

1 EDMUND G. BROWN JR.
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 G. MICHAEL GERMAN
Deputy Attorney General
4 State Bar No. 103312
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2617
7 Facsimile: (619) 645-2061
Attorneys for Complainant
8

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

12 In the Matter of the Accusation Against:

Case No. 3487

13 **FADI WASEF ATIYA**
14 **6643 Duck Pond Trail**
San Diego, CA 92130

A C C U S A T I O N

15 **Pharmacist License No. RPH 45978**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

- 20 1. Complainant Virginia Herold brings this Accusation solely in her official capacity as
21 the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.
22 2. On March 10, 1993, the Board issued Pharmacist License Number RPH 45978 to
23 Respondent Fadi Wasef Atiya. The License was in full force and effect at all times relevant to the
24 charges brought herein and will expire on November 30, 2010, unless renewed.

25 **JURISDICTION**

- 26 3. This Accusation is brought before the Board, Department of Consumer Affairs, under
27 the authority of the following laws. All section references are to the Business and Professions
28 Code unless otherwise indicated.

1 4. Section 4300, subdivision (a) of the Business and Professions Code (Code) provides,
2 in pertinent part, that every license issued may be suspended or revoked.

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

7 STATUTORY PROVISIONS

8 6. Section 480 of the Code states, in pertinent part:

9 (a) A board may deny a license regulated by this code on the grounds that the
10 applicant has one of the following:

11

12 (3)(A) Done any act that if done by a licentiate of the business or profession in
question, would be grounds for suspension or revocation of license.

13 (B) The board may deny a license pursuant to this subdivision only if the crime
14 or act is substantially related to the qualifications, functions, or duties of the business
or profession for which application is made.

15 7. Section 4022 of the Code states:

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

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

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

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

23 8. Section 4081 of the Code states in pertinent part:

24 (a) All records of manufacture and of sale, acquisition, or disposition of
25 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
26 three years from the date of making. A current inventory shall be kept by every . . .
pharmacy . . . holding a currently valid and unrevoked certificate, license, permit,
27 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
28 Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous
drugs or dangerous devices.

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11. Section 4110 of the Code states, in pertinent part:

(a) No person shall conduct a pharmacy in the State of California unless he or she has obtained a license from the board. A license shall be required for each pharmacy owned or operated by a specific person. A separate license shall be required for each of the premises of any person operating a pharmacy in more than one location. The license shall be renewed annually. The board may, by regulation, determine the circumstances under which a license may be transferred.

....

12. 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:

....

(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.

....

REGULATORY PROVISIONS

13. California Code of Regulations, title 16 (Regulations), section 1714 states in pertinent part:

....

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

....

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

14. Regulations, section 1718 states:

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

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

4 COST RECOVERY

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

9 FACTS

10 16. On March 6, 2008, Drug Enforcement Administration (DEA) and Federal Bureau of
11 Investigation (FBI) agents simultaneously served federal search warrants at White Cross
12 Pharmacy, Park Blvd. Pharmacy, and Galloway Pharmacy in San Diego after a two-year
13 investigation into controlled substance diversion from the three pharmacies. From July 1, 2005,
14 through March 6, 2008, Respondent was Pharmacist-in-Charge (PIC) at Galloway Pharmacy.

15 17. The search and warrants produced the following information:

16 a. Galloway was using the building located at 2984 Newton Avenue, San Diego, in
17 back of the pharmacy, as part of the pharmacy for storing prescription records, prescriptions filled
18 with controlled substances and being packaged for delivery, and computer terminals containing
19 confidential patient information, but the building was not licensed with the Board as a pharmacy.

20 b. From July 21, 2005, to March 6, 2008, Galloway purchased 467,400 tablets of
21 Hydrocodone 5/500; 2,111,400 tablets of Hydrocodone 10/325; and 154,900 tablets of
22 Oxycodone 80mg.

23 c. The DEA Biennial Inventory of July 21, 2005 shows 730 tablets of Oxycodone 80;
24 31,200 tablets of Hydrocodone 5/500; and 22,5000 tablets of Hydrocodone 10/325; and a closing
25 inventory (stock on hand) on March 6, 2008, of 956 tablets of Oxycodone 80; 5,396 tablets of
26 Hydrocodone 5/500; and 2,378 tablets of Hydrocodone 10/325.

27 d. The DEA computation chart shows that from July 21, 2005, to March 6, 2008,
28 Galloway dispensed 74,846 tablets of Oxycodone 80mg; 370,767 tablets of Hydrocodone 5/500;
and 103,623 tablets of Hydrocodone 10/325.

1 Together, this information revealed that Galloway was short 79,828 (51%) tablets of
2 Oxycodone 80mg; short 122,437 (25%) tablets of Hydrocodone 5/500 and short 2,028,899 (95%)
3 of Hydrocodone 10/325.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Failure to Maintain Accurate Inventory)**

6 18. Respondent is subject to disciplinary action under section 4301, subdivision (o) of
7 the Code for violation of the Pharmacy Act and Regulations, in that while PIC of Galloway he
8 failed to maintain an accurate inventory in violation of Code section 4081, subdivision (a), and
9 Regulations, section 1718, as detailed in paragraphs 16 and 17, above.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Failure to Maintain Secure Premises and Prevent Theft Inventory)**

12 19. Respondent is subject to disciplinary action under section 4301, subdivision (o) of
13 the Code for violation of the Pharmacy Act and Regulations, in that while PIC of Galloway he
14 failed to maintain his facilities so that dangerous drugs were properly secured and distributed, and
15 failed to make effective provisions for effective control against theft or diversion of dangerous
16 drugs, with resulting shortages, in violation of Regulations, section 1714, subdivisions (b) and
17 (d), as detailed in paragraphs 16 and 17, above.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Operating an Unlicensed Pharmacy)**

20 20. Respondent is subject to disciplinary action under section 4301, subdivision (o) of
21 the Code for violation of the Pharmacy Act and Regulations, in that while PIC of Galloway he
22 operated the building located at 2984 Newton Avenue, San Diego, behind Galloway, as a
23 pharmacy while the building was not licensed with the Board as a pharmacy, in violation of
24 section 4110, subdivision (a) of the Code, as detailed in paragraphs 16 and 17, above.

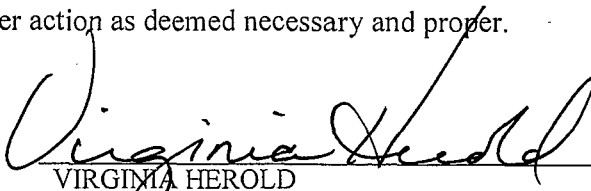
25 **PRAYER**

26 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
27 and that following the hearing, the Board of Pharmacy issue a decision:
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1. Revoking or suspending Original Pharmacist License Number RPH 45978, issued to Fadi Wasef Atiya, RPH;
2. Ordering Fadi Wasef Atiya 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: 6/9/10



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