

**CASH BOND**  
RECOMMENDED: \$5,000.00  
LETTER: 12/06/2016

AGENCY#: 160711922/IPD

MICHAEL A. HESTRIN  
DISTRICT ATTORNEY

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE  
(Indio)

**FILED**  
Superior Court of California  
County of Riverside

10/12/2016

GLORIA MORROW

**INM1607565**

THE PEOPLE OF THE STATE OF CALIFORNIA,  
  
Plaintiff,  
  
v.

CASE NO.

MISDEMEANOR COMPLAINT  
& NOTICE TO APPEAR

SAMEH MAGED NAGUIB ABDELMALEK  
83284 Beaver Creek Ct  
Indio, CA 92201  
DOB:09/14/1980

Misdemeanor DEJ:

Eligible \_\_\_\_\_ Not Eligible X

PC 1000 DIVERSION

PC 1210.1 REFERRED

Eligible X

YES X

Not Eligible \_\_\_\_\_

NO \_\_\_\_\_

Unknown if Eligible \_\_\_\_\_

Defendant.

APPEARANCE NOTICE

Criminal charges have been filed against you. **You are required to appear** for arraignment at 7:30 A.M. on DECEMBER 6, 2016 at:

SUPERIOR COURT OF CALIFORNIA  
46-200 OASIS STREET  
INDIO, CALIFORNIA 92201

The court calendar will list your name and the courtroom to which your case is assigned. Go there, check in, and wait to be arraigned.

**IF YOU FAIL TO APPEAR ON THIS DATE, A WARRANT WILL BE SOUGHT FOR YOUR ARREST.  
BRING THIS NOTICE WITH YOU.**

COUNT 1

The undersigned, under penalty of perjury upon information and belief, declares: That the above named defendant(s) committed a violation of Health and Safety Code section 11350, subdivision (a), a misdemeanor, in that on or about July 13, 2016, in the County of Riverside, State of California, the defendant(s) did willfully and unlawfully have in his possession a controlled substance, to wit, oxycodone.

MARSY'S LAW

Information contained in the reports being distributed as discovery in this case may contain confidential information protected by Marsy's Law and the amendments to the California Constitution Section 28. Any victim(s) in any above referenced charge(s) is entitled to be free from intimidation, harassment, and abuse. It is unlawful for defendant(s), defense counsel, and any other person acting on behalf of the defendant(s) to use any information contained in the reports to locate or harass any victim(s) or the victim(s)'s family or to disclose any information that is otherwise privileged and confidential by law. Additionally, it is a misdemeanor violation of California Penal Code § 1054.2a(3) to disclose the address and telephone number of a victim or witness to a defendant, defendant's family member or anyone else. Note exceptions in California Penal Code § 1054.2a(a) and (2).

DISCOVERY REQUEST

Pursuant to Penal Code section 1054.5, subdivision (b), the People are hereby informally requesting that defense counsel provide discovery to the People as required by Penal Code section 1054.3.

I declare under penalty of perjury upon information and belief under the laws of the State of California that the foregoing is true and correct.

Michael A. Hestrin  
District Attorney

Dated: September 27, 2016

By: Amity M. Armes  
Deputy District Attorney

dw

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE  
MISDEMEANOR PLEA FORM

People v. Sameh Abdelmalek Case Number: INM 1607565

**A. ADVISEMENT OF RIGHTS:**

- Initials
- SA 1. I have the right to a speedy and public trial by a judge or jury.
  - SD 2. At my trial, I have the right to face and cross-examine any witnesses against me.
  - SA 3. I have the right to ask the court to compel witnesses to attend my trial at no expense to me.
  - SD 4. I have the right against self-incrimination. I cannot be forced to testify against myself, but I also have the right to testify in my own defense if I choose to do so.
  - SA 5. I have the right to be represented by a lawyer at all proceedings. If I cannot afford one, the court will appoint one to represent me at no cost to me.
  - SD 6. I have the right to have a court reporter at all proceedings. If I wish one, I will advise the court in advance. If I cannot afford to pay for the court reporter, the court will provide one at no cost to me.

**B. CONSEQUENCES OF PLEA:**

- SA 1. I will be ordered to pay restitution to the victim(s).
- SD 2. I agree that the amount of victim restitution is 0. If the parties do not agree, the probation department will determine the amount. If I disagree with the amount, I may request a hearing
- SD 3. Charges and/or enhancements may have been dismissed as part of this negotiated disposition with the District Attorney's Office. I agree that I will be ordered to pay restitution to the victim(s) of the dismissed charges and/or enhancements.
- SA 4. I will be ordered to pay a restitution fine of at least \$150 and not more than \$1000. There are several other fines and fees that will be imposed as a result of this guilty plea.
- SA 5. If I am not a citizen of the United States, I understand that this conviction may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.
- X 6. Being under the influence of alcohol or drugs, or both, impairs your ability to safely operate a motor vehicle. Therefore, it is extremely dangerous to human life to drive while under the influence of alcohol or drugs, or both. If I drive while under the influence of alcohol or drugs, or both, and as a result of that driving, someone is killed, I can be charged with murder.
- SA 7. My driving privileges may be suspended or revoked by the Department of Motor Vehicles.
- X 8. I may not be able to own or possess a firearm if I am convicted of a crime involving domestic violence, assault, or a firearm violation.
- X 9. I understand that I will be ordered to register with law enforcement as a(n) \_\_\_\_\_ and that if I fail to register or to keep my registration current for any reason, new felony criminal charges may be filed against me. I understand that registration as a sex offender is a life long requirement.
- X 10. I may be required to undergo AIDS testing if I am convicted of sex crimes or an assault.
- SA 11. I may be required to give a DNA sample.
- SA 12. Other Drug & search terms.

**C. DEFENDANT'S STATEMENT:**

- SA 1. All the promises made to me are written on this form, or stated in open court.
- SA 2. No one has made any threats to me or anyone close to me, or placed any pressure of any kind on me in order to make me plead guilty.
- SA 3. I understand that if I violate any of my probation terms, I could be sentenced to the maximum custody term possible under these charges as set forth under "Plea Agreement", Item 3.
- SA 4. If there are any dismissed charges, they may be considered in determining restitution and the appropriate sentence.
- SA 5. As part of this plea, I (circle one) do do not waive any right to appeal that I may have.
- SD 6. Factual Basis: I agree that I did the things that are stated in the charges that I am admitting.

DEC - 9 2016

R. LeBlanc

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

JSA

DEC 13 2016

**D. PLEA AGREEMENT:**

1. Defendant in Pro Per: I will plead guilty to the complaint as charged.
2. Per agreement with the District Attorney, I will plead guilty to the following charges:
3. Defendant represented by an Attorney: The terms of the disposition are: *3 SP \$1000, search terms + drug terms*
4. The maximum possible custody commitment for the admitted charges may be: 1 year, 6 months, or 90 days, depending on the charge. These are per count.
5. My guilty pleas are conditional on receiving the following considerations as to sentence:
  - a) Probation will be granted. The terms are in the Sentencing Memorandum Form which is incorporated into this Plea Form.
  - b) Probation will be denied. The terms are in the Sentencing Memorandum Form which is incorporated into this Plea Form.

**E. SIGNATURES:**

**District Attorney:** The above is a correct statement of the Plea Agreement between defense and prosecution.

\_\_\_\_\_  
(DATE) (PRINT NAME) (SIGNATURE)

**Defendant:** I have read and understand this entire document. I waive and give up all of the rights that I have initiated. I accept this Plea Agreement. An Attorney acting as a Judge Pro Tem or a Commissioner may act as a Judge in this case.

12-9-16 SAMEH ABDELMALEK \_\_\_\_\_  
(DATE) (PRINT NAME) (SIGNATURE)

**Defense Attorney:** I am the attorney for the defendant. I am satisfied that (1) the defendant understands his/her constitutional rights and understand that a guilty plea would be a waiver of these rights; (2) the defendant has had an adequate opportunity to discuss his/her case with me, including any defenses he/she may have to the charges; and (3) the defendant understands the consequences of his/her guilty plea. I join in the decision of the defendant to enter a guilty plea.

12-9-16 Roderick Daly \_\_\_\_\_  
(DATE) (PRINT NAME) (SIGNATURE)

**Interpreter:** Having been duly sworn, I have translated this form to the defendant in the \_\_\_\_\_ language. The defendant has stated that he/she fully understood the contents of the form prior to signing.

\_\_\_\_\_  
(DATE) (PRINT NAME) (SIGNATURE)



**SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE  
SENTENCING MEMORANDUM**

Case Number: JNM 160 7565

Page 2 of 2 Sameh Abdelmalek  
People v.

**DRUG / SEARCH / TEST PROGRAM TERMS (Continued)**

<input type="checkbox"/> TMJ	Report to the Alternative Sentencing within 14 days (excluding time in custody) and:	<input type="checkbox"/> TMF	Enroll in parenting classes as directed/thru the Court / Probation/ Alternative Sentencing/DPSS by _____ Complete by _____ *
<input type="checkbox"/> TMB	Enroll in a 52-week Domestic Violence Program and provide proof of enrollment to the court/probation by _____ and complete by _____ *	<input type="checkbox"/> TMA	Enroll in Anger Management Program by _____ and complete by _____ *
		<input type="checkbox"/> TME1	Enroll in probation approved 1 year minimum Child Abuse Treatment Prog. Provide proof within 30 days of order/release. Probation Officer and/or Alternative Sentencing.

\*Submit proof of enrollment and/or completion of the above noted programs as directed by your Probation Officer and/or Alternative Sentencing.

**ASSOCIATION / RESIDENCE / WORK TERMS**

<input type="checkbox"/> THO	Do not associate with any unrelated person you know to be on probation or parole.	<input type="checkbox"/> THC	Inform the probation officer of your place of residence and reside at residence approved by the probation officer;
<input type="checkbox"/> THO1	Do not associate with any unrelated person you know to be either on probation, on parole, or a gang member.	<input type="checkbox"/> THC1	Give written notice to the probation officer 24 hours before changing your residence and do not move without the approval of the probation officer.
<input type="checkbox"/> TDK	Do not associate with any unrelated person you know to be a possessor, user or trafficker of controlled substances.	<input type="checkbox"/> THB	Seek and maintain employment or attend a full time school or vocational program.
<input checked="" type="checkbox"/> THR	Do not leave the State of California without first obtaining written permission of the probation department per the Interstate Compact Act.		

**TAGGER TERMS**

<input type="checkbox"/> TLR	Do not engage in tagging, marking, painting, scribing or defacing public and/or private property.	<input type="checkbox"/> TLU	Submit to immediate search of person/auto/residence, surrounding premises/storage areas/personal property by probation or law enforcement officer with or without reasonable cause;
<input type="checkbox"/> TLS	Do not knowingly use or possess spray paint, markers, scribes, aerosol nozzles, or other items that you know are commonly used for tagging.	<input type="checkbox"/> TLU1	for detection of tagging and/or scribing items such as: spray paint, markers, scribes, aerosol nozzles or other items commonly used for tagging.
<input type="checkbox"/> TLT	Do not associate with any person you know to engage in tagging or similar activities.		

