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

In the Matter of the Accusation Against:
MAHER I. AL-GHABRA
P.O. Box 881661
San Diego, CA 92168
Pharmacist License No. RPH 44421,
Respondent.

Case No. 3433

ACCUSATION

Complainant alleges:

PARTIES

1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
 2. On or about August 27, 1991, the Board of Pharmacy issued Pharmacist License Number RPH 44421 to Maher I. Al-Ghabra (Respondent). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2011, unless renewed.
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1 JURISDICTION

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

5 4. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
6 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
7 disciplinary action during the period within which the license may be renewed, restored, reissued
8 or reinstated.

9 5. Section 4300 of the Code states:

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

11 STATUTORY PROVISIONS

12 6. Section 4022 of the Code states

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

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

17 (b) Any device that bears the statement: "Caution: federal law restricts this
18 device to sale by or on the order of a _____," "Rx only," or words of similar
19 import, the blank to be filled in with the designation of the practitioner licensed to
20 use or order use of the device.

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

23 7. Section 4040 of the Code states in pertinent part:

24 (a) "Prescription" means an oral, written, or electronic transmission order that
25 is both of the following :

26 (1) Given individually for the person or persons for whom ordered that
27 includes all of the following:

28 (A) The name or names and address of the patient or patients.

(B) The name and quantity of the drug or device prescribed and the directions
for use.

(C) The date of issue.

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(D) Either rubber stamped, typed, or printed by hand or typeset, the name, address, and telephone number of the prescriber, his or her license classification, and his or her federal registry number, if a controlled substance is prescribed.

(E) A legible, clear notice of the condition for which the drug is being prescribed, if requested by the patient or patients.

(F) If in writing, signed by the prescriber issuing the order, or the certified nurse-midwife, nurse practitioner, physician assistant, or naturopathic doctor who issues a drug order pursuant to section 2746.51, 2836.1, 3502.1, or 3640.5, respectively, or the pharmacist who issues a drug order pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.

8. Section 4059 of the Code states in pertinent part:

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

9. Section 4063 of the Code states:

No prescription for any dangerous drug or dangerous device may be refilled except upon authorization of the prescriber. The authorization may be given orally or at the time of giving the original prescription. No prescription for any dangerous drug that is a controlled substance may be designated refillable as needed.

10. Section 4081 of the Code states:

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

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

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11. Section 4301 of the Code states in pertinent part:

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

....
(d) The clearly excessive furnishing of controlled substances in violation of subdivision (a) of Section 11153 of the Health and Safety Code.

....
(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.

12. Section 4333 of the Code states, in pertinent part, that all prescriptions filled by a pharmacy and all other records required by Section 4081 shall be maintained on the premises and available for inspection by authorized officers of the law for a period of at least three years. In cases where the pharmacy discontinues business, these records shall be maintained in a board-licensed facility for at least three years.

13. Health and Safety Code section 11153 provides in pertinent part:

(a) A prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. Except as authorized by this division, the following are not legal prescriptions: (1) an order purporting to be a prescription which is issued not in the usual course of professional treatment or in legitimate and authorized research; or (2) an order for an addict or habitual user of controlled substances, which is issued not in the course of professional treatment or as part of an authorized narcotic treatment program, for the purpose of providing the user with controlled substances, sufficient to keep him or her comfortable by maintaining customary use.

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14. Health and Safety Code section 11165 provides in pertinent part:

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(d) For each prescription for a Schedule II, Schedule III, or Schedule IV controlled substance, the dispensing pharmacy shall provide the following information to the Department of Justice on a weekly basis and in a format specified by the Department of Justice:

- (1) Full name, address, and the telephone number of the ultimate user or research subject, or contact information as determined by the Secretary of the United States Department of Health and Human Services, and the gender, and date of birth of the ultimate user.
- (2) The prescriber's category of licensure and license number; federal controlled substance registration number; and the state medical license number of any prescriber using the federal controlled substance registration number of a government-exempt facility.
- (3) Pharmacy prescription number, license number, and federal controlled substance registration number.
- (4) NDC (National Drug Code) number of the controlled substance dispensed.
- (5) Quantity of the controlled substance dispensed.
- (6) ICD-9 (diagnosis code), if available.
- (7) Number of refills ordered.
- (8) Whether the drug was dispensed as a refill of a prescription or as a first-time request.
- (9) Date of origin of the prescription.
- (10) Date of dispensing of the prescription.

15. Health and Safety Code section 11171 provides that:

No person shall prescribe, administer, or furnish a controlled substance except under the conditions and in the manner provided by this division.

16. Health and Safety Code section 11200 provides that:

(a) No person shall dispense or refill a controlled substance prescription more than six months after the date thereof.

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1 (b) No prescription for a Schedule III or IV substance may be refilled more
2 than five times and in an amount, for all refills of that prescription taken
3 together, exceeding a 120-day supply.

4 (c) No prescription for a Schedule II substance may be refilled.

5 REGULATIONS

6 17. California Code of Regulations, title 16 (CCR), section 1707.1 provides in pertinent
7 part:

8 (a) A pharmacy shall maintain medication profiles on all patients who have
9 prescriptions filled in that pharmacy except when the pharmacist has reasonable
10 belief that the patient will not continue to obtain prescription medications from
11 that pharmacy.

