate, given the alleged misconduct.

19. Complainant seeks \$14,071.50 in costs. Respondent stipulated to the truth of all legal and factual allegations and causes for discipline contained in the Accusation. The scope of the investigation and prosecution was appropriate in light of the alleged misconduct, and respondent is currently employed as a staff pharmacist. When all the *Zuckerman* factors are considered, there is no basis to reduce the reasonable costs sought by complainant. The Board may assess respondent's financial circumstances in determining whether she should be allowed to pay these costs over time according to a payment plan acceptable to the Board.



## ORDER

Pharmacist License Number RPH 43830 issued to respondent Dina M. El-Sayed, also known as Dina Hallack, is revoked. However, the revocation is stayed and respondent is placed on probation for four (4) years upon the following terms and conditions:

1. Pharmacists Recovery Program (PRP). Within thirty (30) days of the effective date of this decision, respondent shall contact the Pharmacists Recovery Program (PRP) for evaluation, and shall immediately thereafter enroll, successfully participate in, and complete the treatment contract and any subsequent addendums as recommended and provided by the PRP and as approved by the Board or its designee. The costs for PRP participation shall be borne by respondent.

If respondent is currently enrolled in the PRP, said participation is now mandatory and as of the effective date of this decision is no longer considered a self-referral under Business and Professions Code section 4362(c)(2). Respondent shall successfully participate in and complete her current contract and any subsequent addendums with the PRP.

Failure to timely contact or enroll in the PRP, or successfully participate in and complete the treatment contract, and/or any addendums, shall be considered a violation of probation.

Probation shall be automatically extended until respondent successfully completes the PRP. Any person terminated from the PRP program shall be automatically suspended by the Board. Respondent may not resume the practice of pharmacy until notified by the Board in writing.

Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall result in the automatic suspension of practice by respondent and shall be considered a violation of probation. Respondent may not resume the practice of pharmacy until notified by the Board in writing.

During suspension, respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food animal drug retailer or any other distributor of drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the Board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and controlled substances. Respondent shall not resume practice until notified by the Board.

During suspension, respondent shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent shall not direct or control any aspect

of the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a designated representative for any entity licensed by the Board.

Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

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

Respondent shall pay administrative fees as invoiced by the PRP or its designee. Fees not timely paid to the PRP shall constitute a violation for probation. The Board will collect unpaid administrative fees as part of the annual probation monitoring costs if not submitted to the PRP.

Respondent shall work in a pharmacy setting with access to controlled substances for six (6) consecutive months before successfully completing probation. If respondent fails to do so, probation shall be automatically extended until this condition has been met. Failure to satisfy this condition within six (6) months beyond the original date of expiration of the term of probation shall be considered a violation of probation.

2. Abstain from Drugs and Alcohol Use. Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment.

Upon request of the board or its designee, respondent shall provide documentation from the licensed practitioner that the prescription for the drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Respondent shall ensure that she is not in the same physical location as individuals who are using illicit substances even if respondent is not personally ingesting the drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia not supported by the documentation timely provided, and/or any physical proximity to persons using illicit substances, shall be considered a violation of probation.

3. Random Drug Screening. Respondent, at her own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug or alcohol screening program as directed by the board or its designee. Respondent may be required to participate in testing for the entire probation period and the frequency of testing will be determined by the board or its designee. At all times, respondent shall fully cooperate with the board or its designee, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its designee may direct. Failure to timely submit to testing as directed shall be considered a violation of probation. Upon request of the board or its designee, respondent shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of the respondent.



Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result in the automatic suspension of practice of pharmacy by respondent. Respondent may not resume the practice of pharmacy until notified by the board in writing.

During suspension, respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and controlled substances. Respondent shall not resume practice until notified by the board.

During suspension, respondent shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a designated representative for any entity licensed by the board.

Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

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

4. 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 in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacist 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.

5. 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.

6. 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.

7. Cooperate with Board Staff. Respondent shall cooperate with the Board's inspection program and with the Board's monitoring and investigation of respondent's compliance with the terms and conditions of her probation. Failure to cooperate shall be considered a violation of probation.

8. Continuing Education. Respondent shall provide evidence of efforts to maintain skill and knowledge as pharmacist as directed by the Board or its designee.

9. Notice to Employers. During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 5795 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 fifteen (15) days of respondent undertaking any new employment, respondent shall cause her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in case number 5795, and terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify her direct supervisor, pharmacist-in-charge, and owner at every entity licensed by the Board of the terms and conditions of the decision in case number 5795 in advance of respondent commencing work at each 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 a

pharmacy employment service, respondent shall cause her direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that he or she has read the decision in case number 5795 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

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

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

10. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as Designated Representative-in-Charge, or Serving as a Consultant. During the period of probation, respondent shall not supervise any intern pharmacist, be the pharmacist-in-charge or designated representative-in-charge of any entity licensed by the Board nor serve as a consultant unless otherwise specified in this order. Assumption of any such unauthorized supervision responsibilities shall be considered a violation of probation.

11. Reimbursement of Board Costs. As a condition precedent to successful completion of probation, respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$14,071.50. Respondent shall make said payments in accordance with any installment payment plan worked out with the Board.

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

The filing of bankruptcy by respondent shall not relieve respondent of her responsibility to reimburse the Board its costs of investigation and prosecution.

12. 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.

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

If respondent's license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or

otherwise, upon renewal or reapplication respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

14. 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 tender her license to the Board for surrender. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of respondent's license history with the Board.

Upon acceptance of the surrender, respondent shall relinquish her pocket and wall license to the Board within ten (10) days of notification by the Board that the surrender is accepted. 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.

15. Notification of a Change in Name, Residence Address, Mailing Address or Employment. Respondent shall notify the Board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if known. Respondent shall further notify the Board in writing within ten (10) days of a change in name, residence address, mailing address, or phone number.

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

16. Tolling of Probation. Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacist in California for the Board-determined minimum number of hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

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

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

"Cessation of practice" means any calendar month during which respondent is not practicing as a pharmacist for at least the minimum hours, as defined by Business and Professions Code section 4000 et seq. "Resumption of practice" means any calendar month during which respondent is practicing as a pharmacist for at least the minimum hours as a pharmacist as defined by Business and Professions Code section 4000 et seq.

17. Violation of Probation. If a respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over respondent, and 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.

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. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

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

This Decision shall become effective January 29, 2018.

IT IS SO ORDERED on this 16<sup>th</sup> day of January 2018.



By

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Amarylis "Amy" Gutierrez, Pharm.D.  
Board President  
California State Board of Pharmacy

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

In the Matter of the Accusation Against:

**DINA M. EL-SAYED**

**Pharmacist License No. RPH 643830**

Respondent.

Case No. 5795

OAH No. 2016120788

**DECISION AFTER REJECTION**

This matter was heard before Administrative Law Judge Ed Washington, Office of Administrative Hearings, on May 10, 2017, in Sacramento, California. Deputy Attorney General Karen R. Denvir represented complainant Virginia Herold, Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs. Paul Chan, Attorney at Law, represented respondent Dina M. El-Sayed, also known as Dina Hallack, who was present at hearing.

Evidence was received, the record was closed, and the matter was submitted for decision on May 10, 2017. The administrative law judge issued a Proposed Decision on June 9, 2017.

On September 20, 2017, pursuant to section 11517 of the Government Code, the Board issued an Order Rejecting the Proposed Decision and Proposing a Waiver of Transcript. Neither party objected to waiving the transcript. Both parties timely submitted written argument.

The Board, having reviewed and considered the record (excluding the transcript), Proposed Decision and written arguments, now issues this decision.