**ADDITIONAL PROBATION TERMS**

<input type="checkbox"/> THJ/A	Do not knowingly own/possess/have under your control / immediate access to any firearm/lethal weapon, ammunition or weapon related paraphernalia/incendiary device.	<input type="checkbox"/> THD	Have no direct or indirect contact with _____
<input type="checkbox"/> TXA2	Weapon ordered destroyed (PC § 12028).	<input type="checkbox"/> TFK	Do not annoy, harass, threaten or disturb the peace of _____
<input type="checkbox"/> TFO	Stay _____ yards away from _____ and don't enter premises described as _____	<input type="checkbox"/> TMI	Any valid Domestic Violence protection/restraining order existing during the period of probation is incorporated into probation terms.
<input type="checkbox"/>	Other: _____		

**ADDITIONAL FORMAL PROBATION TERMS**

<input type="checkbox"/> THM1	If expelled or deported, do not re-enter the United States illegally.	<input type="checkbox"/> THL	Report to probation officer immediately or upon release from custody, and abide by all reasonable directives of probation officer.
<input type="checkbox"/> THM2	If expelled, deported, or voluntarily leave the United States, you must report to probation by telephone or in writing within 30 days of departure.	<input type="checkbox"/> THI	Report any law enforcement contacts to probation officer within 48 hours.

**ADDITIONAL ORDERS OF THE COURT**

<input checked="" type="checkbox"/> TXX	Pay court operations assessment fee of \$40 per convicted charge (PC § 1465.8).	<input type="checkbox"/> TXL	Pay cost of pre-sentence report in amount to be determined by Probation, not to exceed \$ _____ (PC § 1203.1b).
<input checked="" type="checkbox"/> TXW	Pay court conviction assessment fee of \$30 per convicted misdemeanor/felony charge (GC § 70373).	<input type="checkbox"/> TXMA	Pay the costs of probation supervision in an amount to be determined by Probation. Based on the level of supervision, the costs will range from \$ _____ to \$ _____ (PC § 1203.1b).
<input type="checkbox"/> TXW1	Pay court conviction assessment fee of \$35 per convicted infraction charge (GC § 70373).	<input type="checkbox"/> TEE	Pay the actual cost of court ordered drug testing through the court as directed by Enhanced Collections.
<input type="checkbox"/> TXV2	Pay citation fees of \$10 (GC § 29550).	<input type="checkbox"/> DORECA	Report to Enhanced Collections immediately, or within two business days after release, regarding ability to pay attorney fees; total hours _____
<input type="checkbox"/> TXV3	Pay O.R. fees of \$25 (GC § 29550).	<input type="checkbox"/> CFAF	Court finds defendant has the ability to reimburse the county for attorney fees at the standard rate of \$119.50 per hour. Attorney fees ordered in the amount of \$ _____
<input type="checkbox"/> TBAL	Pay drug lab fee and penalty assessment of \$190 (H&S § 11372.5).	<input type="checkbox"/> FNPAF	Any fine/fee not paid in full by _____ will be subject to a \$50 administrative fee (PC § 1205(d)).
<input type="checkbox"/> TBOL	Pay additional drug lab fee - total \$ _____ (H&S § 11372.5). (\$50 each additional conviction)	<input type="checkbox"/> TXV5	Pay Pre-sentence Incarceration costs of \$ _____ (Incarcerated for _____ days). (PC 1203.1c).
<input type="checkbox"/> TBBL	Pay drug education fee and penalty assessment of \$190 (H&S § 11372.7).	<input type="checkbox"/> PHS	Defendant is ordered to return to court on _____ at _____ in Dept. _____ for _____
<input type="checkbox"/> TBQL	Pay additional drug education fee - total \$ _____ (H&S § 11372.7) (\$50 each additional conviction).	<input type="checkbox"/> THY	Return to court on _____ at _____ in Dept. _____ for a progress hearing to evaluate your compliance with the above terms and conditions.
<input type="checkbox"/> TBKL	Pay an alcohol and drug assessment fee of \$100 (VC § 23649).		
<input type="checkbox"/> TXP4	Pay AIDS Education fine of \$ _____ (PC § 1463.23)		
<input type="checkbox"/> TCS	Pay administrative fee equal to 15% of victim restitution (PC § 1203.1(i)).		

I have read, I understand, and I accept these terms and conditions of probation on pages one and two.

Defendant: [Signature] Defense Attorney: [Signature] Interpreter: \_\_\_\_\_

District Attorney: \_\_\_\_\_

Dated: 12-9-16 IT IS SO ORDERED: [Signature] JUDICIAL OFFICER

Revised 04/22/16 Page 2 NCR SHU-SMSBPAK CR002

**NOTICE TO DEFENDANT:** If you have been placed on probation, you have the right to ask the court either (1) to allow you to withdraw your plea of guilty or of nolo contendere and to enter a plea of not guilty, or (2), if you were convicted after a plea of not guilty, to set aside the verdict of guilty. (For details, see Penal Code section 1203.4.) If you have been convicted of a misdemeanor and not placed on probation, and one year has passed since pronouncement of judgment, you have the right to make a similar request. (For details, see Penal Code section 1203.4a.) Forms on which to make such requests are available in the clerk's office.

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

In the Matter of the Accusation Against:

SAMEH ABDELMALEK,

Pharmacist License RPH 65008

Respondent.

Case No. 5988

OAH No. 2017020601

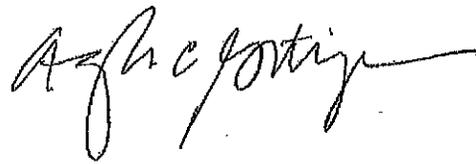
**DECISION AND ORDER**

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on August 2, 2017.

It is so ORDERED on July 3, 2017.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
Amy Gutierrez, Pharm.D.  
Board President

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

In the Matter of the First Amended  
Accusation Against:

SAMEH ABDELMALEK,

Pharmacist License  
RPH 65008

Respondent.

Case No. 5988

OAH No. 2017020601

**PROPOSED DECISION**

Susan J. Boyle, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Riverside, California, on April 19, 2017.

Diane De Kervor, Deputy Attorney General, Department of Justice, represented complainant Virginia Herold, Executive Officer, Board of Pharmacy, Department of Consumer Affairs, State of California.

Seth Weinstein, Attorney at Law, represented respondent Sameh Abdelmalek, who was present throughout the proceeding.

The matter was submitted on April 19, 2017.

**FACTUAL FINDINGS**

1. On November 5, 2010, the Board of Pharmacy issued Pharmacist License Number RPH 65008 to respondent. The license will expire on September 30, 2018, unless renewed.

2. On March 21, 2017, complainant signed the First Amended Accusation (FAA) in Case No. 5988. The FAA contained eight causes for discipline and sought to revoke or suspend respondent's pharmacist license. The FAA alleged that respondent was convicted of a crime that is substantially related to the qualifications, duties and functions of a pharmacist. It further alleged that respondent engaged in unprofessional conduct by creating and using fraudulent prescriptions to obtain narcotics; fraudulently prescribing narcotics to himself;

possessing controlled substances without a valid prescription; using controlled substances in a dangerous manner; furnishing controlled substances to his brother who was an addict; violating statutes governing controlled substances; and violating state and federal statutes and regulations when he obtained controlled substances by fraud and deceit. The FAA also sought the recovery of reasonable costs pursuant to Business and Professions Code section 125.3.

3. Respondent timely filed a Notice of Defense and requested a hearing.

4. Prior to the presentation of evidence, complainant moved to file an amendment to the FAA by removing language that alleged respondent had been intoxicated at work and language that alleged he was a danger to the customers of the pharmacy and the public. The motion was unopposed and granted.

5. Complainant filed a Request for Protective Order and Sealing of Confidential Records. The request was granted. The protective order was signed on April 19, 2017, and served on the parties at the hearing. The request and order were marked as Exhibit 13.

*Respondent Stipulated to the Truth and Accuracy of Most Facts in the FAA.*

6. The parties signed and submitted a "Trial Stipulation to Facts and Charges in the First Amended Accusation" in which respondent admitted the "complete truth and accuracy" of the factual allegations in the FAA with the exception that he denied providing controlled substances to his brother as alleged in paragraph 35 and in the Sixth Cause for Discipline (paragraph 54).

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*Respondent's Background and Education.*

7. Respondent is 36 years old; his brother is 31. He and his brother were born and raised in Alexandria, Egypt. Respondent's father was a teacher and his mother was an engineer by training; however she was a stay-at-home parent. His parents argued frequently and divorced in 1995 when respondent was 15 years old. His parents still live in Egypt.

8. Respondent graduated from St. Mark's High School in Alexandria, Egypt in 1998. He attended the Alexandria University School of Pharmacy and graduated with a degree in pharmaceutical sciences in 2003. He worked in a private pharmacy in Alexandria until he was required to complete one year of mandatory military service.

9. In 2008, respondent entered the United States with his wife, who was also a pharmacist in Egypt. Respondent's wife became a licensed pharmacist in Illinois and supported respondent until they relocated to Riverside, California in 2009.

10. Respondent and his wife became licensed pharmacists in California. His wife is employed part-time at CVS Pharmacy. Respondent was hired as a pharmacist intern at Rite Aid Pharmacy in Cochella and was then hired as a pharmacist in Indio.

11. In 2011, respondent's father and brother visited respondent from Egypt. His father left after a month, but his brother stayed with respondent in the United States. Respondent stated that in 2004 his brother had an addiction problem, but he had gotten control of his addiction by the time he came to the United States. Respondent's brother stayed with respondent for approximately two and one-half years until mid-2013.

*Discovery and Investigation of Respondent's Misconduct by Rite Aid*

12. In October 2015, the Rite Aid Corporation began an investigation into unexplained orders at the Indio Rite Aid of Buprenorphine that were not dispensed. The entire pharmacy staff was interviewed by Rite Aid investigators, cameras were installed and documents were researched. Respondent was interviewed, but he was not a suspect of misconduct in this investigation.

13. During the course of the investigation, the Rite Aid Pharmacy Manager discovered that respondent had been filling prescriptions for Phentermine under someone else's name and under a false name. On June 28, 2016, the manager contacted Mark Steven Leuschner,<sup>1</sup> a Rite Aid investigator, and told him he discovered respondent filled a prescription when everyone was at lunch, but when the manager checked the "Will Call" area, the prescription was missing.

