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8

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

12 In the Matter of the Accusation Against:

Case No. 3489

13 **AHMAD H. HNAINO**  
12956 Cristallo Place  
14 San Diego, CA 92130

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

15 **Pharmacist License No. RPH 50026**

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 April 8, 1998, the Board issued Pharmacist License Number RPH 50026 to  
23 Respondent Ahmad H. Hnaino. The License was in full force and effect at all times relevant to  
24 the charges brought herein and will expire on September 30, 2011, 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.



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9. Section 4060 of the Code states:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either Section 4052.1 or 4052.2. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

10. Section 4081 of the Code states in pertinent part:

(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 . . . pharmacy . . . 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.

11. Section 4110, subdivision (a), of the Code states:

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:

....

(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.

....

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

1                   .....  
2                   (o) Violating or attempting to violate, directly or indirectly, or assisting in or  
3 abetting the violation of or conspiring to violate any provision or term of this chapter  
4 or of the applicable federal and state laws and regulations governing pharmacy,  
5 including regulations established by the board or by any other state or federal  
6 regulatory agency.

7                   .....  
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9                   13. Section 4332 of the Code states:

10                   Any person who fails, neglects, or refuses to maintain the records required by  
11 Section 4081 or who, when called upon by an authorized officer or a member of the  
12 board, fails, neglects, or refuses to produce or provide the records within a reasonable  
13 time, or who willfully produces or furnishes records that are false, is guilty of a  
14 misdemeanor.

15                   14. Section 11153 of the Health and Safety (H&S) Code states in pertinent part:

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

28                   15. Section 11158 of the H&S Code states in pertinent part:

                  (a) Except as provided in Section 11159 or in subdivision (b) of this section,  
no controlled substance classified in Schedule II shall be dispensed without a  
prescription meeting the requirements of this chapter. Except as provided in Section  
11159 or when dispensed directly to an ultimate user by a practitioner, other than a  
pharmacist or pharmacy, no controlled substance classified in Schedule III, IV, or V  
may be dispensed without a prescription meeting the requirements of this chapter.

                  (b) A practitioner specified in Section 11150 may dispense directly to an  
ultimate user a controlled substance classified in Schedule II in an amount not to  
exceed a 72-hour supply for the patient in accordance with directions for use given by  
the dispensing practitioner only where the patient is not expected to require any  
additional amount of the controlled substance beyond the 72 hours. Practitioners  
dispensing drugs pursuant to this subdivision shall meet the requirements of  
subdivision (f) of Section 11164.

                  16. Section 11164 of the H&S Code states in pertinent part:

                  Except as provided in Section 11167, no person shall prescribe a controlled

1 substance, nor shall any person fill, compound, or dispense a prescription for a  
2 controlled substance, unless it complies with the requirements of this section.

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

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

14 (2) The prescription shall also contain the address of the person for whom the  
15 controlled substance is prescribed. If the prescriber does not specify this address on  
16 the prescription, the pharmacist filling the prescription or an employee acting under  
17 the direction of the pharmacist shall write or type the address on the prescription or  
18 maintain this information in a readily retrievable form in the pharmacy. . . .

19 (b)(1) Notwithstanding paragraph (1) of subdivision (a) of Section 11162.1, any  
20 controlled substance classified in Schedule III, IV, or V may be dispensed upon an  
21 oral or electronically transmitted prescription, which shall be produced in hard copy  
22 form and signed and dated by the pharmacist filling the prescription or by any other  
23 person expressly authorized by provisions of the Business and Professions Code. Any  
24 person who transmits, maintains, or receives any electronically transmitted  
25 prescription shall ensure the security, integrity, authority, and confidentiality of the  
26 prescription.

27 (2) The date of issue of the prescription and all the information required for a  
28 written prescription by subdivision (a) shall be included in the written record of the  
prescription; the pharmacist need not include the address, telephone number, license  
classification, or federal registry number of the prescriber or the address of the patient  
on the hard copy, if that information is readily retrievable in the pharmacy.

(3) Pursuant to an authorization of the prescriber, any agent of the prescriber on  
behalf of the prescriber may orally or electronically transmit a prescription for a  
controlled substance classified in Schedule III, IV, or V, if in these cases the written  
record of the prescription required by this subdivision specifies the name of the agent  
of the prescriber transmitting the prescription.

