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

11 In the Matter of the Accusation Against:

Case No. 3917

12 **MOAZZEM H. CHOWDHURY dba**  
13 **DESERT DRUGS, MOAZZEM H.**  
**CHOWDHURY, PHARMACIST-IN-**  
14 **CHARGE**  
204 West Avenue J  
Lancaster, CA 93534

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

15 **Original Pharmacy Permit No. PHY 46289**

16 and

17 **MOAZZEM HOSSAIN CHOWDHURY**  
18 **28419 N. Horseshoe Circle**  
**Santa Clarita, CA 91390**

19 **Original Pharmacist License No. RPH 46737**

20 Respondents.

21  
22  
23 Complainant alleges:

24 **PARTIES**

25 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
26 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

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1 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary  
2 proceeding against, the licensee or to render a decision suspending or revoking the license.”

3 **STATUTORY PROVISIONS**

4 9. Section 4081 of the Code states:

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

14 10. Section 4301 of the Code states:

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

18 ...

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

21 ....

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

26 11. Section 11167.5 of the Health & Safety Code states:

27 "(a) An order for a controlled substance classified in Schedule II for a patient of a licensed  
28 skilled nursing facility, a licensed intermediate care facility, a licensed home health agency, or a

1 licensed hospice may be dispensed upon an oral or electronically transmitted prescription. If the  
2 prescription is transmitted orally, the pharmacist shall, prior to filling the prescription, reduce the  
3 prescription to writing in ink in the handwriting of the pharmacist on a form developed by the  
4 pharmacy for this purpose. If the prescription is transmitted electronically, the pharmacist shall,  
5 prior to filling the prescription, produce, sign, and date a hard copy prescription. The  
6 prescriptions shall contain the date the prescription was orally or electronically transmitted by the  
7 prescriber, the name of the person for whom the prescription was authorized, the name and  
8 address of the licensed skilled nursing facility, licensed intermediate care facility, licensed home  
9 health agency, or licensed hospice in which that person is a patient, the name and quantity of the  
10 controlled substance prescribed, the directions for use, and the name, address, category of  
11 professional licensure, license number, and federal controlled substance registration number of  
12 the prescriber. The original shall be properly endorsed by the pharmacist with the pharmacy's  
13 state license number, the name and address of the pharmacy, and the signature of the person who  
14 received the controlled substances for the licensed skilled nursing facility, licensed intermediate  
15 care facility, licensed home health agency, or licensed hospice. A licensed skilled nursing  
16 facility, a licensed intermediate care facility, a licensed home health agency, or a licensed hospice  
17 shall forward to the dispensing pharmacist a copy of any signed telephone orders, chart orders, or  
18 related documentation substantiating each oral or electronically transmitted prescription  
19 transaction under this section.”

20 12. Health and Safety Code section 11200, states:

21 ...

22 “(c) No prescription for a Schedule II substance may be refilled.”

23 13. California Code of Regulations, title 16, section 1764 states:

24 “No pharmacist shall exhibit, discuss, or reveal the contents of any prescription, the  
25 therapeutic effect thereof, the nature, extent, or degree of illness suffered by any patient or any  
26 medical information furnished by the prescriber with any person other than the patient or his or  
27 her authorized representative, the prescriber or other licensed practitioner then caring for the  
28

1 patient, another licensed pharmacist serving the patient, or a person duly authorized by law to  
2 receive such information."

3 14. Section 125.3 of the Code provides, 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, with failure of the licentiate to comply subjecting the license to not being  
7 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
8 included in a stipulated settlement.

9 **CONTROLLED SUBSTANCES / DANGEROUS DRUGS**

10 15. Section 4021 of the Code states:

11 "Controlled substance' means any substance listed in Chapter 2 (commencing with Section  
12 11053) of Division 10 of the Health and Safety Code."

13 16. Section 4022 of the Code states, in pertinent part:

14 "Dangerous drug' or 'dangerous device' means any drug or device unsafe for self-use,  
15 except veterinary drugs that are labeled as such, and includes the following:

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

18 ...

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

21 17. Fentanyl is a Schedule II controlled substance pursuant to Health and Safety Code  
22 section 11055(c)(8) and is a dangerous drug pursuant to Business and Professions Code section  
23 4022.

24 18. Morphine is a Schedule II controlled substance pursuant to Health and Safety  
25 Code section 11055(b)(1)(L) and a dangerous drug pursuant to Business and Professions Code  
26 section 4022.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 (Unprofessional Conduct – Unauthorized Disclosure of Patient Records)

3 As to Respondents Desert Drugs and Chowdhury

4 19. Respondents are subject to disciplinary action under section 4301, subdivisions (j)  
5 and (o) for violating California Code of Regulations, title 16, section 1764 in that Respondents  
6 disclosed unauthorized patients records. The circumstances are as follows:

7 20. On or about June 8, 2010, a Board inspector conducted a routine inspection of  
8 Respondent Desert Drugs. The inspection revealed that Respondents discarded confidential  
9 patient's information into the regular pharmacy trash without first shredding or redacting patient's  
10 specific information.