14. On July 1, 2016, the manager called Leuschner again and told him a pharmacy technician had discovered that, on June 23, 2016, respondent filled two prescriptions for Oxycodone under two of his family member's names. The pharmacy's computer system said the prescriptions were supposed to be in the "will call" area, but they were not located in the store. The prescriptions were also suspicious because the family members had insurance, but the prescriptions were filled in as "cash" and were marked "paid" on June 30, 2016. The pharmacy staff could not locate hard copies of either prescription.

15. On July 5, 2016, Mr. Leuschner and Rite Aid District Manager, Hendrik Van Der Linde<sup>2</sup> traveled to the Indio store. When they arrived, the store manager informed them they had found additional customer profiles with possible fraudulent prescriptions for Oxycodone filled by respondent for which there were no "scanned hard copy prescriptions" in the system. Based on this information, Mr. Van Der Linde contacted some local medical offices and confirmed that prescriptions in question were written for persons who were not patients of the physician and were not valid prescriptions. Prior to July 13, 2016, the pharmacy had compiled a two-page list of potentially fraudulent prescriptions filled by respondent.

16. On July 13, 2016, Messrs. Van Der Linde and Leuschner went to the Rite Aid to interview respondent. When confronted with five prescriptions for Oxycodone that

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<sup>1</sup> Mr. Leuschner testified at the hearing.

<sup>2</sup> Mr. Van Der Linde testified at the hearing.

respondent had filled, respondent admitted the prescriptions were fraudulent. Respondent told the investigators he gave the medications to someone who was addicted and desperately needed them. He later told investigators the person who was addicted was his brother who lived with him until 2014. Respondent said he could not stand to see his brother go through withdrawals. Respondent also admitted his own addiction and stated he was taking 70 tablets of Oxycodone per day.<sup>3</sup>

Respondent told the investigators he had been filling three to four fraudulent prescriptions a week for three years. He used old patient profiles to create fraudulent profiles. He then entered a false prescription into the pharmacy's electronic system, scanned the bottle of medication, printed a label and indicated in the computer that the medication had been placed in the "will-call" area. However, respondent placed the bottle of medication in his pants pocket and not in "will call." When other employees were away from the pharmacy, respondent paid for the medication using a cash register in the consultation room that was out of the view of surveillance cameras installed in the pharmacy. Respondent reviewed the two-page list of over 100 prescriptions and admitted they were all fraudulent.

17. Respondent gave a written statement to the Rite Aid investigators in which he documented his oral confession. In the written statement, he wrote that he was "under extreme pressure from a family member (my brother)" to obtain the drugs. Respondent stated his brother was addicted, desperate to obtain drugs and unable to remain clean even after treatment. He also addressed his own addiction and stated, "[a]fter my brother left my household, I found myself also addicted to those meds . . . so what I used to do for him, I started doing for myself." Respondent said he was seeking treatment and had an appointment for July 22, 2016, to see his doctor. He described the process of how he falsified records and obtained the drugs without detection. Respondent expressed his sorrow for letting "everyone down" and losing "everyone's trust."

18. At the time of the hearing, 1177 pages of fraudulent prescriptions were received in evidence. Respondent admitted he had created each of the prescriptions and each was fraudulent.<sup>4</sup> The prescriptions represented over 12,500 fraudulently obtained pills, with an approximate retail value of \$23,000, which amount respondent had paid over the years.

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<sup>3</sup> Mr. Van Der Linde, a licensed pharmacist since 2002, questioned respondent's assertion that he took 70 tablets of Oxycodone per day. He had never seen anyone take 70 pills a day and believed that effects of that many pills would stop a patient's breathing. He opined that a patient could not survive taking 70 Oxycodone pills a day. The implication was that respondent was giving pills to another source or selling them; however, that implication was speculative, not alleged in the FAA, and not proven at the hearing.

<sup>4</sup> On April 19, 2017, the Administrative Law Judge signed a Protective Order placing all of the prescriptions contained in Exhibit 11 under seal.

### *Investigation by the Board of Pharmacy*

19. Patricia Peterson has been an investigator with the Board of Pharmacy, assigned to the diversion and fraud team, since 2012. Prior to that, she was a licensed pharmacist for 30 years. Ms. Peterson testified at the hearing.

20. Ms. Peterson and two other inspectors, Sarah Bayley and Chris Woo, went to the Indio Rite Aid on July 19, 2016, after respondent had been arrested and removed from the pharmacy, to conduct an inspection. The inspectors gathered additional information and Ms. Peterson wrote a report of their findings. The records available to the investigators went back only to 2014. Ms. Peterson determined that for some fraudulent prescriptions it appeared respondent scanned a blank piece of paper to represent a prescription received by the pharmacy. In other cases, respondent put a sticker over a valid prescription to change the name of the person for whom the prescription was originally written. The false prescriptions were used multiple times. The inspectors also found prescriptions that respondent had wrongfully written for himself. The inspectors did not interview respondent as part of the investigation.

21. Ms. Peterson testified that the method respondent employed to obtain drugs made detection of his forgery more difficult. Pharmacy audits are based on an analysis of drug purchases and dispensing. Diversion is most often suspected when the amount of purchased medications is greater than the amount the pharmacy has in stock. Audits highlight these discrepancies and trigger investigations. Because respondent created false prescriptions and paid retail price for the drugs, the diversion would not be detected through an audit.

22. Ms. Peterson stated there was no known harm to patients as a result of respondent's actions. However, she testified that the board was particularly concerned because they don't know where all the fraudulently obtained drugs went and who gained possession of them. If respondent distributed some of the drugs to other parties, it is not possible to know whether harm occurred.

### *Failure to Comply or Complete Board of Pharmacy Diversion Program*

23. On August 3, 2016, respondent contacted MAXIMUS, the Board of Pharmacy's drug diversion program, and asked to join the program. He stated he had been in a one-year detox program for opiate addiction from mid-2014 through mid-2015; however, he dropped out of treatment when he saw a pharmacy patron at the detox program and felt ashamed. He stated he believed he could detox on his own but relapsed in January 2016. He re-entered the detox program and was prescribed Buprenorphine to taper down from opiate usage when he found the board's Pharmacist Recovery Program. The program's review committee agreed to accept respondent into the program so long as he enrolled in an inpatient substance abuse program within 10 days and complied with other requirements. Respondent did not agree to enter a residential program because he said it would be the

'financial ruin' of his family. Respondent was removed from consideration for the program due to his lack of compliance.

#### *2016 Conviction for Possession of a Controlled Substance*

24. Indio police officers responded to the pharmacy on July 13, 2016, after respondent completed the written statement he gave to Rite Aide investigators. Respondent voluntarily emptied his pockets and showed officers that he had oxycodone to which he was addicted but for which he did not have a prescription.<sup>5</sup> Respondent was arrested for illegal possession of a controlled substance.

25. On December 9, 2016, in the Superior Court of California, County of Riverside, respondent pled guilty to, and was convicted of, one misdemeanor count of unlawful possession of a controlled substance in violation of Health & Safety Code section 11350, subdivision (a). As a result of his conviction, the court placed respondent on three years of informal probation with certain terms and conditions. Amongst other terms and conditions, respondent was ordered to pay a \$1,000 fine; serve 1 day in custody with credit for one day served; and not be in possession of controlled substances without a prescription.

#### *Respondent's History of Addiction to Pain Medication*

26. In or around 2012, respondent was experiencing frequent migraine headaches. A friend suggested he take OxyContin for the pain. Later, respondent experienced lower back pain after long days at work. He prescribed Vicodin or Norco for himself and took them "as needed." As he developed a tolerance for the drugs, he worked up to taking eight to ten pills a day.

27. In 2014, respondent realized his body was becoming accustomed to having the drugs in his system, and he was unable to stop taking them. He tried on his own to quit, but he was not successful. To compensate for his body's increased tolerance to the drugs, he prescribed higher doses.

28. With his son's birth in 2014, respondent became more motivated to stop taking drugs. He started out-patient treatment with Dr. Craig Rosenblum, a local doctor in Palm

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<sup>5</sup> Law enforcement reports were received under *Lake v. Reed* (1997) 16 Cal.4th 448. *Lake v. Reed* held that portions of a law enforcement officer's report that contain the officer's observations or a party's admissions are admissible in an administrative proceeding as exceptions to the hearsay rule and can support a finding of fact; however, the remaining hearsay statements cannot support a factual finding, even though they may be used to supplement or explain non-hearsay evidence, unless those hearsay statements fall under a hearsay exception.

Desert. In treatment, he went through withdrawals and then was treated by Dr. Rosenblum with medications to wean him off Oxycodone.

29. In 2015, respondent stopped seeing Dr. Rosenblum, and he relapsed. He testified, Dr. Rosenblum was known to treat addicts, and respondent was afraid he would be exposed as having a drug problem if he continued to see him. Respondent tried to wean himself off the drugs, but was not successful. He stated that in mid-2016, he took 30, 40 or more pills a day.

*Evidence in Mitigation and of Rehabilitation*

30. Respondent testified he was no longer addicted to Oxycodone. He said he went back to Dr. Rosenblum after his termination in July 2016, and no longer had any addiction issues.<sup>6</sup>

31. Respondent stated he cared about his patients and loved his job as a pharmacist. He was adamant that his conduct did not result in patient harm; he did not give improper medications to patients; and he had no prior or subsequent discipline of his license. He stated he did not take drugs at work, but admitted he would have tested positive for them if a drug screen was administered. Nonetheless, respondent denied being impaired at work. Respondent conceded the prescription tracking system that records medications prescribed to individuals would contain wrong information about any patient whose profile respondent used to obtain drugs; however, respondent said that "as a general rule" he did not use actual patient names. He further acknowledged that reports from the tracking system would attribute prescribed medication to a physician that the physician had not prescribed.

32. Although he admitted all other allegations in the FAA, respondent denied he gave fraudulently obtained drugs to his brother. He said he made statements about his brother to the investigators to make himself appear more like a victim. He stated he felt intimidated by the way he was interrogated. He said he was not permitted to leave the interrogation room, even after he asked to use the restroom. He testified he was not given a choice to prepare a written statement, he was instead told he was required to prepare one. Respondent had seen his brother when he was a drug addict in 2004, but not in 2014. Respondent said his brother left California in June 2013 and went to Florida, and other than visiting after respondent's son was born, respondent's brother had not been back to California. It is noted respondent did not offer testimony or other evidence from his brother to support his claim.

33. Respondent learned about the board's Pharmacist Recovery Program on its website and, on August 3, 2016, inquired about it. He attended an intake appointment on August 10, 2016, in which it was determined that he must enroll in a 28 day inpatient

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<sup>6</sup> Respondent did not, however, provide proof of sobriety through drug tests or other means. A letter from Dr. Rosenblum dated April 19, 2017, did not discuss respondent's progress other than to say he was in treatment.

program. Respondent objected to that requirement. He testified being in an inpatient program at that time "did not make sense" because he had already detoxed, even though he did not stay on a maintenance program. His son was the most important thing to him, and respondent did not want to leave for 28 days when his son needed him.