....  
17. Section 11350 of the H&S Code states in pertinent part:

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

1 (b) Except as otherwise provided in this division, every person who possesses  
2 any controlled substance specified in subdivision (e) of Section 11054 shall be  
punished by imprisonment in the county jail for not more than one year or in the state  
prison.

3 (c) Except as otherwise provided in this division, whenever a person who  
4 possesses any of the controlled substances specified in subdivision (a) or (b), the  
judge may, in addition to any punishment provided for pursuant to subdivision (a) or  
5 (b), assess against that person a fine not to exceed seventy dollars (\$70) with proceeds  
6 of this fine to be used in accordance with Section 1463.23 of the Penal Code. The  
court shall, however, take into consideration the defendant's ability to pay, and no  
7 defendant shall be denied probation because of his or her inability to pay the fine  
permitted under this subdivision.

8 . . . .

9 18. Section 11352 of the H&S Code states:

10 (a) Except as otherwise provided in this division, every person who transports,  
11 imports into this state, sells, furnishes, administers, or gives away, or offers to  
transport, import into this state, sell, furnish, administer, or give away, or attempts to  
12 import into this state or transport (1) any controlled substance specified in subdivision  
(b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in  
13 paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in  
subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section  
14 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a  
narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist,  
15 or veterinarian licensed to practice in this state, shall be punished by imprisonment in  
the state prison for three, four, or five years.

16 (b) Notwithstanding the penalty provisions of subdivision (a), any person who  
17 transports for sale any controlled substances specified in subdivision (a) within this  
state from one county to another noncontiguous county shall be punished by  
18 imprisonment in the state prison for three, six, or nine years.

19 **REGULATORY PROVISIONS**

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

22 (a) All pharmacies (except hospital inpatient pharmacies as defined by Business  
23 and Professions Code section 4029 which solely or predominantly furnish drugs to  
inpatients of the hospital) shall contain an area which is suitable for confidential  
24 patient counseling.

25 (b) Each pharmacy licensed by the board shall maintain its facilities, space,  
26 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.

27 . . . .

28 (d) Each pharmacist while on duty shall be responsible for the security of the

1 prescription department, including provisions for effective control against theft or  
2 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.

3 20. Regulations, section 1717.4 states:

4 (a) Except as otherwise prohibited by law, prescriptions may be transmitted by  
5 electronic means from the prescriber to the pharmacy.

6 (b) An electronically transmitted prescription which meets the requirements of  
7 this regulation shall be deemed to be a prescription within the meaning of Business  
and Professions Code section 4040.

8 (c) An electronically transmitted prescription order shall include the name and  
9 address of the prescriber, a telephone number for oral confirmation, date of  
10 transmission and the identity of the recipient, as well as any other information  
required by federal or state law or regulations. The prescriber's address, license  
classification and federal registry number may be omitted if they are on file and  
readily retrievable in the receiving pharmacy.

11 (d) An "interim storage device" means as electronic file into which a  
12 prescription is entered for later retrieval by an authorized individual. Any interim  
storage device shall, in addition to the above information, record and maintain the  
13 date of entry and/or receipt of the prescription order, date of transmission from the  
interim storage device and identity of the recipient of such transmission. The interim  
storage device shall be maintained so as to ensure against unauthorized access and  
14 use of prescription information, including dispensing information.

15 (e) A pharmacy receiving an electronic image transmission prescription shall  
16 either receive the prescription in hard copy form or have the capacity to retrieve a  
hard copy facsimile of the prescription from the pharmacy's computer memory. Any  
17 hard copy of a prescription shall be maintained on paper of permanent quality.

18 (f) An electronically transmitted prescription shall be transmitted only to the  
19 pharmacy of the patient's choice. This requirement shall not apply to orders for  
medications to be administered in an acute care hospital.

20 (g) Electronic equipment for transmitting prescriptions (or electronic transmittal  
technology) shall not be supplied or used so as to violate or circumvent Business and  
21 Professions Code section 4000 et seq., Health and Safety Code section 11150 et seq.,  
or any regulations of the board.

22 (h) Any person who transmits, maintains or receives any prescription or  
23 prescription refill, orally, in writing or electronically, shall ensure the security,  
integrity, authenticity, and confidentiality of the prescription and any information  
24 contained therein.

25 21. Regulations, section 1718 states:

26 "Current Inventory" as used in Sections 4081 and 4332 of the Business and  
27 Professions Code shall be considered to include complete accountability for all  
dangerous drugs handled by every licensee enumerated in Sections 4081 and 4332.  
28 The controlled substances inventories required by Title 21, CFR, Section 1304 shall  
be available for inspection upon request for at least 3 years after the date of the

1 inventory.

