

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 MARICHELLE S. TAHIMIC
Deputy Attorney General
4 State Bar No. 147392
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-3154
7 Facsimile: (619) 645-2061
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 **ALY MOHAMED FATHY**
31852 Coast Highway #103
13 Laguna Beach, CA 92651

Case No. 4126

14 **Pharmacist License No. RPH 39394**

A C C U S A T I O N

15 Respondent.
16

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about August 8, 1985, the Board of Pharmacy issued Pharmacist License
22 Number RPH 39394 to Aly Mohamed Fathy (Respondent). The Pharmacist License was in full
23 force and effect at all times relevant to the charges brought herein and will expire on April 30,
24 2013, unless renewed.

25 **JURISDICTION**

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

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2

3
4

5

6

7

10

11

12
13
14

15
16
17
18

19

20

21

22

24

26

27

28

1 7. Section 4324 of the Code states:

2 (a) Every person who signs the name of another, or of a fictitious person, or
3 falsely makes, alters, forges, utters, publishes, passes, or attempts to pass, as
4 genuine, any prescription for any drugs is guilty of forgery and upon conviction
 thereof shall be punished by imprisonment in the state prison, or by imprisonment in
 the county jail for not more than one year. . . .

5 **COST RECOVERY**

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

10 **FACTS**

11 9. On or about November 2, 2010, the Board of Pharmacy received a faxed copy of an
12 incident/investigation report from Laguna Beach Police Department initiated by a complaint
13 involving fraud received by the Laguna Beach Police Department from Dr. M. on October 25,
14 2010. According to the report, Dr. M. is a sole practitioner. She received a telephone call from a
15 Canadian pharmacy on September 24, 2010 with regard to an incomplete prescription purportedly
16 written by her. The Canadian pharmacy sent Dr. M. a scanned copy of the prescription form. Dr.
17 M. recognized the prescription form as one of hers but advised the officer that she did not
18 prescribe the drug and that the form was not in her handwriting. The name of the patient on the
19 prescription was "Aly Fathy." Dr. M. recognized the name as that of Respondent, who was her
20 pharmacist.

21 10. Dr. M. is a pediatrician whose office was in the same building as South Coast Center
22 West Pharmacy where Respondent is the Pharmacist-In-Charge. The pharmacy routinely orders
23 prescription books for local physicians, including the physician from whom Dr. M. purchased her
24 practice. When Dr. M. moved into the building, she continued the practice of having the
25 pharmacy order prescription books for her. After Dr. M. was contacted by the Canadian
26 Pharmacy, she instructed them not to fill any orders under her name. She then went to the
27 pharmacy to pick up all of her prescription books.

1 11. Dr. M. opted not to prosecute Respondent because two weeks after the unauthorized
2 prescription was submitted, Respondent approached her in her office and admitted that he wrote
3 the prescription in her name. Respondent told Dr. M. that he would never do it again and that he
4 did it because he was losing profits and may go into bankruptcy and that he did not have enough
5 money to pay for his prescriptions. Dr. M. was satisfied with his apology and the remorse
6 expressed by Respondent and chose to delay reporting the incident to the police.

7 12. On April 11, 2011, Dr. M. notified a Board of Pharmacy inspector that she was
8 notified of another prescription submitted to the Canadian pharmacy in her name. The
9 prescription was for "Theresa M." for four medications (Niaspan ER, Celebrex, Singular and
10 Lamactal). Dr. M. requested the original prescription and noted that her signature had been
11 forged. When Dr. M. contacted the Canadian Pharmacy, she learned that a "Martin Lopez"
12 opened an online account with the Canadian Pharmacy on May 10, 2010 and subsequently added
13 ten patients to the account. The patients who had medications purportedly ordered by Dr. M. and
14 refilled periodically during the summer of 2010 were Theresa M. (born in 1952), Bill E. (born in
15 1941), including Dean F. (born in 1942) and Respondent. None of these patients were Dr. M.'s
16 pediatric patients and she did not write the prescriptions. The prescriptions requested the brand
17 names of Crestor, Plavix, Boniva, Seroquel, Levaquin, Viagra, Niaspan, and Lamictal with
18 multiple refills. Dr. M. obtained the account's contact telephone number. When Dr. M. called
19 that telephone number, she reached Respondent's voice mail.

20 13. In addition to prescriptions purportedly written by Dr. M., the account opened by
21 "Martin Lopez" included prescriptions purportedly written by Dr. D. for patients Martin L., Pam
22 F. and Bill E. and were for Valtrex, Maxalat MLT, Lipitor, Celebrex, Singulair, Seroquel and
23 Cafergot. Dr. D., who is also a pediatrician, denied writing the prescriptions. Dr. D. also ordered
24 her prescription books through South Coast Center West Pharmacy.