34. Respondent stated he has not worked since he was terminated from Rite Aid. He wanted to wait until he had a determination about the status of his license, and he did not want to burden another employer with the uncertainty.

35. Respondent said he used drugs to compensate for family issues. He stated he and his wife are more open with each other and communicate better now; he does not believe he would resort to drugs again.

36. Respondent does not believe he is an addict. He believes he can stay sober on his own and does not need to attend counseling or support groups. However, if the board requires him to receive counseling as a condition of probation, he would comply.

37. Respondent is active in the St. Verena Coptic Church, through which money is sent to poor families in Egypt. Members of the Coptic Christian Church are persecuted in Egypt.

*Report of Dr. Lanikai Clouse*

38. Dr. Lanikai Clouse holds a Doctorate and Master's Degree in Clinical Psychology from Alliant International University. She has a private practice and is specially trained in treatment of patients with addictions. She evaluated respondent and prepared an affidavit. The affidavit was received as administrative hearsay.

39. Dr. Clouse interviewed respondent for her report. There is no indication that Dr. Clouse administered any psychological or biological tests.

Dr. Clouse recited respondent's history with drug abuse and attempts to rehabilitate. She noted that respondent was "hopeful to retain his license to practice as a Pharmacist". Dr. Clouse stated respondent was "highly motivated for sobriety," but she noted "he has not received any formal treatment to aid in learning formal relapse prevention techniques or more proactive coping skills." Given this, her opinion is that respondent "is susceptible to relapsing in the face of working with his drug of choice, prescription opiates, and therefore [sic] puts him at risk." Dr. Clouse recommended respondent receive individual psychotherapy and attend group psychotherapy or twelve step program.<sup>7</sup>

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<sup>7</sup> Respondent stated he respected Dr. Clouse, but he believes he could stay sober on his own and was not convinced he needed therapy or support groups.

## *Costs*

40. Complainant submitted a Certification of Costs of Investigation by Agency Executive Officer and a Certification of Prosecution Costs seeking to recover costs of investigation and prosecution pursuant to Business and Professions Code section 125.3. The certification of prosecution costs prepared by the Attorney General sought recovery of costs in the amount of \$16,767.50 and was supported by a billing summary detailing the professionals who worked on the matter, the date the professional worked on the matter, the tasks performed, the amount of time billed for the activity and the hourly rate of the professional who performed the work. The costs sought by the Attorney General are reasonable.

The certifications of investigative costs with declarations from Ms. Peterson, Ms. Bayley and Mr. Woo sought the recovery of \$24,774.75. The certifications listed the total of investigative hours spent working on the case beginning "in or around July 2016", the hourly rate charged and a breakdown of activities by categories. The total number of hours worked on the matter was divided into the categories of investigation, travel, report preparation and hearing preparation. A list of 10 tasks, one designated as "Other," followed the total number of hours related to "Investigation." None of the categories of costs detailed the date the activities were performed or the time spent performing the activities on each date. Due to the lack of specificity, it could not be determined whether the costs claimed for investigative hours were reasonable.

## LEGAL CONCLUSIONS

### *Burden of Proof*

1. In a proceeding to revoke the license of a Pharmacist, the clear and convincing evidence standard of proof applies. "Clear and convincing evidence" requires a high probability of the existence of the disputed fact, greater than proof by a preponderance of the evidence. Evidence of a charge is clear and convincing as long as there is a high probability that the charge is true. (*People v. Mabini* (2001) 92 Cal.App.4th 654, 662.)

### *Applicable Statutory and Regulatory Provisions*

2. Business and Professions Code section 482 requires the Board to "develop criteria to evaluate the rehabilitation of a person when (a) considering the denial of a license" under section 480. Section 482 also requires the Board to "take into account all competent evidence of rehabilitation furnished by the applicant or licensee."

3. Business and Professions Code section 490, subdivision (a), provides that the board "may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued."

4. Business and Professions Code section 493 provides in part that in a proceeding to revoke or suspend a license

upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

5. Business and Professions Code section 4022 provides, in part, that a “[d]angerous drug” is a drug that “is unsafe for self-use in humans or animals” and “that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.”

6. Business and Professions Code section 4026 defines “furnish” as “to supply by any means, by sale or otherwise.”

7. Business and Professions Code section 4059, subdivision (a), provides that a “person may not furnish any dangerous drug, except upon the prescription of [an authorized health care provider.]”

8. Business and Professions Code section 4060 provides in part that “[a] person shall not possess any controlled substance, except that furnished to a person upon the prescription of [an authorized health care provider.]”

9. Business and Professions Code section 4301 mandates that the board take action against a licensee who is guilty of unprofessional conduct. Unprofessional conduct includes:

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

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

(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.

(i) Except as otherwise authorized by law, knowingly selling, furnishing, giving away, or administering, or offering to sell, furnish, give away, or administer, any controlled substance to an addict.

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

[¶] . . . [¶]

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

[¶] . . . [¶]

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

[¶] . . . [¶]

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

11. Health and Safety Code section 11171 provides, “[n]o person shall prescribe, administer, or furnish a controlled substance except under the conditions and in the manner provided by this division.”

12. Health and Safety Code section 11173 provides:

(a) 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.

(b) No person shall make a false statement in any prescription, order, report, or record, required by this division.

(c) No person shall, for the purpose of obtaining controlled substances, falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian, registered nurse, physician’s assistant, or other authorized person.

(d) No person shall affix any false or forged label to a package or receptacle containing controlled substances.

13. Health and Safety Code section 11175 provides that “[n]o person shall obtain or possess a prescription that does not comply with this division, nor shall any person obtain a controlled substance by means of a prescription which does not comply with this division or possess a controlled substance obtained by such a prescription.”

14. Health and Safety Code section 11180 provides that, “[n]o person shall obtain or possess a controlled substance obtained by a prescription that does not comply with this division.”

15. 21 U.S.C. section 843, subdivision (a)(3), provides that it is “unlawful for any person knowingly or intentionally . . . to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge.”

16. California Code of Regulations, title 16, section 1769, subdivision (c), provides:

When considering the . . . revocation of a . . . personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

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17. California Code of Regulations, title 16, section 1770 provides:

For the purpose of . . . revocation of a personal . . . license . . . , a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.

### *Disciplinary Guidelines*

18. The Board of Pharmacy Disciplinary Guidelines, October 2007, provide that the board “serves the public by: protecting the health, safety, and welfare of the people of California with integrity and honesty . . . .”

19. The Guidelines provide that the following factors should be considered when determining the level of discipline to be imposed in a disciplinary case:

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.

*Causes Exists to Impose Discipline on Respondent's License*

20. Cause exists to discipline respondent's pharmacist license because he was convicted of a crime that is substantially related to the qualifications, functions, or duties of a

pharmacist. (Bus. & Prof. Code § 490.) The circumstances surrounding the commission of a crime may be relevant to determining whether the crime is substantially related to the qualifications, functions, or duties of a licensee and the measure of discipline that should be imposed. A determination that a licensee's conviction justifies discipline requires a reasoned determination that the conduct was in fact substantially related to the licensee's fitness to engage in a profession. Licensing authorities do not have unfettered discretion to determine whether a given conviction is substantially related to the relevant professional qualifications. Licensing authorities are required to develop criteria to aid in making that determination. (*Robbins v. Davi* (2009) 175 Cal.App.4th 118, 124.)

Pharmacists occupy positions that require trustworthiness, honesty, clear-headedness, and the exercise of impeccable judgment, particularly because they have access to confidential personal and financial information, as well as highly regulated medications and devices. A pharmacist's unlawful possession of a controlled substance that was fraudulently obtained from the pharmacist's employer is an offense that, to a substantial degree, evidences both a present and potential unfitness to hold employment as a licensed pharmacist. In this matter, respondent gave the Oxycodone in his pocket to the arresting officers and he pled guilty to possessing a controlled substance without a prescription. The underlying circumstances surrounding respondent's conviction establish that respondent is unfit to hold a license as a pharmacist and that it would not be in the interest of public health, safety, or welfare to permit him to retain his license absent a showing of rehabilitation.

21. Cause exists to discipline respondent's pharmacist license because he engaged in unprofessional conduct involving dishonesty, fraud, deceit and corruption when he created fraudulent prescriptions to obtain controlled substances. (Bus. & Prof. Code § 4301, subd. (f).)

22. Cause exists to discipline respondent's pharmacist license because he engaged in unprofessional conduct when he knowingly created false and fraudulent prescriptions to obtain controlled substances. (Bus. & Prof. Code § 4301, subd. (g).)

23. Cause exists to discipline respondent's pharmacist license because he engaged in unprofessional conduct when he fraudulently prescribed controlled substances to himself and possessed controlled substances without a valid prescription. (Bus. & Prof. Code § 4301, subd. (j); and Health & Saf. Code §§ 11170, 11171, 11173, 11175, and 11180.)

24. Cause exists to discipline respondent's pharmacist license because he engaged in unprofessional conduct when he used controlled substances in a dangerous manner. (Bus. & Prof. Code § 4301, subd. (h).)

25. Cause exists to discipline respondent's pharmacist license because he engaged in unprofessional conduct when he furnished controlled substances to his brother who was an addict. (Bus. & Prof. Code § 4301, subd. (i).) Respondent voluntarily told investigators a detailed story of how he began to create fraudulent prescriptions beginning in 2012 or 2013 to obtain narcotics for his brother who was a drug addict. He then wrote a statement in

which he repeated the same story and acknowledged that what he wrote was "true, complete and accurate." Respondent's retraction of this portion of his verbal and written statements was unpersuasive, not credible, and unsupported by any other evidence.

26. Cause exists to discipline respondent's pharmacist license because he engaged in unprofessional conduct when he violated Health and Safety Code sections 11170, 11171, 11173, 11175, and 11180 and 21 U. S. C., section 843. (Bus. & Prof. Code § 4301, subd. (h).)

27. Cause exists to discipline respondent's pharmacist license because he engaged in unprofessional conduct when he violated federal and state laws and regulations governing pharmacists and pharmacies by using fraud and deceit to obtain controlled substances. (Bus. & Prof. Code § 4301, subd. (o).)

#### *Level of Discipline Determination*

28. The purpose of an administrative proceeding seeking the revocation or suspension of an occupational license or registration is not to punish the individual; the purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

The determination of whether respondent's license should be revoked or suspended includes an evaluation of the criteria set forth in the board's Disciplinary Guidelines. In this case, the Guidelines are applied as follows: The facts and circumstances surrounding respondent's multiple year scheme involving over 12,000 pills with a retail value of \$23,000 involved egregious conduct of the highest magnitude. Although no actual harm to pharmacy customers or the public was proven, potential harm existed. The number of violations committed by respondent and the nature and severity of his fraudulent and dishonest conduct are staggering. Respondent inquired about the board's pharmacist recovery program a few weeks after his arrest and termination from employment but, despite having an addiction that spanned several years and included prior attempts at treatment and relapses, he rejected the requirement he enroll in a 28 day inpatient treatment program because it would ruin his family financially, he did not want to leave his two-year old son, and he didn't need it. Notwithstanding his assertion that his participation in a 28-day program would result in financial hardship, respondent has not worked since he was terminated from employment 10 months ago.