2 **COST RECOVERY**

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

7 **FACTS**

8 23. On March 6, 2008, Drug Enforcement Administration (DEA) and Federal Bureau of  
9 Investigation (FBI) agents simultaneously served federal search warrants at White Cross  
10 Pharmacy, Park Blvd. Pharmacy, and Galloway Pharmacy in San Diego after a two-year  
11 investigation into controlled substance diversion from the three pharmacies. From April 11,  
12 2005, through September 17, 2007, Respondent was Pharmacist-in-Charge (PIC) at White Cross  
13 Pharmacy, and from September 17, 2007, through March 6, 2008, PIC at Park Blvd. Pharmacy.  
14 The agents also served federal search and arrest warrants on Respondent Hnaino at his residence.

15 24. As to White Cross Pharmacy, the warrants produced the following information:

16 a. Printouts of the tabulations and summary of White Cross's purchases of  
17 Hydrocodone 5/500, Hydrocodone 10/325, and Oxycodone 80, show White Cross purchased  
18 600,800 tablets of Hydrocodone 5/500; 139,700 tablets of Hydrocodone 10/325; and 27,100  
19 tablets of Oxycodone 80 from February 7, 2005, through March 6, 2008.

20 b. The DEA Biennial Inventory of February 7, 2005 shows 980 tablets of Oxycodone  
21 80; 1500 tablets of Hydrocodone 5/500; and 1,640 tablets of Hydrocodone 10/325; and a closing  
22 inventory (stock on hand) as of March 6, 2008, show 1,165 tablets of Oxycodone 80; 4,495  
23 tablets of Hydrocodone 5/500; and 3,819 tablets of Hydrocodone 10/325.

24 c. From February 7, 2005, through March 6, 2008, White Cross dispensed 23,068  
25 tablets of Oxycodone 80; 309,293 tablets of Hydrocodone 5/500; and 45,247 tablets of  
26 Hydrocodone 10/325.



1 Together, this information revealed that White Cross was short 2,341 (8%) tablets of  
2 Oxycodone 80mg.; short 49,126 (8%) tablets of Hydrocodone 5/500; and short 51,263 (38%) of  
3 Hydrocodone 10/325.

4 25. As to Park Blvd. Pharmacy, the warrants produced the following information:

5 a. Printouts of the tabulations and summary of Park's purchases of Hydrocodone  
6 5/500, Hydrocodone 10/325 and Oxycodone 80, showing Park purchased 634,200 tablets of  
7 Hydrocodone 5/500; 278,000 tablets of Hydrocodone 10/325; and 44,900 tablets of Oxycodone  
8 80.1 from April 11, 2005 to March 6, 2008.

9 b. The DEA Biennial Inventory of April 11, 2005 shows 698 tablets of Oxycodone  
10 80; 7,500 tablets of Hydrocodone 5/500; and 2,000 tablets of Hydrocodone 10/325; and a closing  
11 inventory (stock on hand) of 1,789 tablets of Oxycodone 80; 3,649 tablets of Hydrocodone 5/500;  
12 and 4,347 tablets of Hydrocodone 10/325.

13 Together, this information revealed that Park Blvd. was short 14,245 Oxycodone (31%);  
14 short 410,636 (64%) of Hydrocodone 5/500; and short 209,044 (75%) of Hydrocodone 10/325.

15 26. In addition to the information obtained pursuant to the search warrants, on or about  
16 May 20, 2009, the Board's Investigator noted that in filling the following prescriptions while PIC  
17 at Park Blvd., Respondent violated pharmacy laws as follows:

18 a. #N0396971, dated June 7, 2005: Respondent filled or allowed to be filled for  
19 patient B.V. a faxed prescription for Concerta 27 SR, Schedule II, without an original  
20 prescription, in violation of H&S Code, section 11164, subdivision (b)(1);

21 b. #C0431111, dated October 24, 2005: Respondent filled or allowed to be filled for  
22 patient E.H. a prescription for Ambien 10mg; #0431115, a prescription for Gabapentin; and an  
23 unreadable prescription for Furosemide 80mg, despite their being transferred to the pharmacy  
24 incorrectly, in violation of Regulations, section 1717(e);

25 c. #N0464698, dated March 9, 2006: Respondent filled or allowed to be filled for  
26 patient J.D., a prescription for MS IR 30mg, despite being faxed from the patient, in violation of  
27 Regulations, section 1717.4 (a) and H&S Code, section 11164, subdivision (b)(1);  
28