**FACTUAL FINDINGS**

1. The Board issued Pharmacist License No. RPH 43830 (license) to respondent on August 21, 1990. The license was in full force and effect at all times relevant to this action, and will expire on September 30, 2018, unless renewed or revoked. Respondent has also been a licensed registered pharmacist in the State of Nevada since May 10, 1991.

2. On September 16, 2016, acting solely in her official capacity, complainant issued an Accusation against respondent seeking to revoke or suspend respondent's license based on the conduct described below. The Accusation alleges the following causes for discipline:  
(1) Violation of State Laws Regulating Controlled-Substances; (2) Self-administration of a



Controlled Substance in a Manner Dangerous or Injurious; (3) Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption; and (4) Violation of the Pharmacy Law.

3. On May 4, 2017, respondent stipulated to the truth of all legal and factual allegations and causes for discipline contained in the Accusation. The Accusation specifies the following factual allegations:

- a. On or about March 23, 2014, while on duty at Costco, respondent verified an order for hydrocodone/acetaminophen 10/325. Respondent's work was checked and the order was found to be short three tablets. Video surveillance footage revealed respondent taking tablets from the order. Costco management subsequently interviewed respondent regarding the incident and, after confronted with video surveillance footage, she admitted that she took three tablets from the order, ingested one, and flushed the remaining tablets down the toilet.
- b. On or about April 4, 2014, "P.Y.", the pharmacist in charge for Costco, notified the Board that respondent was terminated from Costco for her alleged theft of hydrocodone including, but not limited to, [on] March 23, 2014.
- c. On or about March 3, 2015, respondent admitted to Board representatives that she stole hydrocodone tablets from Costco, one of which she self-administered that same day while at work. Respondent also admitted to stealing hydrocodone from Costco on one other occasion, admitted that she ingested hydrocodone prescribed to her husband, and that she became addicted to hydrocodone around 2006 - 2007. A review of Costco's video surveillance footage for the period [of] on or about January 27, 2014, to March 23, 2014, revealed that respondent stole tablets containing hydrocodone from Costco on multiple occasions.

*Evidence of Rehabilitation, Mitigation and Aggravation*

4. Respondent began working as a graduate intern with Kaiser Permanente in Roseville in 1990. She promoted to pharmacist and then to supervising pharmacist. As a supervising pharmacist she worked as the pharmacist-in-charge. She supervised 25 employees, including 12 pharmacists, and managed day-to-day pharmacy operations. In 2004, she promoted to regional pharmacy manager in Kaiser Permanente's pharmacy refill call center. As a call center pharmacy manager, she shared responsibility for authorizing and processing prescription refills for more than 125 Kaiser Permanente pharmacies in the Northern California region. No controlled substances were maintained at the Kaiser Permanente pharmacy refill call center.

5. Prior to accepting employment at Costco, respondent was in what she described as an abusive relationship. She had been married for 18 years, and had three children. She asserted that her husband was verbally and emotionally abusive to her. Respondent was working very long hours at Kaiser at the time and did not know how to deal with the combined work and

personal stressors. She turned to prescription medication to numb herself. Her husband had a valid prescription for Vicodin as part of a pain management treatment program.<sup>1</sup> Respondent began secretly taking her husband's Vicodin tablets from his prescription bottles to "escape" the difficulties of home life. She testified that she would usually take the Vicodin when she came home from work "and let the evening fly by." She became addicted. When respondent's husband discovered that she was secretly taking his prescription medication, he belittled her by teasing her and calling her names like "junkie."

6. In July 2012, respondent accepted a position as a relief pharmacist for Costco. As a relief pharmacist, respondent worked part-time on an on-call basis at the central fill pharmacy. She was reluctant to work at the Costco pharmacy because they maintained controlled substances on site. She had worked at the Kaiser Permanente pharmacy call center for years while addicted to narcotics without issue, as there were no controlled substances on site. Despite her reluctance, respondent accepted the position to earn additional income to assist with her family's financial needs. She stole controlled substances while working for Costco as described in Finding 3, above. Costco terminated her employment effective March 27, 2014.

7. Respondent learned of the Maximus Drug Diversion Program (also known as the Board's Pharmacist's Recovery Program) on the day she was terminated from employment at Costco. She contacted them that same day and asked for help. After a series of interviews, she enrolled in the recovery program May 1, 2014. Through the recovery program, respondent enrolled in a 60-day residential treatment program at Promises Treatment Center in Santa Monica. Respondent initially told her family she had checked herself into a mental hospital for care to avoid telling them of her drug addiction. When she eventually disclosed her addiction to her children, they were aware of her addiction and were supportive of her recovery efforts.

8. As a Maximus program participant, respondent abstained from mind altering substances, submitted to random drug testing, attended support group meetings twice a week, and attended Alcoholics Anonymous (AA) 12-Step meetings daily for the first 90 days of the program. Respondent prefers to attend AA meetings, rather than Narcotics Anonymous meetings, and now attends AA meetings four times a week. She completed the residential treatment program on August 6, 2014, and returned to the Sacramento area. Respondent filed for divorce in September 2014.

9. Respondent entered the Kaiser Permanente Chemical Dependency Program on September 24, 2014, and graduated March 31, 2015. After graduating from the chemical dependency program, respondent joined Kaiser's chemical codependency program to ensure she had another resource to rely upon as she went through her divorce. She attends weekly counseling group sessions and also attends self-help group sessions no less than twice a week. Respondent is going through the 12-Steps for her third time and completes one step each month. She practices Step 10 of the program daily, by taking a personal inventory of herself and acknowledging her faults.

10. Respondent plans to "always go to AA." She has many friends in recovery and has developed a valued relationship with her sponsor. Respondent understands the Board's

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<sup>1</sup> Vicodin contains a combination of hydrocodone and acetaminophen.



concern with her fitness for licensure, considering her addiction and the access pharmacists have to controlled substances. However, she feels she is safe to practice despite her history as she has taken several steps to address the "triggers" that led to her addiction. She felt her unhappy marriage was a primary trigger. She is now divorced. Through the Promises in-patient treatment program respondent learned to be more expressive about her feelings. She testified that she "learned that her silence does not help her" and that she "doesn't have to live a secretive life anymore because of her shame." Respondent currently works as a staff pharmacist for Pacific West Pharmacy, in Rocklin. She has not used controlled substances since March 23, 2014, and no longer has a desire to numb herself with medication.

11. Respondent submitted nine character reference letters, from colleagues, family, and friends, to support her fitness for licensure. Those letters consistently describe respondent as an exceptional pharmacist, a supportive friend, a loving mother, and a person dedicated to her recovery. Respondent also submitted proof of regular attendance at AA meetings, proof of 64.5 hours of continuing education completed between March 2013 and March 2016, a compliance letter from her Maximus clinical case manager, and a favorable performance evaluation from March 16, 2017. Respondent's character reference letters and additional materials were admitted as administrative hearsay and have been considered to the extent permitted under Government Code section 11513, subdivision (d).<sup>2</sup>

#### *Discipline*

12. As respondent stipulated to the truth of all facts and allegations constituting the causes for discipline in the Accusation, only the issue of discipline must be determined. The Board has adopted "Disciplinary Guidelines (Rev. 10/2007)" (Guidelines), which sets forth factors to be considered in reaching a decision on a disciplinary action. (Cal. Code Regs., tit. 16, § 1760.) The Guidelines divide the statutory and regulatory provisions pertaining to pharmacy technicians into three categories - Category I, Category II, and Category III - and provides a recommended minimum and maximum discipline for each category.

13. Of the nine statutory violations specified in the Accusation, five are Category II violations, three are Category III violations, and one violation, Business and Professions Code section 4301, subdivision (j), is listed in the Guidelines under both Category II and Category III. The Guidelines provide the following regarding these penalties:

The recommended penalty for a Category II violation is:

Minimum: Revocation; Revocation stayed, three years probation (five years probation where self-administration or diversion of controlled substances is involved). All standard terms

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<sup>2</sup> Government Code section 11513, subdivision (d), provides, in pertinent part, that "[h]earsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over-objection in civil actions ...."

and conditions shall be included and optional terms and conditions as appropriate.