25 14. On April 27, 2011, a Board inspector conducted an inspection of South Coast Center
26 West Pharmacy. Respondent was present. When asked about the forged prescriptions,
27 Respondent admitted to the Board inspector that he forged the prescriptions to obtain medication
28 for himself and his family members.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct - Committing Acts Involving Dishonesty, Fraud or Deceit)**

3 15. Respondent is subject to disciplinary action under Code section 4301, subdivision (f),
4 in that Respondent committed acts involving dishonesty, fraud and deceit between May 2010 and
5 February 2011 by representing himself to be a physician and forging prescriptions for multiple
6 patients and drugs using the prescription books and signatures of Dr. M. and Dr. D and submitting
7 the prescriptions to a Canadian pharmacy to be filled as more fully set forth in paragraphs 9-14
8 above and incorporated herein as though set forth in full.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct – Making or Signing Document with False Representation)**

11 16. Respondent is subject to disciplinary action under Code section 4301, subdivision (g),
12 in that Respondent knowingly made or signed a document that falsely represents the existence of
13 a state of facts in that between May 2010 and February 2011, Respondent represented himself to
14 be a physician by signing prescriptions using the name of Dr. M. and Dr. N. D and submitting the
15 prescriptions to a Canadian pharmacy to be filled as more fully set forth in paragraphs 9-14 above
16 and incorporated herein as though set forth in full.

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(Unprofessional Conduct - Forgery of Prescriptions)**

19 17. Respondent is subject to disciplinary action under Code section 4324 in that
20 Respondent signed the name of another and passed as genuine the forged prescriptions when
21 Respondent forged the signatures of Dr. M. and Dr. D. on prescriptions for medication and passed
22 the prescriptions as genuine to a Canadian pharmacy between May 2010 and February 2011, as
23 more fully set forth in paragraphs 9-14 above and incorporated herein as though set forth in full.

24 **DISCIPLINE CONSIDERATIONS**

25 18. To determine the degree of discipline, if any, to be imposed on Respondent,
26 Complainant alleges that on or about November 10, 2010, the Board of Pharmacy issued Citation
27 Number CI 2010 46226 to Respondent for: 1) violation of title 21 Code of Federal Regulations
28 section 1305.13(e) for failure to complete a Schedule II controlled substance purchaser record on

1 DEA 222 Order Form; 2) violation of Business and Professions Code sections 4104(a) and (b)
2 for failing to have theft or impairment policies and procedures; 3) violation of Business and
3 Professions Code section 4125(a) and title 16 California Code of Regulations section 1711 for
4 failure to establish a Quality Assurance Policy; 4) violation of title 21 Code of Federal
5 Regulations section 1304.11(a) for failure to maintain controlled substance inventories; 5)
6 violation of title 16 California Code of Regulations section 1716.2 for failure to have a
7 compounding/repackaging log available for review on the premises; 6) violation of title 16
8 California Code of Regulations section 1764 for the unauthorized disclosure of prescriptions
9 when Respondent discarded patient prescription documentation in a trash bin accessible by the
10 public; and, 7) violation of Business and Professions Code section 4076(a)(11)(A) for dispensing
11 incorrectly labeled prescriptions.

12 Citation Number CI 2010 46226 ordered Respondent to pay a fine in the amount of \$2,750.
13 That Citation is now final and has not been appealed. It is incorporated by this reference as
14 though set forth in full.

15 **PRAYER**

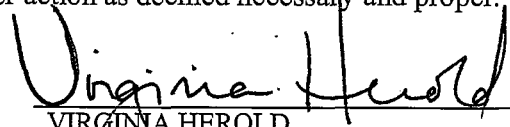
16 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
17 and that following the hearing, the Board of Pharmacy issue a decision:

18 1. Revoking and/or suspending Pharmacist License Number RPH 39394, issued to Aly
19 Mohamed Fathy;

20 2. Ordering Aly Mohamed Fathy to pay the Board of Pharmacy the reasonable costs of
21 the investigation and enforcement of this case, pursuant to Business and Professions Code section
22 125.3;

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

24 DATED: 11/9/11


25 VIRGINIA HEROLD
26 Executive Officer
27 Board of Pharmacy
28 Department of Consumer Affairs
State of California
Complainant

1 SD2011800846/80542051.doc

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28