11 **SECOND CAUSE FOR DISCIPLINE**

12 (Unprofessional Conduct – Furnishing Without a Prescription)

13 As to Respondents Desert Drugs and Chowdhury

14 21. Respondents are subject to disciplinary action pursuant to Code section 4301,  
15 subdivisions (j) and (o) in that Respondents furnished prescription medications without  
16 prescriptions or without proper exemptions from the prescription requirement, in violation of  
17 Health and Safety Code section 11200, subdivision (c) and Health and Safety Code section  
18 11167.5, subdivision (a). The circumstances are as follows:

19 22. On or about June 8, 2010, a Board inspector conducted a routine inspection of  
20 Respondent Desert Drugs. The inspection revealed clerks Erica Castagneeto, Blanca Salinas,  
21 intern Tang Vo and Respondent Chowdhury received verbal Schedule II refill authorizations  
22 (Morphine ER 15mg RX#256294, Morphine 20mg/ml RX#254787, Morphine ER 30mg  
23 RX#254808, Morphine IR 15mg RX#254721, Morphine ER 30mg RX#254237, Morphine ER  
24 30mg RX#254817, Morphine ER 15mg RX#254816) from hospice nurses. Respondents  
25 dispensed the medications to patients without the pharmacist first obtaining verification from the  
26 physician, receiving any signed documents substantiating the oral CII prescriptions order, or  
27 obtaining the signature of the person receiving the controlled substance on the prescription.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 (Failure to Maintain Dangerous Drugs Acquisition Records and Current Inventory)

3 As to Respondents Desert Drugs and Chowdhury

4 23. Respondents are subject to disciplinary action pursuant to Code sections 4301,  
5 subdivisions (j) and (o) for violating Code section 4081, subdivision (a) for failing to meet the  
6 requirements for maintaining an accurate inventory. The circumstances are as follows:

7 24. On or about June 8, 2010, a Board inspector conducted a routine inspection of  
8 Respondent Desert Drugs. The inspection revealed Respondents purchased dangerous drugs from  
9 Respondent Valley Pharmacy, Respondent Medicine Shoppe and Acton Pharmacy without  
10 obtaining accurate sales records from the supplying pharmacies. As a result, a current and  
11 accurate inventory of drugs could not be ascertained.

12 25. A drug audit of Fentanyl 50mcg and Fentanyl 100mcg was conducted for the time  
13 period between June 19, 2009 to June 8, 2010 and Respondents were unable to account for 20  
14 patches of Fentanyl 50mcg and 1 patch of Fentanyl 100mcg.

15 **DISCIPLINE CONSIDERATIONS**

16 26. To determine the degree of discipline, if any, to be imposed on Respondent Desert  
17 Pharmacy, Complainant alleges that on or about January 13, 2010, in a prior action, the Board of  
18 Pharmacy issued Citation Number CI 2008 37690 and ordered Respondent to pay a citation fine  
19 of \$5,000.00. That Citation is now final and is incorporated by reference as if fully set forth.

20 27. To determine the degree of discipline, if any, to be imposed on Respondent  
21 Chowdhury, Complainant alleges that on or about January 13, 2010, in a prior action, the Board  
22 of Pharmacy issued Citation Number CI 2009 42457 and ordered Respondent to pay a citation  
23 fine of \$5,000.00. That Citation is now final and is incorporated by reference as if fully set forth.

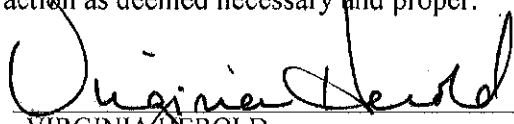
24 **PRAYER**

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

27 1. Revoking or suspending Original Pharmacy Permit Number PHY 46289, issued to  
28 Moazzem H. Chowdhury to do business as Desert Drugs;

- 1           2.    Revoking or suspending Original Pharmacist License Number RPH 46737, issued to  
2 Moazzem Hossain Chowdhury;  
3           3.    Ordering Desert Drugs and Moazzem Hossain Chowdhury to pay the Board of  
4 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to  
5 Business and Professions Code section 125.3; and  
6           4.    Taking such other and further action as deemed necessary and proper.

7  
8 DATED: 11/19/13

  
9 VIRGINIA HEROLD  
10 Executive Officer  
11 Board of Pharmacy  
12 Department of Consumer Affairs  
13 State of California  
14 *Complainant*

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