Maximum: Revocation

[¶] ... [¶]

The recommended penalty for a Category III violation is:

Minimum: Revocation; Revocation stayed, 90 days actual suspension, three years probation (five years probation where self-administration or diversion of controlled substances is involved). All standard terms and conditions shall be included and optional terms and conditions as appropriate.

Maximum: Revocation

[¶] ... [¶]

Section 4300 of the Business and Professions Code provides that the board may discipline the holder of, and suspend or revoke, any certificate, license or permit issued by the board.

In determining whether the minimum, maximum, or an intermediate penalty is to be imposed in a given case, factors such as the following should be considered:

1. actual or potential harm to the public
2. actual or potential harm to any consumer
3. prior disciplinary record, including level of compliance with disciplinary order(s)
4. prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s)
5. number and/or variety of current violations
6. nature and severity of the act(s), offense(s) or crime(s) under consideration
7. aggravating evidence
8. mitigating evidence
9. rehabilitation evidence
10. compliance with terms of any criminal sentence, parole, or probation
11. overall criminal record

12. if applicable, evidence of proceedings for case being set aside and dismissed pursuant to Section 1203.4 of the Penal Code
13. time passed since the act(s) or offense(s)
14. whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct
15. financial benefit to the respondent from the misconduct.

No single one or combination of the above factors is required to justify the minimum and/or maximum penalty in a given case, as opposed to an intermediate one.

14. Respondent violated multiple provisions of the Pharmacy Law by stealing tablets containing hydrocodone from Costco, and from her husband, and ingesting them, including while on duty as a pharmacist. There was no evidence that she had a valid prescription for the controlled substances. Taking medication from a prescription bottle to be provided to a patient prevents the patient from receiving his or her medication in the quantity prescribed – the patient could run out of medicine too soon and may not be able to fill or refill the prescription timely. In addition, her actions placed her employer's pharmacy license at risk. Moreover, the risk to the public associated with a licensed pharmacist distributing any drugs while under the influence of a controlled substance is indisputable.

15. Respondent has no history of discipline or warnings by the Board. She recognized that she needed help with her addiction when she was caught stealing medication from her employer, and took immediate and appropriate steps to overcome her addiction and begin recovery. Respondent voluntarily enrolled in the Maximus program, she completed a 60-day in-patient residential treatment program, and also completed an 18-month chemical dependency program. She has been clean for more than three years and actively participates in AA. Her character reference letters were strong and supportive. Respondent has removed the "triggers" from her life that contributed to her desire to use drugs, and has developed a support system to rely upon during challenging times. She expressed sincere remorse for her actions and has made significant progress in regaining the trust of her friends, family, and colleagues. When all the evidence is considered, given the factors identified in Business and Professions Code section 4300, respondent submitted sufficient evidence of rehabilitation to demonstrate that the public health, safety and welfare would be adequately protected if respondent is placed on probation for four years under the terms and conditions set forth below.

16. While the Guidelines specify that the minimum recommended discipline for at least two of the established causes of action is a 90-day license suspension with five years of probation, that level of discipline is not appropriate under these circumstances. Respondent self-referred to the Maximus program in May 2014, and has remained in full compliance with its requirements for more than two years. The steps she has taken, by her own initiative, to address her addiction are praiseworthy. She should be given appropriate credit for her efforts and their results. Her efforts do not, however, mean that she should not be subject to terms. If or when she

is released from the Maximus program, which may well be before she is done with probation, to protect the public, the Board must have terms to require her ongoing abstinence and to continue to monitor her through drug testing.

#### *Reasonable Costs*

17. Complainant has requested that respondent be ordered to pay the Board's costs for investigation and enforcement in the amount of \$14,071.50. The costs for prosecuting this matter are supported by a Certification of Costs and a declaration of the Deputy Attorney General. Attached to the certification is a computer printout of the tasks the Attorney General's Office performed, the amount of time spent performing those tasks, and the amounts charged. The investigative costs are specified in a Certification of Investigative Costs, and a declaration from the Board investigator that specifies the investigative tasks performed, the number of hours spent on each task and the hourly rate for those services. Respondent did not object to the costs requested by complainant. The requested costs are reasonable, given the allegations and issues in this matter. Complainant's request for costs is addressed in the Legal Conclusions below.

#### LEGAL CONCLUSIONS

1. To discipline respondent's license, complainant must prove cause for disciplinary action by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-856.)

2. Business and Professions Code section 4300, subdivision (a), provides that "[e]very license issued may be suspended or revoked." The Board's responsibility, and its highest priority, is to protect the public. (Bus. & Prof. Code §§ 4001.1, 4313.)

3. Business and Professions Code section 4021 provides that "[c]ontrolled substance" means any substance listed in Chapter 2 (commencing with section 11053) of Division 10 of the Health and Safety Code.

4. Business and Professions Code section 4022 provides:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following: (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import. (b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a \_\_," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device. (c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

5. Pursuant to Business and Professions Code section 4301, the Board may discipline any holder of a license who has engaged in unprofessional conduct. Unprofessional conduct includes, but is not limited to, any of the following:

[¶] ... [¶]

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

[¶] ... [¶]

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

[¶] ... [¶]

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

6. Health and Safety Code section 11173, subdivision (a), provides in part: "No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact. ..."

7. Complainant established cause to discipline respondent's license pursuant to Business and Professions Code section 4301, subdivision (f), and Health and Safety Code section 11173, subdivision (a), by reason of the matters set forth in Finding 3. Complainant established through clear and convincing evidence that respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption when she stole tablets containing hydrocodone from both her husband and Costco and ingested them.

8. Business and Professions Code section 4060 provides:

A person shall not possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to Section 4052.1, 4052.2, or 4052.6.

9. Health and Safety Code section 11350, subdivision (a), provides:

Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code.

10. Complainant established cause to discipline respondent's license pursuant to Business and Professions Code section 4060, and Health and Safety Code section 11350, subdivision (a), by reason of the matters set forth in Finding 3. Complainant established through clear and convincing evidence that respondent possessed a controlled substance that was not obtained pursuant to a valid prescription, when she stole tablets containing hydrocodone from both her husband and Costco and ingested them.

11. Business and Professions Code section 4059, subdivision (a), provides that "[a] person may not furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7."

12. Health and Safety Code section 11170 provides that "[n]o person shall prescribe, administer, or furnish a controlled substance for himself."

13. Complainant established cause to discipline respondent's license for unprofessional conduct pursuant to Business and Professions Code sections 4301, subdivision (h), and 4059, subdivision (a), and Health and Safety Code section 11170, by reason of the matters set forth in Finding 3. Complainant established through clear and convincing evidence that respondent administered a dangerous drug or controlled substance to herself to an extent or in a manner that was dangerous or injurious to her or any other person or the public.



14. Health and Safety Code section 11173, subdivision (a), provides in part: "No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact..." "

15. Complainant established cause to discipline respondent's license for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivision (j), by reason of the matters set forth in Finding 3. Complainant established through clear and convincing evidence that respondent attempted to obtain a dangerous drug and controlled substance by theft and deceit, in violation of Health and Safety Code section 11173, subdivision (a), and Business and Professions Code section 4022.

16. Complainant established cause to discipline respondent's license for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivision (o), by reason of the matters set forth in Finding 3. Complainant established through clear and convincing evidence that respondent violated provisions of the applicable federal and state laws and regulations governing pharmacy.