Respondent's egregious conduct took place regularly over a minimum of three or four years. The conduct was intentional and carried out in a precise and calculated way that assured his fraud and deceit would not be detected. Because respondent forged prescriptions, entered them in the pharmacy's computer, and paid for them, an audit of medications delivered to the pharmacy and those distributed would not show a discrepancy. Similarly, the pharmacy's financial records would balance and would not suggest anything was amiss. When respondent paid for the forged prescriptions, he went to a station that was beyond the

surveillance cameras in an effort to further hide his activities. One would be hard pressed to find conduct of a pharmacist any more deceitful.

29. Rehabilitation is a state of mind, and the law looks with favor on rewarding with the opportunity to serve, one who has achieved reformation and regeneration. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) The amount of evidence of rehabilitation required varies according to the seriousness of the misconduct. The mere expression of remorse does not demonstrate rehabilitation. A truer indication of rehabilitation will be presented if a petitioner can demonstrate by sustained conduct over an extended period that he or she is rehabilitated and fit to practice. (*In re Menna* (1995) 11 Cal.4th 975, 987, 991.)

An addict's own verbal assurances that he will never take drugs again are not sufficient proof that he has overcome a history of drug abuse. (*Walker v. State Bar* (1989) 49 Cal.3d 1107, 1118.) Recovery, or rehabilitation, naturally involves consideration of the individual's history of substance abuse-related behavior, including any substance abuse-related misconduct. The requisite length of time to show meaningful and sustained rehabilitation will vary from case to case. Before an addict can return to a position of trust, he must present reliable evidence that his long-standing addiction is permanently under control and that he has undergone a meaningful and sustained period of successful rehabilitation. (*In re Billings* (1990) 50 Cal.3d 358, 367.)

30. Respondent's fraudulent conduct stopped in July 2016 when he was caught. He was placed on criminal probation for three years beginning in December 2016, and will be on court ordered probation for more than two and one-half more years.

31. Respondent presented virtually no evidence of rehabilitation other than his own self-serving statement that he was no longer taking opiates. Dr. Rosenblum in his letter did not confirm that respondent was drug free, Dr. Clouse did not perform a drug test, and respondent did not present the results of any drug tests from any source. Most troubling is that respondent adamantly believes he is no longer an addict, and he does not need therapy, counseling or support groups to maintain his sobriety. He demonstrated a total absence of insight or understanding of his addiction, which strongly suggests he is susceptible to relapse and should not be permitted to be employed in a pharmacy in any capacity. In fact, Dr. Clouse concluded the same in her affidavit.

32. By any measure, respondent has failed to show meaningful and sustained successful rehabilitation. He presented no evidence to sustain a finding that he is not a danger to himself and the public. There are no circumstances that would warrant allowing respondent to retain his pharmacist license, even if his license were put on probation under the most stringent of conditions. The public cannot be protected unless respondent's license is revoked.

*The Reasonable Costs of Investigation and Prosecution*

33. Under Business and Professions Code section 125.3, complainant may request that an administrative law judge "direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case."

34. The Office of Administrative Hearings has enacted regulations for use when evaluating an agency's request for costs under Business and Professions Code section 125.3. (Cal. Code Regs., tit. 1, § 1042.) Under the regulations, a cost request must be accompanied by a declaration or certification of costs. The declaration "may be executed by the agency or its designee and shall describe the general tasks performed, the time spent on each task and the method of calculating the cost." Alternatively, the agency may provide a bill or invoice. (Cal. Code Regs., tit. 1, § 1042, subd. (b)(1).) For services provided by persons who are not agency employees, the declaration must be executed by the person providing the service and must describe the general tasks performed, the time spent on each task and the hourly rate. In lieu of the declaration, the agency may attach copies of the time and billing records submitted by the service provider. (Cal. Code Regs., tit. 1, § 1042, subd. (b)(2).)

35. Complainant seeks costs related to the investigation and prosecution of this matter in the amount of \$41,542.25, based on \$24,774.75 for investigative costs and \$16,767.50 for costs incurred by the Attorney General's Office. Under Business and Professions Code section 125.3, costs awarded may not exceed the reasonable costs of investigation and enforcement of the case with respect to the licensing act violations.

36. The Certification of Investigative Costs submitted by Ms. Peterson, Ms. Bayley and Mr. Woo listed a total of hours spent on the case and the hourly rate charged for activities they performed in the investigation and prosecution of the case. The total hours was then broken down into four categories: Investigation; travel; report preparation; and hearing preparation. For example, Ms. Peterson's certification seeks costs for 165 hours at the rate of \$121 per hour. Of the total hours, 63.25 hours were for investigation which included:

- (1) Reviewing and prioritizing assignment upon receipt.
- (2) Communicating with complainant.
- (3) Contacting and interviewing witness(es) and/or the licensee.
- (4) Preparing correspondence and/or declarations.
- (5) Collecting, organizing, and evaluating documentation and other physical evidence.
- (6) Performing audit(s).
- (7) Inspection.
- (8) Research.
- (9) Conferring with supervisor.
- (10) Other \_\_\_\_\_.

Fourteen hours were attributed to travel; 71.75 hours were attributed to report preparation; and 16 hours were attributed to hearing preparation. No other information regarding investigative services or expenses was included. Ms. Bayley and Mr. Woo's certifications were on an identical form, but their total number of hours were fewer and the numbers were distributed differently.

37. Neither the inspectors' nor complainant's certification contained information regarding, the specific tasks performed, the date they were performed, or how long each task took. Because the certification did not comply with the regulation, it is impossible to determine if the costs claimed are permissible charges under Business and Professions Code section 125.3, or to determine the reasonableness of the costs being sought. As a result, complainant's request for investigation costs must be denied.

38. The Certification of Prosecution Costs was prepared by Deputy Attorney General Diane De Kervor and requested costs of enforcement in the amount of \$16,767.50. The certification included an attached breakdown of tasks by the professional who performed them, their general nature, the amount of time spent on each, and the amount charged. The certification complied with the OAH regulation and the amount requested is reasonable.

39. Other factors that must be considered when determining costs are discussed in *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32. In *Zuckerman*, the California Supreme Court decided, in part, that in order to determine whether the reasonable costs of investigation and prosecution should be awarded or reduced, the Administrative Law Judge must decide: (a) whether the licensee has been successful at hearing in getting charges dismissed or reduced; (b) whether the licensee had a subjective good faith belief in the merits of his or her position; (c) whether the licensee raised a colorable challenge to the proposed discipline; (d) whether the licensee had the financial ability to make payments on an award of costs, and (e) whether the scope of the investigation was appropriate to the alleged misconduct.

In this case, respondent failed to achieve a reduction in the severity of the discipline sought to be imposed and he did not raise a colorable challenge to the proposed discipline. Respondent provided no evidence of inability to make payments on a cost award.

It is reasonable to require respondent to pay \$16,767.50 in costs. These costs shall be paid prior to respondent filing an application for reinstatement of his license.

#### ORDER

1. Pharmacist License RPH 65008 issued to Sameh Abdelmalek is revoked.

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2. Sameh Abdelmalek is ordered to pay costs to the board in the amount of \$16,767.50. This amount must be paid in full before Sameh Abdelmalek files an application for reinstatement of his license unless the board agrees otherwise.

DATED: May 19, 2017

DocuSigned by:

*Susan J. Boyle*

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SUSAN J. BOYLE  
Administrative Law Judge  
Office of Administrative Hearings

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*Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:  
12  
13 **SAMEH ABDELMALEK**  
83284 Beaver Creek Ct.  
14 Indio, CA 92203  
15  
16 **Pharmacist License No. RPH 65008**  
  
Respondent.

Case No. 5988  
**FIRST AMENDED ACCUSATION**

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18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about November 5, 2010, the Board of Pharmacy issued Pharmacist License  
24 Number RPH 65008 to Sameh Abdelmalek (Respondent). The Pharmacist License will expire on  
25 September 30, 2018, unless renewed.

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## JURISDICTION

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

4. Section 4300, subdivision (a) of the Code states: "Every license issued may be suspended or revoked."

5. Section 4300.1 of the Code 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.

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## STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- (a) Considering the denial of a license by the board under Section 480; or
- (b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order

1 to fix the degree of discipline or to determine if the conviction is substantially related  
2 to the qualifications, functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority,"  
4 and "registration."

5 9. Section 4022 of the Code states

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

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

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

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

16 10. Section 4026 of the Code states: "Furnish" means to supply by any means, by sale or  
17 otherwise."

18 11. Section 4059 of the Code states, in pertinent part, that a person may not furnish any  
19 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,  
20 veterinarian, or naturopathic doctor.

21 12. Section 4060 of the Code states, in pertinent part, that a person may not possess any  
22 controlled substance, except that furnished to a person upon the prescription of a physician,  
23 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor.

24 13. Section 4301 of the Code states:

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

....

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

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

1 (h) The administering to oneself, of any controlled substance, or the use of any  
2 dangerous drug or of alcoholic beverages to the extent or in a manner as to be  
3 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.

4 (i) Except as otherwise authorized by law, knowingly selling, furnishing, giving  
5 away, or administering or offering to sell, furnish, give away, or administer any  
controlled substance to an addict.

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

8 . . . .

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

19 . . . .

20 (o) Violating or attempting to violate, directly or indirectly, or assisting in or  
21 abetting the violation of or conspiring to violate any provision or term of this chapter  
22 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. . .

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

25 15. Health and Safety Code section 11171 provides that "no person shall prescribe,  
26 administer, or furnish a controlled substance except under the conditions and in the manner  
27 provided by this division."  
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16. Health and Safety Code section 11173 states:

(a) 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.

(b) No person shall make a false statement in any prescription, order, report, or record, required by this division.

(c) No person shall, for the purpose of obtaining controlled substances, falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian, registered nurse, physician's assistant, or other authorized person.

(d) No person shall affix any false or forged label to a package or receptacle containing controlled substances.

17. Health and Safety Code section 11175 states:

No person shall obtain or possess a prescription that does not comply with this division, nor shall any person obtain a controlled substance by means of a prescription which does not comply with this division or possess a controlled substance obtained by such a prescription.

18. Health and Safety Code section 11180 states that "no person shall obtain or possess a controlled substance obtained by a prescription that does not comply with this division."

19. United States Code, title 21, section 843, subdivision (a)(3) states:

(a) It shall be unlawful for any person knowingly or intentionally - (3) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge.