12 (1) A patient medication record shall be maintained in an automated data
13 processing or manual record mode such that the following information is
14 readily retrievable during the pharmacy's normal operating hours.

15 (A) The patient's full name and address, telephone number, date of birth (or
16 age) and gender;

17 (B) For each prescription dispensed by the pharmacy:

18 (1) The name, strength, dosage form, route of administration, if other than
19 oral, quantity and directions for use of any drug dispensed;

20 18. CCR section 1714 provides in pertinent part:

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

27 19. CCR section 1716 states:

28 Pharmacists shall not deviate from the requirements of a prescription except
upon the prior consent of the prescriber or to select the drug product in accordance
with Section 4073 of the Business and Professions Code.

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1 20. CCR section 1718 states:

2 "Current Inventory" as used in Sections 4081 and 4332 of the Business and
3 Professions Code shall be considered to include complete accountability for all
4 dangerous drugs handled by every licensee enumerated in Sections 4081 and 4332.

4 The controlled substances inventories required by Title 21, CFR, Section
5 1304 shall be available for inspection upon request for at least 3 years after the
6 date of the inventory.

6 21. CCR section 1761 states:

7 (a) No pharmacist shall compound or dispense any prescription which contains any
8 significant error, omission, irregularity, uncertainty, ambiguity or alteration.
9 Upon receipt of any such prescription, the pharmacist shall contact the
10 prescriber to obtain the information needed to validate the prescription.

10 (b) Even after conferring with the prescriber, a pharmacist shall not compound or
11 dispense a controlled substance prescription where the pharmacist knows or has
12 objective reason to know that said prescription was not issued for a legitimate
13 medical purpose.

13 COSTS

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

18 DRUG

19 23. Hydrocodone with acetaminophen (hydrocodone/APAP) is designated by Health and
20 Safety Code section 11056(e)(4) as a narcotic drug and a Schedule III controlled substance, and
21 by Business and Professions Code section 4022 as a dangerous drug, and is used as a narcotic
22 analgesic in the relief of pain.

23 FACTS

24 24. In December 2006, Respondent began working as a pharmacist at CVS Pharmacy
25 #8842 in El Cajon, California. On February 3, 2007, customer M.B. filled his first prescription
26 for hydrocodone/APAP at CVS Pharmacy #8842. Thereafter, customer M.B. came into CVS
27 Pharmacy #8842 every couple of days looking for Respondent and if Respondent was not at the
28 pharmacy, customer M.B. would leave without conducting any business. Respondent filled

1 prescriptions for hydrocodone/APAP for customer M.B. almost every day and customer M.B.
2 received from 8 to 100 tablets of hydrocodone/APAP at a time. Sometimes, Respondent filled
3 two prescriptions for hydrocodone/APAP for customer M.B. on the same day.

4 25. In December 2007, it was discovered that Respondent was falsifying refill documents
5 and prescriptions for hydrocodone/APAP for customer M.B. Over approximately a 9 month
6 period, Respondent dispensed 47 prescriptions for hydrocodone/APAP to customer M.B., without
7 keeping a record in the patient profile. Respondent did not report, or incorrectly reported, 58
8 hydrocodone/APAP dispensings to CURES and was not able to produce 46 original prescriptions
9 for the hydrocodone/APAP prescriptions for customer M.B. Respondent filled 3 prescriptions for
10 hydrocodone/APAP for customer M.B. which did not meet the requirements of a prescription.
11 Respondent filled 13 prescriptions for hydrocodone/APAP differently from written and refilled 21
12 prescriptions for hydrocodone/APAP without authorization. Respondent also refilled 100
13 hydrocodone/APAP prescriptions early. Respondent excessively furnished hydrocodone/APAP
14 to customer M.B. 55 times because he filled the prescriptions too soon compared to the directions
15 for use and days supplied as ordered by the prescribing doctor. The total amount of
16 hydrocodone/APAP Respondent dispensed to customer M.B. over the approximately 9 month
17 period was 5,475 tablets.

18 FIRST CAUSE FOR DISCIPLINE

19 (Unprofessional Conduct: Violating State Law Governing Pharmacy)

20 26. Respondent's license is subject to discipline for unprofessional conduct under section
21 4301(o) for violating state law governing pharmacy. The circumstances are as follows

22 a. Respondent failed to comply with CCR section 1707.1(a)(1)(B)(1) which requires
23 pharmacies to keep patient profiles, including names and dates of prescriptions filled, for each
24 patient. Specifically, on 47 occasions between March 12, 2007 and November 19, 2007, while
25 Respondent was working as a pharmacist at CVS Pharmacy #8442, Respondent dispensed
26 prescriptions for hydrocodone/APAP for customer M.B. which were not put into the patient
27 profile for customer M.B.

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1 b. Respondent failed to comply with Health and Safety Code section 11165(d) which
2 requires pharmacies to report controlled substance prescriptions to CURES. Specifically, on 58
3 occasions between March 12, 2007 and November 26, 2007, while Respondent was working as a
4 pharmacist at CVS Pharmacy #8442, Respondent dispensed prescriptions for hydrocodone/APAP
5 for customer M.B. which were not submitted to CURES correctly.