17. As set forth in Finding 15, respondent submitted sufficient evidence of rehabilitation to demonstrate that it would be consistent with the public health, safety and welfare to allow her to retain her certificate on a probationary basis subject to the terms and conditions set forth below. As a condition of probation respondent must continue to participate in the Board's Pharmacist Recovery Program (Maximus).

18. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated a licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal. 4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include whether the licensee has succeeded at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate, given the alleged misconduct.

19. Complainant seeks \$14,071.50 in costs. Respondent stipulated to the truth of all legal and factual allegations and causes for discipline contained in the Accusation. The scope of the investigation and prosecution was appropriate in light of the alleged misconduct, and respondent is currently employed as a staff pharmacist. When all the *Zuckerman* factors are considered, there is no basis to reduce the reasonable costs sought by complainant. The Board may assess respondent's financial circumstances in determining whether she should be allowed to pay these costs over time according to a payment plan acceptable to the Board.

## ORDER

Pharmacist License Number RPH 43830 issued to respondent Dina M. El-Sayed, also known as Dina Hallack, is revoked. However, the revocation is stayed and respondent is placed on probation for four (4) years upon the following terms and conditions:

1. Pharmacists Recovery Program (PRP). Within thirty (30) days of the effective date of this decision, respondent shall contact the Pharmacists Recovery Program (PRP) for evaluation, and shall immediately thereafter enroll, successfully participate in, and complete the treatment contract and any subsequent addendums as recommended and provided by the PRP and as approved by the Board or its designee. The costs for PRP participation shall be borne by respondent.

If respondent is currently enrolled in the PRP, said participation is now mandatory and as of the effective date of this decision is no longer considered a self-referral under Business and Professions Code section 4362(c)(2). Respondent shall successfully participate in and complete her current contract and any subsequent addendums with the PRP.

Failure to timely contact or enroll in the PRP, or successfully participate in and complete the treatment contract, and/or any addendums, shall be considered a violation of probation.

Probation shall be automatically extended until respondent successfully completes the PRP. Any person terminated from the PRP program shall be automatically suspended by the Board. Respondent may not resume the practice of pharmacy until notified by the Board in writing.

Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall result in the automatic suspension of practice by respondent and shall be considered a violation of probation. Respondent may not resume the practice of pharmacy until notified by the Board in writing.

During suspension, respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food animal drug retailer or any other distributor of drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the Board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and controlled substances. Respondent shall not resume practice until notified by the Board.

During suspension, respondent shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a designated representative for any entity licensed by the Board.



Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

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

Respondent shall pay administrative fees as invoiced by the PRP or its designee. Fees not timely paid to the PRP shall constitute a violation for probation. The Board will collect unpaid administrative fees as part of the annual probation monitoring costs if not submitted to the PRP.

Respondent shall work in a pharmacy setting with access to controlled substances for six (6) consecutive months before successfully completing probation. If respondent fails to do so, probation shall be automatically extended until this condition has been met. Failure to satisfy this condition within six (6) months beyond the original date of expiration of the term of probation shall be considered a violation of probation.

2. Abstain from Drugs and Alcohol Use. Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment.

Upon request of the board or its designee, respondent shall provide documentation from the licensed practitioner that the prescription for the drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Respondent shall ensure that she is not in the same physical location as individuals who are using illicit substances even if respondent is not personally ingesting the drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia not supported by the documentation timely provided, and/or any physical proximity to persons using illicit substances, shall be considered a violation of probation.

3. Random Drug Screening. Respondent, at her own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug or alcohol screening program as directed by the board or its designee. Respondent may be required to participate in testing for the entire probation period and the frequency of testing will be determined by the board or its designee. At all times, respondent shall fully cooperate with the board or its designee, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its designee may direct. Failure to timely submit to testing as directed shall be considered a violation of probation. Upon request of the board or its designee, respondent shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully

prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result in the automatic suspension of practice of pharmacy by respondent. Respondent may not resume the practice of pharmacy until notified by the board in writing.

During suspension, respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and controlled substances. Respondent shall not resume practice until notified by the board.

During suspension, respondent shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a designated representative for any entity licensed by the board.

Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

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

4. 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 in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacist 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.

5. 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.

6. 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.

7. Cooperate with Board Staff. Respondent shall cooperate with the Board's inspection program and with the Board's monitoring and investigation of respondent's compliance with the terms and conditions of her probation. Failure to cooperate shall be considered a violation of probation.

8. Continuing Education. Respondent shall provide evidence of efforts to maintain skill and knowledge as pharmacist as directed by the Board or its designee.

9. Notice to Employers. During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 5795 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 fifteen (15) days of respondent undertaking any new employment, respondent shall cause her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in case number 5795, and terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify her direct supervisor, pharmacist-in-charge, and owner at every entity licensed by the Board of the terms and conditions of the decision in case number 5795 in advance of respondent commencing work at each 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 a pharmacy employment service, respondent shall cause her direct supervisor with the

pharmacy employment service to report to the Board in writing acknowledging that he or she has read the decision in case number 5795 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

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

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

10. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as Designated Representative-in-Charge, or Serving as a Consultant. During the period of probation, respondent shall not supervise any intern pharmacist, be the pharmacist-in-charge or designated representative-in-charge of any entity licensed by the Board nor serve as a consultant unless otherwise specified in this order. Assumption of any such unauthorized supervision responsibilities shall be considered a violation of probation.

11. Reimbursement of Board Costs. As a condition precedent to successful completion of probation, respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$14,071.50. Respondent shall make said payments in accordance with any installment payment plan worked out with the Board.

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

The filing of bankruptcy by respondent shall not relieve respondent of her responsibility to reimburse the Board its costs of investigation and prosecution.

12. 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.

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

If respondent's license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or

otherwise, upon renewal or reapplication respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

14. 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 tender her license to the Board for surrender. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of respondent's license history with the Board.

Upon acceptance of the surrender, respondent shall relinquish her pocket and wall license to the Board within ten (10) days of notification by the Board that the surrender is accepted. 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.

15. Notification of a Change in Name, Residence Address, Mailing Address or Employment. Respondent shall notify the Board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if known. Respondent shall further notify the Board in writing within ten (10) days of a change in name, residence address, mailing address, or phone number.

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

16. Tolling of Probation. Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacist in California for the Board-determined minimum number of hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

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



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

"Cessation of practice" means any calendar month during which respondent is not practicing as a pharmacist for at least the minimum hours, as defined by Business and Professions Code section 4000 et seq. "Resumption of practice" means any calendar month during which respondent is practicing as a pharmacist for at least the minimum hours as a pharmacist as defined by Business and Professions Code section 4000 et seq.

17. Violation of Probation. If a respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over respondent, and 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.

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. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

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

This Decision shall become effective January 29, 2018.

IT IS SO ORDERED this 28<sup>th</sup> day of December 2017.



By

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Amarylis "Amy" Gutierrez, Pharm.D.  
Board President  
California State Board of Pharmacy

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

In the Matter of the Accusation Against:

DINA EL-SAYED  
Elk Grove, CA 95624

Original Pharmacist License No. RPH 43830,

Respondent.

Case No. 5795

OAH No. 2016120788

**ORDER REJECTING PROPOSED DECISION  
AND PROPOSING WAIVER OF TRANSCRIPT**

Pursuant to Government Code section 11517, subdivision (c), the Proposed Decision of the Administrative Law Judge in the above-entitled case is rejected. The California State Board of Pharmacy will decide the case upon the record, and upon such written argument as the parties may wish to submit.

The right to argue on any matter is limited to the facts as presented in the record. No new evidence may be submitted. However, the board is especially interested in arguments as to whether, in order to protect the public, and considering Business and Professions Code section 315, *et seq.*, terms titled Random Drug Screening and Abstain from Drugs and Alcohol Use should be required during respondent's probationary period. Stated alternately, the question is whether the board's model terms regarding such matters (Optional Terms 22 and 23 for pharmacists) from its Disciplinary Guidelines should be imposed. (Disciplinary Guidelines, rev. 10/2007, p. 35 and 36.)