1 d. # N0481533, dated May 12, 2006: Respondent filled or allowed to be filled for  
2 patient G.R. a prescription for Oxycodone 40mg, and Rx 48153, Prevacid 30mg, despite being  
3 faxed from the patient, in violation of Regulations, section 1717.4 (a) and H&S Code, section  
4 11164, subdivision (b)(1);

5 e. #C395240, dated May 31, 2005: Respondent filled or allowed to be filled for  
6 patient C.N. a prescription for Androjel, which was not written on a security form, in violation of  
7 H&S Code, section 11164, subdivision (a);

8 f. #C0482203, dated May 16, 2006: Respondent filled or allowed to be filled for  
9 patient J.M. a prescription for Tylenol #3, which was not written on a security form, in violation  
10 of H&S Code, section 11164, subdivision (a); and

11 g. #C0483377, dated May 22, 2006: Respondent filled or allowed to be filled for  
12 patient N.K. a prescription for Marinol 2.5 for N. K., though it did not indicate whether it is a  
13 transfer from another pharmacy or authorization from doctor's office, in violation of H&S Code,  
14 section 11158, subdivision (a).

15 27. On June 5, 2008, in a criminal proceeding entitled, *United States of America vs.*  
16 *Ahmad H. Hnaino*, in the United States District Court, Southern District of California, Case No.  
17 3:08-cr-01012-JAH, Respondent pled guilty to two felony counts of violating Title 21, United  
18 States Code, section 841(a)(1), knowingly and intentionally distributing approximately 38.16  
19 grams of Oxycodone, a Schedule II Controlled Substance; and knowingly and intentionally  
20 distributing approximately 6,000 Hydrocodone Bitrarte tablets, a Schedule III Controlled  
21 substance, on or about February 29, 2008, crimes that are substantially related to the  
22 qualifications, functions, and duties of a pharmacist.

23 28. Pursuant to the June 5, 2008 Plea Agreement between the United States and  
24 Respondent, Respondent agreed to forfeit \$27,500, and pay a \$200 special assessment to the  
25 United States. Respondent also understood that the crimes to which he pled guilty carry the  
26 following penalties:

- 27 Count 1: Distribution of Oxycodone  
28 A. A maximum term of imprisonment of 20 years;  
B. A maximum fine of \$1,000,000;

- 1 C. A mandatory special assessment of \$100; and  
2 D. A Term of supervised release of at least 3 and not more than 5 years.

- 3 Count 2: Distribution of Hydrocodone bitartrate  
4 A. A maximum term of imprisonment of 5 years;  
5 B. A maximum fine of \$250,000;  
6 C. A mandatory special assessment of \$100; and  
7 D. A term of supervised release of a least 2 and not more than 5 years

8 29. Respondent is currently scheduled to be sentenced on November 8, 2010

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct – Illegally Distributing Controlled Substances)**

11 30. Respondent has subjected his license to disciplinary action under sections 4301,  
12 subdivision (j) and (o), and 4059, subdivision (a), of the Code, and section 11352, subdivision (a)  
13 of the H&S Code, in that he furnished controlled substances without a prescription therefor, and  
14 violated state and federal statutes and regulations governing the practice of pharmacy, as detailed  
15 in paragraphs 23—29.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Unprofessional Conduct: Dishonesty, Deceit & Corruption)**

18 31. Respondent has subjected his license to disciplinary action under Code section 4301,  
19 subdivision (f) for engaging in acts involving moral turpitude, dishonesty, fraud, deceit, or  
20 corruption, as detailed in paragraphs 23—29.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Unprofessional Conduct: Violating Statutes Governing Practice of Pharmacy)**

23 32. Respondent has subjected his license to disciplinary action under Code section 4301,  
24 subdivision (o) for violating and attempting to violate, assisting in the violation of, and conspiring  
25 to violate state and federal laws and regulations governing the practice of pharmacy, while PIC at  
26 White Cross and Park Blvd., as detailed in paragraphs 23—29 as follows:

27 a. Respondent failed to maintain all records of acquisition and disposition to be  
28 open for inspection for a period of three years, and to keep a current inventory showing  
accountability for all dangerous drugs, with resulting shortages, in violation of Code, sections  
4081, subdivision (a), and of Regulations, section 1718.



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2. Ordering Ahmad H. Hnaino 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

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