6 c. Respondent failed to comply with Health and Safety Code section 11171 and Code
7 section 4059(a) which requires a prescription be present prior to dispensing any dangerous drugs.
8 Specifically, on 46 occasions between March 3, 2007 and November 23, 2007, while Respondent
9 was working as a pharmacist at CVS Pharmacy #8442, Respondent dispensed controlled
10 substance prescriptions for hydrocodone/APAP to customer M.B. which did not have a
11 prescription document.

12 d. Respondent failed to comply with Code section 4040(a)(1) which requires certain
13 elements to be present on a prescription prior to dispensing any dangerous drugs. Specifically, on
14 3 occasions, while Respondent was working as a pharmacist at CVS Pharmacy #8442,
15 Respondent dispensed controlled substance prescriptions for hydrocodone/APAP for customer
16 M.B. which were incomplete. Rx #221915 filled on June 1, 2007, was an oral prescription with
17 no directions. Rx #223131 filled on June 15, 2007, consisted solely of a label. Rx #229877 filled
18 August 30, 2007 was an oral prescription which was not reduced to writing.

19 e. Respondent failed to comply with CCR section 1716 which prohibits varying from a
20 prescription unless authorization is obtained by the prescriber. Specifically, on 13 occasions
21 between February 15, 2007 and November 26, 2007, while Respondent was working as a
22 pharmacist at CVS Pharmacy #8442, Respondent dispensed hydrocodone/APAP to customer
23 M.B. in a manner not prescribed. Respondent filled some prescriptions for hydrocodone/APAP
24 for customer M.B. earlier than the doctor ordered; dispensed more pills than authorized, and
25 refilled the prescriptions when there were no refills ordered by the doctor.

26 f. Respondent failed to comply with Code section 4063 which prohibits refilling of
27 prescriptions without authorization. Specifically, on 21 occasions between February 19, 2007 and
28 November 26, 2007, while Respondent was working as a pharmacist at CVS Pharmacy #8442,

1 Respondent refilled hydrocodone/APAP prescriptions for customer M.B. without authorization
2 from the prescriber.

3 g. Respondent failed to comply with Health and Safety Code section 11153(a) and CCR
4 section 1761 which states that a pharmacist shall not dispense a prescription containing
5 irregularity or uncertainty, and that a pharmacist has a corresponding responsibility to ensure
6 proper prescribing and dispensing. Specifically, on 100 occasions between February 20, 2007
7 and November 19, 2007, while Respondent was working as a pharmacist at CVS Pharmacy
8 #8442, Respondent filled hydrocodeone/APAP prescriptions for customer M.B. early. This was
9 due to either Respondent filling the prescription too early based on how many pills were received
10 previously by customer M.B., or because there were two prescriptions filled on the same day for
11 customer M.B. for a similar drug.

12 h. Respondent failed to comply with Health and Safety Code section 11200 which
13 prohibits anyone from refilling a controlled substance prescription more than 5 times.
14 Specifically, on October 4 and 5, 2007, while Respondent was working as a pharmacist at CVS
15 Pharmacy #8442, Respondent refilled hydrocodone/APAP Rx #232237 in excess of 5 times.

16 i. Respondent failed to comply with CCR section 1714(d) which states that each
17 pharmacist while on duty shall be responsible for the security of the prescription department,
18 including provisions for effective control against theft or diversion of dangerous drugs and
19 devices, and records for those drugs and devices. Specifically, between May 1, 2007 and
20 December 15, 2007, while Respondent was working as a pharmacist at CVS Pharmacy #8442,
21 Respondent did not have provisions in place to avoid the loss of dangerous drugs which resulted
22 in a loss of Hydrocodone products to CVS Pharmacy #8442.

23 SECOND CAUSE FOR DISCIPLINE

24 (Unprofessional Conduct: Excessive Furnishing of Controlled Substances)

25 27. Respondent's license is subject to discipline for unprofessional conduct under section
26 4301(d) for the clearly excessive furnishing of controlled substances in violation of Health and
27 Safety Code section 11153(a) in that on 55 occasions between September 9, 2007 and
28 November 5, 2007, while Respondent was working as a pharmacist at CVS Pharmacy #8442,

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Respondent filled hydrocodone/APAP prescriptions early for customer M.B. where the doctor wanted customer M.B. to take no more than 10 pills per day but Respondent continuously gave customer M.B. amounts exceeding the prescribed 10 pills per day.

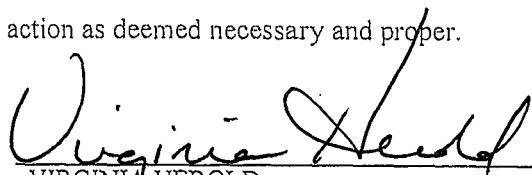
PRAYER

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

1. Revoking or suspending Pharmacist License Number RPH 44421, issued to Maher I. Al-Ghabra;
2. Ordering Maher I. Al-Ghabra to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED:

1/4/10



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

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