The board believes the issue above may be addressed without a review of the transcript of the hearing held. Unless the parties object in writing, it will be assumed the parties stipulate that the board may decide the case upon the record without including the transcript. The record will also include any written argument as the parties may wish to submit. In the event any party objects to not ordering the transcript, it should file a notice of objection to the stipulation by **October 4, 2017**, with a copy to the other party. The notice of objection may be served on the board at **1625 N. Market Blvd, N219, Sacramento, CA 95834, Attention Susan Cappello, Enforcement Manager.**

If no party objects to the stipulation regarding the transcript, the parties shall have until **October 20, 2017**, to submit written argument.

In the event any party objects to the stipulation, the transcript will be ordered and the parties will be notified of a revised date for submission of such argument when the transcript of the above-mentioned hearing becomes available. In that case, a copy of the record will be provided to you at the time of notification of the final filing date for written argument (the board may require payment of fees to cover the copying and mailing costs of the transcript and exhibits).

IT IS SO ORDERED this 20th day of September 2017.

A handwritten signature in black ink, appearing to read 'Amarylis Gutierrez', written over a horizontal line.

By

Amarylis "Amy" Gutierrez, Pharm.D.  
Board President  
California State Board of Pharmacy



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

In the Matter of the Accusation Against:

DINA M. EL-SAYED  
Sacramento, CA 95865

Original Pharmacist License No. RPH 643830

Respondent.

Case No. 5795

OAH No. 2016120788

**PROPOSED DECISION**

This matter was heard before Administrative Law Judge Ed Washington, Office of Administrative Hearings, on May 10, 2017, in Sacramento, California.

Deputy Attorney General Karen R. Denvir represented complainant Virginia Herold, Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

Paul Chan, Attorney at Law, represented respondent Dina M. El-Sayed, also known as Dina Hallack, who was present at hearing.

Evidence was received, the record was closed, and the matter was submitted for decision on May 10, 2017.

**FACTUAL FINDINGS**

1. The Board issued Original Pharmacist License No. RPH 43830 (license) to respondent on August 21, 1990. The license was in full force and effect at all times relevant to this action, and will expire on September 30, 2018, unless renewed or revoked. Respondent has also been a licensed registered pharmacist in the State of Nevada since May 10, 1991.

2. On September 16, 2016, acting solely in her official capacity, complainant issued an Accusation against respondent seeking to revoke or suspend respondent's license based on the conduct described below. The Accusation alleges the following causes for discipline: (1) Violation of State Laws Regulating Controlled Substances; (2) Self-administration of a Controlled Substance in a Manner Dangerous or Injurious; (3) Acts

Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption; and (4) Violation of the Pharmacy Law.

3. On May 4, 2017, respondent stipulated to the truth of all legal and factual allegations and causes for discipline contained in the Accusation. The Accusation specifies the following factual allegations:

- a. On or about March 23, 2014, while on duty at Costco, respondent verified an order for hydrocodone/acetaminophen 10/325. Respondent's work was checked and the order was found to be short three tablets. Video surveillance footage revealed respondent taking tablets from the order. Costco management subsequently interviewed respondent regarding the incident and, after confronted with video surveillance footage, she admitted that she took three tablets from the order, ingested one, and flushed the remaining tablets down the toilet.
- b. On or about April 4, 2014, "P.Y.," the pharmacist in charge for Costco, notified the Board that respondent was terminated from Costco for her alleged theft of hydrocodone including, but not limited to, [on] March 23, 2014.
- c. On or about March 3, 2015, respondent admitted to Board representatives that she stole hydrocodone tablets from Costco, one of which she self-administered that same day while at work. Respondent also admitted to stealing hydrocodone from Costco on one other occasion, admitted that she ingested hydrocodone prescribed to her husband, and that she became addicted to hydrocodone around 2006 – 2007. A review of Costco's video surveillance footage for the period [of] on or about January 27, 2014, to March 23, 2014, revealed that respondent stole tablets containing hydrocodone from Costco on multiple occasions.

*Evidence of Rehabilitation, Mitigation and Aggravation*

4. Respondent began working as a graduate intern with Kaiser Permanente in Roseville in 1990. She promoted to pharmacist and then to supervising pharmacist. As a supervising pharmacist she worked as the pharmacist-in-charge. She supervised 25 employees, including 12 pharmacists, and managed day-to-day pharmacy operations. In 2004, she promoted to regional pharmacy manager in Kaiser Permanente's pharmacy refill call center. As a call center pharmacy manager, she shared responsibility for authorizing and processing prescription refills for more than 125 Kaiser Permanente pharmacies in the

Northern California region. No controlled substances were maintained at the Kaiser Permanente pharmacy refill call center.

5. Prior to accepting employment at Costco, respondent was in what she described as an abusive relationship. She had been married for 18 years, and had three children. She asserted that her husband was verbally and emotionally abusive to her. Respondent was working very long hours at Kaiser at the time and did not know how to deal with the combined work and personal stressors. She turned to prescription medication to numb herself. Her husband had a valid prescription for Vicodin as part of a pain management treatment program.<sup>1</sup> Respondent began secretly taking her husband's Vicodin tablets from his prescription bottles to "escape" the difficulties of home life. She testified that she would usually take the Vicodin when she came home from work "and let the evening fly by." She became addicted. When respondent's husband discovered that she was secretly taking his prescription medication, he belittled her by teasing her and calling her names like "junkie."

6. In July 2012, respondent accepted a position as a relief pharmacist for Costco. As a relief pharmacist, respondent worked part-time on an on-call basis at the central fill pharmacy. She was reluctant to work at the Costco pharmacy, because they maintained controlled substances on site. She had worked at the Kaiser Permanente pharmacy call center for years while addicted to narcotics without issue, as there were no controlled substances on site. Despite her reluctance, respondent accepted the position to earn additional income to assist with her family's financial needs. She stole controlled substances while working for Costco as described in Finding 3, above. Costco terminated her employment effective March 27, 2014.

7. Respondent learned of the Maximus Drug Diversion Program on the day she was terminated from employment at Costco. She contacted them that same day and asked for help. After a series of interviews, she enrolled in the diversion program May 1, 2014. Through the diversion program, respondent enrolled in a 60-day residential treatment program at Promises Treatment Center in Santa Monica. Respondent initially told her family she had checked herself into a mental hospital for care to avoid telling them of her drug addiction. When she eventually disclosed her addiction to her children, they were aware of her addiction and were supportive of her recovery efforts.

8. As a Maximus program participant, respondent abstained from mind altering substances, submitted to random drug testing, attended support group meetings twice a week, and attended Alcoholics Anonymous (AA) 12-Step meetings daily for the first 90 days of the program. Respondent prefers to attend AA meetings, rather than Narcotics Anonymous meetings, and now attends AA meetings four times a week. She completed the residential treatment program on August 6, 2014, and returned to the Sacramento area. Respondent filed for divorce in September 2014.

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<sup>1</sup> Vicodin contains a combination of hydrocodone and acetaminophen.

9. Respondent entered the Kaiser Permanente Chemical Dependency Program on September 24, 2014, and graduated March 31, 2015. After graduating from the chemical dependency program, respondent joined Kaiser's chemical codependency program to ensure she had another resource to rely upon as she went through her divorce. She attends weekly counseling group sessions and also attends self-help group sessions no less than twice a week. Respondent is going through the 12-Steps for her third time and completes one step each month. She practices Step 10 of the program daily, by taking a personal inventory of herself and acknowledging her faults.