**REGULATORY PROVISIONS**

20. California Code of Regulations, title 16, section 1769, subdivision (b) states:

(b) When considering the suspension or revocation of a facility or a personal License on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).

1 (4) Whether the licensee has complied with all terms of parole, probation,  
restitution or any other sanctions lawfully imposed against the licensee.

2 (5) Evidence, if any, of rehabilitation submitted by the licensee.

3 21. California Code of Regulations, title 16, section 1770, states:

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

#### 8 COSTS

9 22. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
10 administrative law judge to direct a licentiate found to have committed a violation or violations of  
11 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
12 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
13 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
14 included in a stipulated settlement.

#### 15 DRUGS

16 23. Phentermine (brand name Fastin or Ionamin) is a Schedule IV controlled substance  
17 pursuant to Health and Safety Code section 11057(f)(4), and is a dangerous drug pursuant to  
18 Business and Professions Code section 4022.

19 24. Oxycodone (brand name Oxycontin) is a Schedule II controlled substance pursuant  
20 to Health and Safety Code section 11055, subdivision (b), and a dangerous drug pursuant to  
21 Business and Professions Code section 4022.

22 25. Buprenorphine (brand name Suboxone) is a Schedule V controlled substance  
23 pursuant to Health and Safety Code section 11058, subdivision (d), and a dangerous drug  
24 pursuant to Business and Professions Code section 4022.

25 26. Hydrocodone/apap (brand name Norco) was a Schedule III controlled substance  
26 pursuant to Health and Safety Code section 11056, subdivision (e), until October 6, 2014, when it  
27 was changed to a Schedule II drug pursuant to Health and Safety Code section 11055, and is a  
28 dangerous drug pursuant to Business and Professions Code section 4022.



1 the consultation room to pay for them because there was no camera in that area, then he would  
2 take the medications from the store.

3 33. Further investigation determined that other hard copy prescriptions for several patient  
4 profiles had been altered, some dating back to 2014, including patient profiles for: MR., AA., FF,  
5 RM., RF., MP., SG., NS., DB., FF., GH., and CL. Phone calls to the physicians confirmed that  
6 the prescriptions were fraudulent. In each instance, the prescriptions were paid for and the  
7 medications picked up by Respondent.

8 34. Respondent admitted that he had been obtaining medication from the store this way  
9 for three to four years, that he always paid for the medication, and he offered to show the loss  
10 prevention personnel his bank statements. He reported that he fraudulently obtained medication  
11 three to four times per week and that would either use old patient profiles or make them up. He  
12 admitted that he would enter the prescription, scan the bottle, and print the label, then put the  
13 prescription in will call. He would then put the medication into an empty vial, place it in his  
14 pocket, and then take the medication out of the store.

15 35. When asked what Respondent did with the medication, Respondent reported that after  
16 he took the medication from the store, he would give it to a person who needed it. Respondent  
17 stated that "The medication is being used by someone, its crazy... They are hooked on this  
18 medication." Respondent admitted that his brother lived with him from 2011 to 2014, that the  
19 brother was addicted to the medication, and that he gave the medication to his brother so that he  
20 did not go through withdrawals. Respondent admitted that he also started taking the medications,  
21 Respondent admitted to taking 70 tablets of Oxycodone a day and reported that he was seeking  
22 treatment for his addiction.

23 36. Respondent's signed statement to the store personnel reinforced his admission that he  
24 had been filling fraudulent prescriptions with false patient profiles for three to four years.  
25 Respondent reviewed a list of fraudulent prescriptions and admitted that he had filled all of them.  
26 On July 22, 2016, Respondent was terminated from his position at Rite Aid.

27 37. Rite Aid personnel called the police department to report the matter. Respondent  
28 admitted to the responding police officers that he had been filling false prescriptions for years and

1 that he was addicted to Oxycodone. Respondent emptied his pockets for the police and his  
2 pockets contained an Advil bottle with 11 tablets of Oxycodone and one tablet of Phentermine.  
3 Respondent admitted he did not have a prescription for the medications. Respondent also had  
4 between three and four thousand dollars in his pocket. Respondent was arrested on July 13, 2016  
5 for a violation of Health and Safety Code section 11350(a) (possession of narcotic controlled  
6 substance).

#### 7 **TERMINATION FROM DIVERSION PROGRAM AS PUBLIC SAFETY RISK**

8 38. On August 3, 2016, Respondent called and requested to join the Pharmacy Recovery  
9 Program and the Diversion Program based upon a 3-4 year history of opiate addiction, an  
10 admission that he had worked while under the influence of opiates and that he had filled  
11 fraudulent prescriptions at work. On August 10, 2016, Respondent was admitted into the  
12 program, but he failed to cooperate in the treatment plan. He refused to admit himself into an  
13 inpatient setting, failed to sign the recovery terms and conditions agreement, he did not attend the  
14 health support group, and he failed to enroll in random drug testing. Thus, on September 9, 2016,  
15 Respondent was terminated from the Pharmacy Board diversion program as a public safety risk.

#### 16 **CRIMINAL CONVICTION**

17 39. On December 9, 2016, in *People v. Sameh Maged Naguib Abdelmalek*, Riverside  
18 Superior Court case no. INM1607565, Respondent pled guilty to a violation of Health and Safety  
19 Code section HS M11350(a), possession of controlled substance, a misdemeanor. Respondent  
20 was sentenced to three years probation and a \$1,000 fine.

#### 21 **BOARD INSPECTION**

22 40. An ongoing inspection of the pharmacy resulted in an investigative report that  
23 revealed additional instances of diversion and falsification of prescriptions. In each of these  
24 instances, the prescriber was called and it was confirmed that the prescriptions were fraudulent.  
25 In each instance, Respondent paid the pharmacy for the medication.

#### 26 **VIDEO SURVEILLANCE OF RESPONDENT FILLING FALSE PRESCRIPTIONS**

27 41. The board's inspector reviewed video of Respondent as he was filling prescriptions  
28 that were later verified to be false. On some of these occasions, Respondent disbursed the

1 medication to third parties. At other times, he appeared to fill the prescriptions but did not  
2 disburse the medication at the time of sale.

3 a. On June 26, 2016, video surveillance showed Respondent as the cashier when a  
4 white vehicle drove up to the drive through window and Respondent dispensed fraudulent  
5 prescription number Rx295050 for patient MP.

6 b. On June 22, 2016, video surveillance showed Respondent as the cashier when  
7 a white vehicle drive up to the drive through window and Respondent dispensed fraudulent  
8 prescription number Rx295454 for FF and fraudulent prescription number Rx294469 for RF.

9 c. On June 20, 2016, Respondent was the cashier at the front counter. No person  
10 was in front of the counter at the time of the transaction when Respondent dispensed fraudulent  
11 prescription number Rx294280 for DB.

12 d. On June 16, 2016, Respondent was the cashier at the front counter. No person  
13 was in front of the counter at the time of the transaction when Respondent dispensed fraudulent  
14 prescription number Rx293985 for RM.

15 e. On June 12, 2016 video surveillance showed Respondent as the cashier at the  
16 drive through window and Respondent dispensed fraudulent prescription numbers Rx293219,  
17 Rx293265, and Rx293266 for GH and NS.

18 f. On June 12, 2016 video surveillance showed Respondent as the cashier at the  
19 drive through window and Respondent dispensed fraudulent prescription numbers Rx293306 and  
20 Rx293257 for RF and AA.

21 RESPONDENT ADMITTED FILLING THE FOLLOWING PRESCRIPTIONS WITH FAKE  
22 AND OR FALSIFIED PATIENT PROFILES

23 42. Below are tables reflecting the prescriptions Rite Aid identified as filled for false  
24 patient profiles created by Respondent and those which respondent admitted "these are the RX's I  
25 took. I sometimes used existing (empty) patient profiles and sometimes I make a new patient  
26 profile."

27 43. No actual patient picked up or bought these prescriptions. Instead, Respondent  
28 created the false profiles and produced false prescriptions either by altering pre-existing

1 prescriptions or with a false verbal prescription. Most of the hard copies of the prescriptions were  
 2 missing, the scanned copies were blanks, and the signatures were missing, illegible, or did not  
 3 match the names on the prescriptions. Respondent would then set the medications aside, pay for  
 4 them, and then remove them from the store and on some occasions he appeared to have provided  
 5 the medication to third parties in the drive through. Doctors denied writing these prescriptions:

6 a. Respondent admitted using false patient profile MR to divert 1460 oxycodone 20mg;  
 7 680 oxycodone 30mg; and 30 zolpidem 10mg:

Patient name/DOB:	Rx number and date, Drug, Quantity:	Hard copy present:	Scanned Copy:	Signature log cashier:
MR; 8/31/1980	294826 on 6/15/16, oxycodone 30mg #160	No	Blank	001467527 register 9 Rx 294826
MR	292523 on 5/26/16; oxycodone 30mg #160	No	Blank	001467527 register 1 Rxs 292497, 292498, 292523
MR	289941 on 5/9/16; oxycodone 30mg #120	No	Blank	001467527 register Rx 289941
MR	287567 on 4/22/16; oxycodone 20mg #180	No	Yes, name on Rx-MR DOB 10/31/60	001467527 register 1 Rx 287567
MR	284225 on 3/31/16; oxycodone 20mg #180	No	Blank	Not available on this date
MR	281039 on 3/9/16; oxycodone 30mg #240	No	Blank	001467527 register 9 Rx 281039, 282333
MR	276278 on 2/12/16; oxycodone 20mg #180	No	Blank	001467527 register 1 Rx 276278
MR	269947 on 1/4/16; oxycodone 20mg #180	No	Blank	Not available on this date
MR	264866 on 11/25/15; oxycodone 20mg #120	No	Scanned copy-sticker on Rx dated 11/2/15	

1	Patient name/DOB:	Rx number and date, Drug, Quantity:	Hard copy present:	Scanned Copy:	Signature log cashier:
2					
3	MR	264867 on 11/25/15; zolpidem 10mg #30	No	Scanned copy-sticker on RX dated 11/2/15	
4					
5	MR	201397 on 8/18/14; oxycodone 20mg #180 by RPH PHL	No	Scanned copy	Signature log not available
6					
7	MR	196627 on 7/12/14; oxycodone 20mg #180	No	Scanned copy	Signature log not available
8					
9	MR	192622 on 6/4/14; oxycodone 20mg #160	No	Scanned copy	Signature log not available
10					
11	MR	190709 on 5/17/14; oxycodone 20mg #100	No	Scanned copy	Signature log not available
12					
13					

b. Respondent admitted using false patient profile RF to divert 775 oxycodone 30mg; 120 oxycodone 20mg; and 240 hydrocod/apap 10/325mg:

16	Patient name/DOB:	Rx number and date, Drug, Quantity/RPH:	Hard copy present:	Scanned Copy:	Signature log cashier:
17					
18	RF; 10/23/86	297733 on 7/1/16; oxycodone 30mg #120/ SA1	No	Blank	001467527 register 9 RX297733
19					
20	RF	294469 on 6/13/16; oxycodone 30mg #120/ PHL	No	Blank	001467527 register 1 RX295454, 294469
21					
22	RF	293257 on 6/3/16; oxycodone 30mg #60/ SA1	No	None	001467527 register 9 RX293257, 293306
23					
24	RF	291179 on 5/18/16; oxycodone 30mg #120/ SA1	No	None	001467527 register 1 RX291179
25					
26	RF	288357 on 4/28/16; oxycodone 30mg #120/ SA1	No	None	001467527 register 1 RX288357
27					
28					

Patient name/DOB:	Rx number and date, Drug, Quantity/RPH:	Hard copy present:	Scanned Copy:	Signature log cashier:
RF	285574 on 4/8/16; oxycodone 30mg #150/ SA1	No	None	001467527 register 1 RX285963, 285574
RF	282618 on 3/21/16; oxycodone 30mg #100/ PHL	No	None	001467527 register 1 RX282618
RF	277694 on 2/22/16 (Monday); oxycodone 30mg #120/ MDM	No	Blank	001467527 register 1 RX277694
RF	270752 on 1/10/16; oxycodone 30mg 000#120/ SA1	No	Scanned copy with sticker; dated 12/18/15	001467527 register 1 RX270752
RF	264870 on 11/25/15; oxycodone 20mg #120/ SA1	No	Blank	001467527 register 9 RX264870
RF	264871 on 11/25/15; hydrocodone/apap 10-325mg #120/ SA1	No	Blank	001467527 register 9 RX264871
RF	258950 on 10/14/15; hydrocodone/apap 10-325mg #120/ SA1	No	Scanned copy with sticker dated 7/23/15	001467527 register 1 RX258950

c. Respondent admitted using false patient profile RM to divert 1110 oxycodone 30mg;  
and 180 oxycodone 10mg:

Patient name/DOB:	Rx number and date, Drug, Quantity/RPH:	Hard copy present:	Scanned Copy:	Signature log cashier:
RM; 7/23/82	293985 on 6/9/16; oxycodone 30mg #180	No	Blank	NA
RM	291763 on 5/16/16; oxycodone 30mg #100	No	Blank	NA
RM	288764 on 5/2/16; oxycodone 30mg #120	No	Blank	NA
RM	286348 on 4/14/16; oxycodone 30mg #150	No	Blank	NA

	Patient name/DOB:	Rx number and date, Drug, Quantity/RPH:	Hard copy present:	Scanned Copy:	Signature log cashier:
1					
2	RM	283315 on 3/25/16; oxycodone 30mg #120	No	Blank	NA
3					
4	RM	278127 on 2/23/16; oxycodone 30mg #200	No	Blank	NA
5					
6	RM	272962 on 1/24/16; oxycodone 30mg #240	No	Blank	NA
7					
8	RM	267315 on 12/14/15; oxycodone 10mg #180	No	Scanned copy-sticker for name dated 11/19/15	NA
9					
10	RM	265960 on 12/4/15; oxycodone 30mg #70	No	Scanned copy-sticker for name; dated 12/1/15	NA
11					
12	RM	261417 on 11/2/15; hydrocodone/apap 10-325mg #120	No	Scanned copy-sticker for name dated 11/16/15	NA
13					
14	RM	261418 on 11/2/15; oxycontin 20mg #60	No	Scanned copy-sticker for name dated 5/6/15	NA
15					

16 d. Respondent admitted using false patient profile AA to divert 285 oxycodone 30mg;  
 17 20 phentermine 37.5mg; 340 oxycodone 20mg; and 770 oxycodone 15mg;

	Patient name/DOB:	Rx number and date, Drug, Quantity/RPH:	Hard copy present:	Scanned Copy:	Signature log cashier:
18					
19	AA; 4/1/67	297423 on 7/1/16; oxycodone 30mg #200	No	Blank copy	Could not print
20					
21	AA	297425 on 7/1/16; phentermine 37.5 #20	No	Blank copy	Could not print
22					
23	AA	293306 on 6/3/16; oxycodone 15mg #300	No	None	001467527 register 9 RX293306, 293257
24					
25	AA	286776 on 4/18/16; oxycodone 20mg #240	No	None	001467527 register 1 RX286776
26					
27					
28					

	Patient name/DOB:	Rx number and date, Drug, Quantity/RPH:	Hard copy present:	Scanned Copy:	Signature log cashier:
1	AA	282447 on 3/20/16; oxycodone 15mg #150	No	None	001467527 register 9 RX282448, 282447
2	AA	279102 on 2/29/16; oxycodone 30mg #70	No	None	001467527 register 1 RX279103, 279102
3	AA	274734 on 2/4/16; oxycodone 15mg #150	No	None	001467527 register 1 RX274734
4	AA	263799 on 11/18/15; oxycodone 20mg #15	No	None	001467527 register 1 RX263799
5	AA	267099 on 12/13/15; oxycodone 15mg #120	No	None	001467527 register 1 RX267099
6	AA	269572 on 12/31/15; oxycodone 15mg #150	No	None	001467527 register NA RX269572
7	AA	260600 on 10/26/15; oxycodone 20mg #100	No	Scanned copy-strength changed dated 8/28/15	001467527 register 1 RX260600

16  
 17 e. Respondent admitted using false patient profile GH to divert 240 oxycodone  
 18 20mg; 270 oxycodone 30mg; and 450 oxycodone 15mg;  
 19

	Patient name/DOB:	Rx number and date, Drug, Quantity/RPH:	Hard copy present:	Scanned Copy:	Signature log cashier:
20	GH; 1/8/80	293265 on 6/3/16; oxycodone 20mg #240	No	Blank	NA
21	GH	291426 on 5/20/16; oxycodone 30mg #120	No	Blank	NA
22	GH	287906 on 4/25/16; oxycodone 30mg #60	No	Blank	NA
23	GH	284824 on 4/4/16; oxycodone 30mg #90 RPH PHL	No	Blank	NA

Patient name/DOB:	Rx number and date, Drug, Quantity/RPH:	Hard copy present:	Scanned Copy:	Signature log cashier:
GH	282086 on 3/17/16; oxycodone 15mg #150	No	Blank	NA
GH	278122 on 2/23/16; oxycodone 15mg #150	No	Blank	NA

f. Respondent admitted using false patient profile DB to divert 360 oxycodone 20mg and 360 hydrocod/apap 10/325mg:

Patient name/DOB:	Rx number and date, Drug, Quantity/RPH:	Hard copy present:	Scanned Copy:	Signature log cashier:
DB; 9/14/73	294280 on 6/12/16; oxycodone 20mg #180	No	Blank	NA
DB	289294 on 5/4/16; oxycodone 20mg #180	No	Blank	NA
DB	159318 on 9/4/13; hydrocodone/apap 10-325mg #240	No	Scanned copy dated 8/24/13 with a refill	NA

g. Respondent admitted using false patient profile FF to divert 1,710 oxycodone 30mg:

Patient name/DOB:	Rx number and date, Drug, Quantity/RPH:	Hard copy present:	Scanned Copy:	Signature log cashier:
FF; 8/25/46	295454 on 6/17/16; oxycodone 30mg #240	No	Blank	NA
FF	292497 on 5/29/16; oxycodone 30mg #180	No	Blank	NA
FF	289524 on 5/6/16; oxycodone 30mg #180	No	Blank	NA
FF	287269 on 4/20/16; oxycodone 30mg #80	No	Blank	NA

Patient name/DOB:	Rx number and date, Drug, Quantity/RPH:	Hard copy present:	Scanned Copy:	Signature log cashier:
FF	202694 on 8/27/14; oxycodone 30mg #180	No	Scanned copy with a sticker, quantity changed to 180. Sequence no: 125328 SP14	NA
FF	198390 on 7/26/14; oxycodone 30mg #210	No	Scanned copy with sticker. Quantity changed to 210 SP14	NA
FF	195607 on 7/2/14; oxycodone 30mg #210	No	Scanned copy - name visibly changed; quantity changed to 210. Sequence: 164380 SP14	NA
FF	193321 on 6/11/14; oxycodone 30mg #170	No	Scanned copy quantity changed to 170; Sequence: 800503 SP14	NA
FF	191803 on 5/28/14; oxycodone 30mg #100	No	Scanned copy- date, name and quantity changed Sequence 800421 SP14	NA
FF	189475 on 5/7/14; oxycodone 30mg #80	No	No- TCH wrote "image not available" edited by RXPSA19	NA
FF	187020 on 4/16/14; oxycodone 30mg #80	No	Scanned copy- directions and quantity changed Sequence: 125326 SP14	NA

h. Respondent admitted using false patient profile MP to divert a total of 1,960 oxycodone 20mg:

Patient name/DOB:	Rx number and date, Drug, Quantity/RPH:	Hard copy present:	Scanned Copy:	Signature log cashier:
MP; 5/11/84 (Exhibit 18)	295050 on 6/17/16; oxycodone 20mg #240	No	Blank	001467527 register 9 RX295050

	Patient name/DOB:	Rx number and date, Drug, Quantity/RPH:	Hard copy present:	Scanned Copy:	Signature log cashier:
1					
2	MP	290622 on 5/15/16; oxycodone 20mg #240	No	Blank	001467527 register 1 RX291762, 290622
3					
4	MP	288356 on 4/28/16; oxycodone 20mg #120	No	Blank	001467527 register 1 RX288356
5					
6	MP	285963 on 4/4/16; oxycodone 20mg #240	No	Blank	001467527 register 1 RX285963, 285574
7					
8	MP	282449 on 3/20/16; oxycodone 20mg #100	No	Blank	001467527 register 9 RX282449
9					
10	MP	279636 on 2/26/16; oxycodone 20mg #240	No	Blank	001467527 register 1 RX279636
11					
12	MP	274264 on 2/1/16; oxycodone 20mg #120	No	Blank	001467527 register 1 RX274264
13					
14	MP	267974 on 12/18/15; oxycodone 20mg #120	No	Blank	001467527 register 1 RX267974
15					
16	MP	202122 on 8/22/14; oxycodone 20mg #90 RPH PHL	No	Scanned copy - sticker over name; date changed to 7/19/14; Sequence 64	001467527 register 1 RX202122
17					
18					
19	MP	197286 on 7/17/14; oxycodone 20mg #90 RPH PHL	No	Scanned copy - sticker over name; date changed to 6/27/14; sequence:74	001467527 register 1 RX197286
20					
21					
22	MP	194216 on 6/19/14; oxycodone 20mg #90	No	Scanned copy - name altered, date 6/17/14; sequence:74	001467527 register 1 RX194216
23					
24	MP	192117 on 5/31/14; oxycodone 20mg #90	no	Scanned copy - name altered, date 5/28/14 Sequence: 14	001467527 register 1 RX192117
25					
26	MP	185573 on 4/5/14; oxycodone 20mg #90	No	Scanned copy - named altered, date 3/19/14; sequence:2135	001467527 register 1 RX185573
27					
28					