10. Respondent plans to "always go to AA." She has many friends in recovery and has developed a valued relationship with her sponsor. Respondent understands the Board's concern with her fitness for licensure, considering her addiction and the access pharmacists have to controlled substances. However, she feels she is safe to practice despite her history as she has taken several steps to address the "triggers" that led to her addiction. She felt her unhappy marriage was a primary trigger. She is now divorced. Through the Promises in-patient treatment program respondent learned to be more expressive about her feelings. She testified that she "learned that her silence does not help her" and that she "doesn't have to live a secretive life anymore because of her shame." Respondent currently works as a staff pharmacist for Pacific West Pharmacy, in Rocklin. She has not used controlled substances since March 23, 2014, and no longer has a desire to numb herself with medication.

11. Respondent submitted nine character reference letters, from colleagues, family, and friends, to support her fitness for licensure. Those letters consistently describe respondent as an exceptional pharmacist, a supportive friend, a loving mother, and a person dedicated to her recovery. Respondent also submitted proof of regular attendance at AA meetings, proof of 64.5 hours of continuing education completed between March 2013 and March 2016, a compliance letter from her Maximus clinical case manager, and a favorable performance evaluation from March 16, 2017. Respondent's character reference letters and additional materials were admitted as administrative hearsay and have been considered to the extent permitted under Government Code section 11513, subdivision (d).<sup>2</sup>

#### *Discipline*

12. As respondent stipulated to the truth of all facts and allegations constituting the causes for discipline in the Accusation, only the issue of discipline must be determined. The Board has adopted "Disciplinary Guidelines (Rev. 10/2007)" (Guidelines), which sets forth factors to be considered in reaching a decision on a disciplinary action. (Cal. Code Regs., tit. 16, § 1760.) The Guidelines divide the statutory and regulatory provisions

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<sup>2</sup> Government Code section 11513, subdivision (d), provides, in pertinent part, that "[h]earsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions ..."

pertaining to pharmacy technicians into three categories – Category I, Category II, and Category III – and provides a recommended minimum and maximum discipline for each category.

13. Of the nine statutory violations specified in the Accusation, five are Category II violations, three are Category III violations, and one violation, Business and Professions Code section 4301, subdivision (j), is listed in the Guidelines under both Category II and Category III. The Guidelines provide the following regarding these penalties:

The recommended penalty for a Category II violation is:

Minimum: Revocation; Revocation stayed, three years probation (five years probation where self-administration or diversion of controlled substances is involved). All standard terms and conditions shall be included and optional terms and conditions as appropriate.

Maximum: Revocation

The recommended penalty for a Category III violation is:

Minimum: Revocation; Revocation stayed, 90 days actual suspension, three years probation (five years probation where self-administration or diversion of controlled substances is involved). All standard terms and conditions shall be included and optional terms and conditions as appropriate.

Maximum: Revocation

¶¶ ... ¶¶

Section 4300 of the Business and Professions Code provides that the board may discipline the holder of, and suspend or revoke, any certificate, license or permit issued by the board.

In determining whether the minimum, maximum, or an intermediate penalty is to be imposed in a given case, factors such as the following should be considered:

1. actual or potential harm to the public
2. actual or potential harm to any consumer

3. prior disciplinary record, including level of compliance with disciplinary order(s)
4. prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s)
5. number and/or variety of current violations
6. nature and severity of the act(s), offense(s) or crime(s) under consideration
7. aggravating evidence
8. mitigating evidence
9. rehabilitation evidence
10. compliance with terms of any criminal sentence, parole, or probation
11. overall criminal record
12. if applicable, evidence of proceedings for case being set aside and dismissed pursuant to Section 1203.4 of the Penal Code
13. time passed since the act(s) or offense(s)
14. whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct
15. financial benefit to the respondent from the misconduct.

No single one or combination of the above factors is required to justify the minimum and/or maximum penalty in a given case, as opposed to an intermediate one.

14. Respondent violated multiple provisions of the Pharmacy Law by stealing tablets containing hydrocodone from Costco, and from her husband, and ingesting them. There was no evidence that she had a valid prescription for the controlled substances. While there was no evidence that the public or any consumer was harmed by respondent's conduct, her actions placed her employer's pharmacy license at risk. Moreover the risk associated with a licensed pharmacist distributing controlled substances while under the influence of drugs is indisputable.

15. Respondent has no history of discipline or warnings by the Board. She recognized that she needed help with her addiction when she was caught stealing medication from her employer, and took immediate and appropriate steps to overcome her addiction and begin recovery. Respondent voluntarily enrolled in the Maximus program, she completed a 60-day in-patient residential treatment program, and also completed an 18-month chemical dependency program. She has been clean for more than three years and actively participates in AA. Her character reference letters were strong and supportive. Respondent has removed the "triggers" from her life that contributed to her desire to use drugs, and has developed a



support system to rely upon during challenging times. She expressed sincere remorse for her actions and has made significant progress in regaining the trust of her friends, family, and colleagues. When all the evidence is considered, given the factors identified in Business and Professions Code section 4300, respondent submitted sufficient evidence of rehabilitation to demonstrate that the public health, safety and welfare would be adequately protected if respondent is placed on probation for four years under the terms and conditions set forth below.

16. While the Guidelines specify that the minimum recommended discipline for at least two of the established causes of action is a 90-day license suspension with five years of probation, that level of discipline is not appropriate under these circumstances. Respondent self-referred to the Maximus drug diversion program in May 2014, and has remained in full compliance with its requirements for more than two years. The steps she has taken, by her own initiative, to address her addiction are praiseworthy. She should be given appropriate credit for her efforts and their results.

#### *Reasonable Costs*

17. Complainant has requested that respondent be ordered to pay the Board's costs for investigation and enforcement in the amount of \$14,071.50. The costs for prosecuting this matter are supported by a Certification of Costs and a declaration of the Deputy Attorney General. Attached to the certification is a computer printout of the tasks the Attorney General's office performed, the amount of time spent performing those tasks, and the amounts charged. The investigative costs are specified in a Certification of Investigative Costs, and a declaration from the Board investigator that specifies the investigative tasks performed, the number of hours spent on each task and the hourly rate for those services. Respondent did not object to the costs requested by complainant. The requested costs are reasonable, given the allegations and issues in this matter. Complainant's request for costs is addressed in the Legal Conclusions below.

### LEGAL CONCLUSIONS

1. To discipline respondent's license, complainant must prove cause for disciplinary action by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-856.)

2. Business and Professions Code section 4300, subdivision (a), provides that "[e]very license issued may be suspended or revoked."

3. Business and Professions Code section 4021 provides that "[c]ontrolled substance" means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

4. Business and Professions Code section 4022 provides:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following: (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import. (b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a \_\_\_\_\_," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device. (c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

5. Pursuant to Business and Professions Code section 4301, the Board may discipline any holder of a license who has engaged in unprofessional conduct. Unprofessional conduct shall include, but is not limited to, any of the following:

[§] ... [§]

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

[§] ... [§]

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

[§] ... [§]

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

6. Health and Safety Code section 11173, subdivision (a), provides in part: "No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact..."

7. Complainant established cause to discipline respondent's license pursuant to Business and Professions Code section 4301, subdivision (f), and Health and Safety Code section 11173, subdivision (a), by reason of the matters set forth in Finding 3. Complainant established through clear and convincing evidence that respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption when she stole tablets containing hydrocodone from both her husband and Costco and ingested them.

8. Business and Professions Code section 4060 provides:

A person shall not possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to Section 4052.1, 4052.2, or 4052.6.

9. Health and Safety Code section 11350, subdivision (a), provides:

Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code.

10. Complainant established cause to discipline respondent's license pursuant to Business and Professions Code section 4060, and Health and Safety Code section 11350, subdivision (a), by reason of the matters set forth in Finding 3. Complainant established through clear and convincing evidence that respondent possessed a controlled substance that was not obtained pursuant to a valid prescription, when she stole tablets containing hydrocodone from both her husband and Costco and ingested them.

11. Business and Professions Code section 4059, subdivision (a), provides that "[a] person may not furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7."

12. Health and Safety Code section 11170 provides that "[n]o person shall prescribe, administer, or furnish a controlled substance for himself."

13. Complainant established cause to discipline respondent's license for unprofessional conduct pursuant to Business and Professions Code sections 4301, subdivision (h), and 4059, subdivision (a), and Health and Safety Code section 11170, by reason of the matters set forth in Finding 3. Complainant established through clear and convincing evidence that respondent administered a dangerous drug or controlled substance to herself to an extent or in a manner that was dangerous or injurious to her or any other person or the public.

14. Health and Safety Code section 11173, subdivision (a), provides in part: "No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact..."

15. Complainant established cause to discipline respondent's license for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivision (j), by reason of the matters set forth in Finding 3. Complainant established through clear and convincing evidence that respondent attempted to obtain a dangerous drug and controlled substance by theft and deceit, in violation of Health and Safety Code section 11173, subdivision (a), and Business and Professions Code section 4022.

16. Complainant established cause to discipline respondent's license for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivision (o), by reason of the matters set forth in Finding 3. Complainant established through clear and convincing evidence that respondent violated provisions of the applicable federal and state laws and regulations governing pharmacy.

17. As set forth in Finding 15, respondent submitted sufficient evidence of rehabilitation to demonstrate that it would be consistent with the public health, safety and welfare to allow her to retain her certificate on a probationary basis subject to the terms and

conditions set forth below. As a condition of probation respondent must continue to participate in the Board's Pharmacist Recovery Program

18. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated a licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include whether the licensee has succeeded at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate, given the alleged misconduct.

19. Complainant seeks \$14,071.50 in costs. Respondent stipulated to the truth of all legal and factual allegations and causes for discipline contained in the Accusation. The scope of the investigation and prosecution was appropriate in light of the alleged misconduct, and respondent is currently employed as a staff pharmacist. When all the *Zuckerman* factors are considered, there is no basis to reduce the reasonable costs sought by complainant. The Board may assess respondent's financial circumstances in determining whether she should be allowed to pay these costs over time according to a payment plan acceptable to the Board.

### ORDER

Original Pharmacist License Number RPH 43830 issued to respondent Dina M. El-Sayed, also known as Dina Hallack, is revoked. However, the revocation is stayed and respondent is placed on probation for four (4) years upon the following terms and conditions:

1. Pharmacists Recovery Program (PRP). Within thirty (30) days of the effective date of this decision, respondent shall contact the Pharmacists Recovery Program (PRP) for evaluation, and shall immediately thereafter enroll, successfully participate in, and complete the treatment contract and any subsequent addendums as recommended and provided by the PRP and as approved by the Board or its designee. The costs for PRP participation shall be borne by respondent.

If respondent is currently enrolled in the PRP, said participation is now mandatory and as of the effective date of this decision is no longer considered a self-referral under Business and Professions Code section 4362(c)(2). Respondent shall successfully participate in and complete her current contract and any subsequent addendums with the PRP.

Failure to timely contact or enroll in the PRP, or successfully participate in and complete the treatment contract and/or any addendums, shall be considered a violation of probation.

Probation shall be automatically extended until respondent successfully completes the PRP. Any person terminated from the PRP program shall be automatically suspended by the Board. Respondent may not resume the practice of pharmacy until notified by the Board in writing.

Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall result in the automatic suspension of practice by respondent and shall be considered a violation of probation. Respondent may not resume the practice of pharmacy until notified by the Board in writing.

During suspension, respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the Board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and controlled substances. Respondent shall not resume practice until notified by the Board.

During suspension, respondent shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a designated representative for any entity licensed by the Board.

Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

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

Respondent shall pay administrative fees as invoiced by the PRP or its designee. Fees not timely paid to the PRP shall constitute a violation for probation. The Board will collect unpaid administrative fees as part of the annual probation monitoring costs if not submitted to the PRP.

Respondent shall work in a pharmacy setting with access to controlled substances for six (6) consecutive months before successfully completing probation. If respondent fails to do so, probation shall be automatically extended until this condition has been met. Failure to satisfy this condition within six (6) months beyond the original date of expiration of the term of probation shall be considered a violation of probation.



2. Obey All Laws. Respondent shall obey all state and federal laws and regulations. Respondent shall report any of the following occurrences to the board, in writing, within seventy-two (72) hours of such occurrence:

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

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

3. Report to the Board. Respondent shall report to the Board quarterly, on a schedule as directed by the Board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the Board.

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

5. Cooperate with Board Staff. Respondent shall cooperate with the Board's inspection program and with the Board's monitoring and investigation of respondent's compliance with the terms and conditions of her probation. Failure to cooperate shall be considered a violation of probation.

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

7. Notice to Employers. During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 5795 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 fifteen (15) days of respondent undertaking any new employment, respondent shall cause her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in case number 5795, and terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify her direct supervisor, pharmacist-in-charge, and owner at every entity licensed by the Board of the terms and conditions of the decision in case number 5795 in advance of respondent commencing work at each 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 a pharmacy employment service, respondent shall cause her direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that he or she has read the decision in case number 5795 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

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

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

8. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as Designated Representative-in-Charge, or Serving as a Consultant. During the period of probation, respondent shall not supervise any intern pharmacist, be the pharmacist-in-charge or designated representative-in-charge of any entity licensed by the Board nor serve as a consultant unless otherwise specified in this order. Assumption of any such unauthorized supervision responsibilities shall be considered a violation of probation.

9. Reimbursement of Board Costs. As a condition precedent to successful completion of probation, respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$14,071.50. Respondent shall make said payments in accordance with any installment payment plan worked out with the Board.

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

The filing of bankruptcy by respondent shall not relieve respondent of her responsibility to reimburse the Board its costs of investigation and prosecution.

10. 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.

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

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

12. 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 tender her license to the Board for surrender. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of respondent's license history with the Board.

Upon acceptance of the surrender, respondent shall relinquish her pocket and wall license to the Board within ten (10) days of notification by the Board that the surrender is accepted. 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.

13. Notification of a Change in Name, Residence Address, Mailing Address or Employment. Respondent shall notify the Board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if known. Respondent shall further notify the Board in writing within ten (10) days of a change in name, residence address, mailing address, or phone number.

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

14. Tolling of Probation. Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacist in California for the Board-determined minimum number of hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

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

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

"Cessation of practice" means any calendar month during which respondent is not practicing as a pharmacist for at least the minimum hours, as defined by Business and Professions Code section 4000 et seq. "Resumption of practice" means any calendar month during which respondent is practicing as a pharmacist for at least the minimum hours as a pharmacist as defined by Business and Professions Code section 4000 et seq.

15. Violation of Probation. If a respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over respondent, and 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.

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. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

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

DATED: June 9, 2017

DocuSigned by:  
*Ed Washington*  
D1857747BA4F405...  
ED WASHINGTON  
Administrative Law Judge  
Office of Administrative Hearings

1 KAMALA D. HARRIS  
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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5795

12 **DINA M. EL-SAYED**  
P.O. Box 254615  
13 Sacramento, CA 95865

**A C C U S A T I O N**

14 **Original Pharmacist License No. RPH 43830**

15 Respondent.

16  
17 Virginia Herold ("Complainant") alleges:

18 **PARTIES**

19 1. Complainant brings this Accusation solely in her official capacity as the Executive  
20 Officer of the Board of Pharmacy ("Board"), Department of Consumer Affairs.