1 Patient name/DOB:	Rx number and date, Drug, Quantity/RPH:	Hard copy present:	Scanned Copy:	Signature log cashier:
2 MP	188940 on 5/3/14; oxycodone 20mg #90	No	Scanned copy – name altered, date 4/14/14; sequence:37	001467527 register 9 RX188940

4 ADDITIONAL MEDICATIONS OBTAINED BY FALSIFIED PATIENT PROFILES OR  
5 VALID PROFILES BUT FALSIFIED PRESCRIPTIONS:

6 44. Falsified patient profile CL was used to divert 90 phentermine 37.5mg. The  
7 prescription for these medications was fraudulently produced, verified, and dispensed by  
8 Respondent. The provider listed on the prescription reported he would never call in that dosage  
9 or quantity of phentermine:  
10

11 Patient name/DOB:	Rx number and date, Drug, Quantity/RPH:	Hard copy present:	Scanned Copy:	Signature log cashier:
12 CL; 6/1/80	287272 on 6/25/16; phentermine 37.5mg #25	No	Scanned copy- by Dr. Derum; verbal taken by SA1 RF 1x; dated 3/10/16	NA
15 CL	287272 on 5/15/16; phentermine 37.5mg #20	No	Used RX287272 for refill with different quantity	NA
17 CL	287272 on 4/20/16; phentermine 37.5mg #45	No	Used RX287272 for refill with different quantity	NA

19  
20 45. Falsified prescriptions for patient MP2 were filled and this patient profile was used  
21 to create the false patient profile for patient MP<sup>1</sup> above. The prescription for these medications  
22 was fraudulently produced, verified, and dispensed by Respondent:

23 ///

24 ///

26 <sup>1</sup> The prescriptions filled for MP2, a valid patient profile, were used to alter the name, quantity  
27 and date for many of the RX's filled for patient MP, a falsified patient profile, that Respondent  
28 admitted creating and using to fill falsified prescriptions.

Patient name/DOB:	Rx number and date, Drug, Quantity/RPH:	Hard copy present:	Scanned Copy:	Signature log cashier:
MP2; 9/22/56	242559 on 6/12/15; oxycodone 20mg #120 RPH PHL	No	Scanned copy-sequence: 74 same as RXs 197286 & 194216 for MP	NA
MP2	196505 on 7/11/14; oxycodone 20mg #90 RPH PHL	No	Scanned copy - sequence 64 same as RX 202122 for MP	NA
MP2	193450 on 6/12/14; oxycodone 20mg #90 RPH SA1	No	Scanned copy - sequence 74	NA
MP2	190508 on 5/15/14; oxycodone 20mg #90 RPH SA1	No	Scanned copy - sequence 14; same as RX 192117 for MP	NA
MP2	186990 on 4/16/14; oxycodone 20mg #90 RPH SA1	No	Scanned copy - sequence 37; same as RX 188940 for MP	

46. Falsified prescriptions for patient RR were filled and this patient profile was used to create the false patient profile for patient MR<sup>2</sup> in the table above. The prescription for these medications was fraudulently produced, verified, and dispensed by Respondent:

Patient name/DOB:	Rx number and date, Drug, Quantity/RPH:	Hard copy present:	Scanned Copy:	Signature log cashier:
RR; 6/22/59 (Exhibit 20, page 38)	238597 on 5/8/15; methadone 5mg #90 RPH SA1	No	Scanned copy-sequence 0779 unknown if used	NA
(Exhibit 20, page 36)	261527 on 11/2/15; oxycodone 20mg #120 RPH SA1	No	Scanned copy-sequence 1872	NA
(Exhibit 20, page 36)	261528 on 11/2/15; zolpidem 10mg #30 SA1	No	Scanned copy-sequence 1872	NA
(Exhibit 20, page 37)	214243 on 11/21/14; hydrocodone/apap	No	Scanned copy-sequence 213	NA

<sup>2</sup> Rx's 261527 and 261528 for RR were used to alter Rx's 264866 and 264867 on the profile for MR above.

1 c. Rx227205 for alprazolam 1mg #90 on 2/16/15. Scanned copy available. No initials  
2 of the RPH on the blank.

3 d. Rx217294 for alprazolam 1mg #60 on 1/19/15. Scanned copy available. No initials  
4 of the RPH on the blank.

5 e. Rx295850 for oxycodone 20mg #180 on 6/23/16. No scanned copy available.  
6 Respondent admitted that this was a false prescription.

7 RESPONDENT DISPENSED CONTROLLED SUBSTANCES TO HIMSELF

8 49. Respondent took and/or filled prescriptions for controlled substances for himself  
9 while working at Rite Aid. None of the hard copies of the prescriptions were ever located. The  
10 verbal prescriptions were taken by Respondent, scanned by him, and reviewed or verified by  
11 Respondent or another pharmacist. Respondent then filled the following prescriptions for  
12 himself:  
13

14 a. Rx 284467 for Axiron 30mg #30 on 4/1/16 and 5/18/16. The fill date of 7/9/16 was  
15 still on the shelf waiting for pickup but was no longer on the profile.

16 b. Rx160840 for Vicodin 5/325mg was filled and verified by another pharmacist.

17 c. Rx158987 for Vicodin ES 7.5 mg/750mg #30 with 1 refill was filled by Respondent  
18 on 8/24/13 and 8/29/13.  
19

20 FIRST CAUSE FOR DISCIPLINE

21 (December 9, 2016 Criminal Conviction for  
22 Possession of Controlled Substance on July 13, 2016)

23 50. Respondent has subjected his license to discipline under sections 490 and 4301,  
24 subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the  
25 qualifications, duties, and functions of a pharmacist. The circumstances are as follows: On  
26 December 9, 2016, in *People v. Sameh Maged Naguib Abdelmalek*, Riverside Superior Court case  
27 no. INM1607565, Respondent pled guilty to a violation of Health and Safety Code section HS  
28 M11350(a), possession of controlled substance, a misdemeanor. Respondent was sentenced to

1 three years probation and a \$1,000 fine. The facts that led to the convictions are described in  
2 paragraphs 29 TO 39 above and are incorporated herein by reference.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct - Commission of Acts Involving Dishonesty,  
5 Fraud, Deceit & Corruption)**

6 51. Respondent has subjected his license to discipline under section 4301, subdivision (f)  
7 of the Code for unprofessional conduct in that Respondent created fraudulent prescriptions to  
8 obtain narcotics from his employer using fraud, deceit, and dishonesty, as described in paragraphs  
9 29 to 48 above which are hereby incorporated by reference.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Unprofessional Conduct -- Creating False Prescription Documents)**

12 52. Respondent has subjected his license to discipline under section 4301, subdivision (g)  
13 of the Code for unprofessional conduct in that Respondent knowingly made fraudulent  
14 prescription documents, as described in paragraphs 29 to 48 above which are hereby incorporated  
15 by reference.

16 **FOURTH CAUSE FOR DISCIPLINE**

17 **(Unprofessional Conduct -- Fraudulently Prescribed Controlled Substances to Himself and  
18 Possessed Controlled Substances without a Valid Prescription)**

19 53. Respondent has subjected his license to discipline under section 4301, subdivision (j),  
20 and Health and Safety Code sections 11170, 11171, 11173, 11175, and 11180 of the Code for  
21 unprofessional conduct in that Respondent fraudulently prescribed controlled substances to  
22 himself and possessed controlled substances without a valid prescription as described in  
23 paragraphs 29 to 48 above which are hereby incorporated by reference.

24 **FIFTH CAUSE FOR DISCIPLINE**

25 **(Unprofessional Conduct -- Use if Controlled Substances in a Dangerous Manner)**

26 54. Respondent has subjected his license to discipline under section 4301, subdivision (h)  
27 of the Code for unprofessional conduct in that Respondent knowingly administered narcotics to  
28 himself without a prescription, while he was addicted to those medications, and such that he was  
intoxicated at work, in a manner that was dangerous and injurious to himself, potentially to the

1 patrons of the pharmacy, and to the public as described in paragraphs 29 to 48 above which are  
2 hereby incorporated by reference.

3 **SIXTH CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct – Furnishing Controlled Substances to an Addict)**

5 55. Respondent has subjected his license to discipline under section 4301, subdivision (i)  
6 of the Code for unprofessional conduct in that Respondent admitted knowingly furnishing  
7 narcotics to his brother, when he alleged that his brother was addicted to those narcotics, as  
8 described in paragraphs 29 to 48 above which are hereby incorporated by reference.

9 **SEVENTH CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct - Violation of California Statutes  
11 Regulating Controlled Substances)**

12 56. Respondent has subjected his license to discipline under section 4301, subdivision (j)  
13 of the Code for unprofessional conduct in that Respondent knowingly violated Health and Safety  
14 Code sections 11170, 11171, 11173, 11175, and 11180; Title 21 U.S.C. section 843, subdivision  
15 (a)(3), and the California Uniform Controlled Substances Act (Health and Safety Code 11000, et  
16 seq.), as described in paragraphs 29 to 48 above which are hereby incorporated by reference.

17 **EIGHTH CAUSE FOR DISCIPLINE**

18 **(Unprofessional Conduct - Violating Federal & State Laws &  
19 Regulations Governing Pharmacy)**

20 57. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the  
21 Code for unprofessional conduct in that he violated Business and Professions Code sections 4059  
22 and 4060, and Board of Pharmacy Regulations (California Code of Regulations, Title 16, Section  
23 1700, et seq.), when he obtained controlled substances using fraud and deceit, as described in  
24 paragraph 29 to 48 above which are hereby incorporated by reference.

25 **DISCIPLINARY CONSIDERATIONS**

26 58. On August 10, 2016, Respondent was voluntarily admitted to the Pharmacy Board  
27 Diversion Program based upon his report of being addicted to narcotics, obtaining narcotics from  
28 his work place with false prescriptions, and being under the influence of narcotics at the  
workplace. Respondent was terminated from the Pharmacy Board diversion program as a public

1 safety risk because he failed to participate in the treatment program prescribed for him, as  
2 described in paragraph 38 above.

3 PRAYER

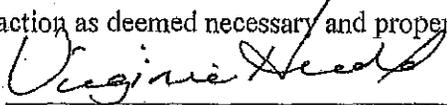
4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
5 and that following the hearing, the Board of Pharmacy issue a decision:

6 1. Revoking or suspending Pharmacist License Number RPH 65008, issued to Sameh  
7 Abdelmalek;

8 2. Ordering Sameh Abdelmalek to pay the Board of Pharmacy the reasonable costs of  
9 the investigation and enforcement of this case, pursuant to Business and Professions Code section  
10 125.3; and,

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

12 DATED: 3/21/17



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

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