21 2. On or about August 21, 1990, the Board issued Original Pharmacist License Number  
22 RPH 43830 to Dina M. El-Sayed, also known as Dina Hallack ("Respondent"). The Original  
23 Pharmacist License was in full force and effect at all times relevant to the charges brought herein  
24 and will expire on September 30, 2016, unless renewed.

25 **JURISDICTION**

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



4. Code section 4011 provides, in pertinent part, that the Board shall administer and enforce both the Pharmacy Law [Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].

5. Code section 4300 states, in pertinent part, that every license issued may be suspended or revoked.

6. Code section 4300.1 states:

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

## STATUTORY PROVISIONS

7. Code section 4301 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 procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

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

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license

(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.

(c) 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 . . . .

8. Code section 4021 states, “‘Controlled Substance’ means any substance listed in Chapter 2 (commencing with section 11053) of Division 10 of the Health and Safety Code.”

///

1 9. Code section 4022 states:

2 "Dangerous drug" or "dangerous device" means any drug or device unsafe for  
3 self-use in humans or animals, and includes the following:

4 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing  
5 without prescription," "Rx only," or words of similar import.

6 (b) Any device that bears the statement: "Caution: federal law restricts this  
7 device to sale by or on the order of a \_\_\_\_\_," "Rx only," or words of similar import,  
8 the blank to be filled in with the designation of the practitioner licensed to use or  
9 order use of the device.

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

12 10. Code section 4059(a) states, in pertinent part, that, "A person may not furnish any  
13 dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist,  
14 veterinarian, or naturopathic doctor pursuant to Section 3640.7."

15 11. Code section 4060 states, in pertinent part:

16 No person shall possess any controlled substance, except that furnished to a  
17 person upon the prescription of a physician, dentist, podiatrist, optometrist,  
18 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant  
19 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a  
20 nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to  
21 Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist  
22 pursuant to Section 4052.1, 4052.2, or 4052.6.

23 12. Health and Safety Code section 11170 states, "no person shall prescribe,  
24 administer, or furnish a controlled substance for himself."

25 13. Health and Safety Code section 11173(a), states:

26 No person shall obtain or attempt to obtain controlled substances, or procure or  
27 attempt to procure the administration of or prescription for controlled substances,  
28 (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a  
material fact.

14. Health and Safety Code section 11350(a), states:

Except as otherwise provided in this division, every person who possesses  
(1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of  
subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of  
subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of  
Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled  
substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon  
the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to  
practice in this state, shall be punished by imprisonment pursuant to subdivision (h)  
of Section 1170 of the Penal Code.

1 **COST RECOVERY**

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

8 **DRUG**

9 16. *Hydrocodone bitartrate* and acetaminophen, is designated a Schedule II controlled  
10 substance by Health and Safety Code section 11055(b)(1)(i), and is a dangerous drug pursuant to  
11 Code section 4022. It is designated a Schedule II controlled substance by the Code of Federal  
12 Regulations, Title 21, section 1308.12(b)(1)(vi).

13 **BACKGROUND**

14 17. Between on or about July 22, 2012, until her termination on or about March 23, 2014,  
15 Respondent was employed as a licensed pharmacist for Costco Pharmacy No. 1043 ("Costco"),  
16 located in West Sacramento, California. Respondent was responsible for confirming the accuracy  
17 (by hand counting tablets) of electronically received prescriptions that were mechanically filled  
18 and for entering her verification in a computer.

19 18. On or about March 23, 2014, while on duty at Costco, Respondent verified an order  
20 for hydrocodone/acetaminophen 10/325. Respondent's work was checked and the order was  
21 found to be short three tablets. Video surveillance footage revealed Respondent taking tablets  
22 from the order. Costco management subsequently interviewed Respondent regarding the incident  
23 and, after confronted with video surveillance footage, she admitted that she took three tablets  
24 from the order, ingested one, and flushed the remaining tablets down the toilet.

25 19. On or about April 4, 2014, "P.Y.", the pharmacist in charge for Costco, notified the  
26 Board that Respondent was terminated from Costco for her alleged theft of hydrocodone  
27 including, but not limited to, March 23, 2014.

28 ///

1       20. On or about March 3, 2015, Respondent admitted to Board representatives that she  
2 stole hydrocodone tablets from Costco, one of which she self-administered that same day while at  
3 work. Respondent also admitted to stealing hydrocodone from Costco on one other occasion,  
4 admitted that she ingested hydrocodone prescribed to her husband, and that she became addicted  
5 to hydrocodone around 2006-2007. A review of Costco's video surveillance footage for the  
6 period on or about January 27, 2014, to March 23, 2014, revealed that Respondent stole tablets  
7 containing hydrocodone from Costco on multiple occasions.

8                               **FIRST CAUSE FOR DISCIPLINE**

9                               (Violation of State Laws Regulating Controlled Substances)

10       21. Respondent is subject to disciplinary action pursuant to Code section 4301(j), for  
11 unprofessional conduct, in that Respondent violated the following statutes, as more fully set forth  
12 in paragraphs 18 and 20, above:

13       a. Respondent possessed hydrocodone, a controlled substance and a dangerous drug,  
14 without a valid prescription from a physician, dentist, podiatrist, optometrist, veterinarian, or  
15 naturopathic doctor, a violation of Code section 4060 and Health and Safety Code Section  
16 11350(a):

17       b. Respondent self-furnished hydrocodone, a dangerous drug, without a valid  
18 prescription from a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor,  
19 a violation of Code section 4059(a).

20       c. Respondent self-administered hydrocodone, a controlled substance, a violation of  
21 Health and Safety Code Section 11170.

22                               **SECOND CAUSE FOR DISCIPLINE**

23                               (Self-Administration of a Controlled Substance in a Manner Dangerous or Injurious)

24       22. Respondent is subject to disciplinary action pursuant to Code section 4301(h), for  
25 unprofessional conduct, in that on or about March 23, 2014, Respondent self-administered  
26 hydrocodone in a manner dangerous or injurious to herself or others or to the extent that she could  
27 not practice as a pharmacist safely, in that she ingested hydrocodone, a narcotic known to impair

28       ///

1 a user's mental and/or physical abilities, while on duty as a pharmacist at Costco, as set forth  
2 more fully in paragraphs 18 and 20, above.

3 **THIRD CAUSE FOR DISCIPLINE**

4 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)

5 23. Respondent is subject to disciplinary action pursuant to Code section 4301(f), for  
6 unprofessional conduct, in that while on duty as a pharmacist at Costco, she committed acts of  
7 moral turpitude, dishonesty, fraud, or deceit, when:

8 a. Between on or about January 27, 2014, and March 23, 2014, Respondent stole  
9 hydrocodone in violation of Health & Safety Code section 11173(a).

10 b. On or about March 23, 2014, while on duty as a pharmacist at Costco, Respondent  
11 self-administered hydrocodone, a narcotic known to impair a user's mental and/or physical  
12 abilities.

13 **FOURTH CAUSE FOR DISCIPLINE**

14 (Violation of the Pharmacy Law)

15 24. Respondent is subject to disciplinary action pursuant to Code section 4301(o), for  
16 unprofessional conduct, in that she violated laws governing pharmacy, as set forth in  
17 paragraphs 21 through 23, above.

18 **PRAYER**

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

21 1. Revoking or suspending Original Pharmacist License Number RPH 43830, issued to  
22 Dina M. El-Sayed, also known as Dina Hallack;

23 2. Ordering Dina M. El-Sayed, also known as Dina Hallack, to pay the Board of  
24 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to  
25 Business and Professions Code section 125.3; and,

26 ///

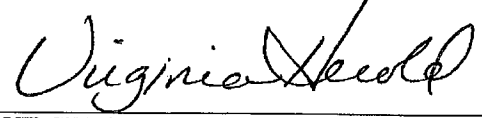
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3. Taking such other and further action as deemed necessary and proper.

DATED: 9/16/16



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

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