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

In the Matter of the Accusation Against: **HAN.SAM.CORP., DBA TRU CARE PHARMACY, HANY S. BENJAMIN, PRESIDENT; MERVAT MECHEAL ABDELMALIK, PHAMACIST-IN-CHARGE** **6301 Beach Blvd., Ste. 105** **Buena Park, CA 90621** **Pharmacy Permit No. PHY 50663** **HANY BENJAMIN** **AKA, HANY SAMUEL-BENJAMIN GADALLA** **812 Ventana Ridge** **Palm Springs, CA 92262** **Pharmacist License No. RPH 58261** **MERVAT MECHEAL ABDELMALIK** **1 Odessa** **Foothill Ranch, CA 92610** **Pharmacist License No. RPH 56346** Respondent.	Case No. 5277 **A C C U S A T I O N**

Complainant alleges:

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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 May 9, 2006, the Board of Pharmacy (Board) issued Original Pharmacist License Number RPH 58261 to Hany Benjamin, aka Hany Samuel-Benjamin Gadalla (Respondent Benjamin). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2015, unless renewed.

3. On or about September 28, 2004, the Board issued Original Pharmacist License Number RPH 56346 to Mervat Mecheal Abdelmalik (Respondent Abdelmalik). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2016, unless renewed.

4. On or about October 3, 2011, the Board issued Pharmacy Permit Number PHY 50663 to Han.Sam.Corp., dba Tru Care Pharmacy, Hany S. Benjamin, President, Vice President, Secretary and Treasurer/Chief Financial Officer (Respondent Tru Care Pharmacy). Respondent Abdelmalik was associated as the Pharmacist-in-Charge (PIC) for Respondent Tru Care Pharmacy from October 3, 2011 to present. The Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein and will expire on October 1, 2015, unless renewed.

JURISDICTION

5. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

6. Section 4113 of the Code states in pertinent part:

> . . .
>
> (c) The pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy.
>
> . . . .

7. Section 4300 of the Code states:

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

. . . .

8. Section 4300.1 of the Code states:

The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

9. Section 4301 of the Code states:

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.

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

. . . .

(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.

REGULATIONS

10. California Code of Regulations, title 16, section 1709.1 provides:

(a) The pharmacist-in-charge of a pharmacy shall be employed at that location and shall have responsibility for the daily operation of the pharmacy.

(b) The pharmacy owner shall vest the pharmacist-in-charge with adequate authority to assure compliance with the laws governing the operation of a pharmacy.

. . . .

11. California Code of Regulations, title 22, section 51501 states in pertinent part:

. . .

(d) No provider shall submit claims to the Medi-Cal program using any provider number other than that issued to the provider by the Department.

COSTS

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

FACTS

13. "CalOptima" is the name of an integrated health care system that administers public health insurance programs for children, low income families, and persons with disabilities who are eligible for Medi-Cal in Orange County, California.

14. In Orange County, California, pharmacies that fill prescriptions for Medi-Cal patients obtain payment through CalOptima. In order to receive payment from CalOptima, a pharmacy must apply to CalOptima and receive approval to become a registered provider for CalOptima. CalOptima requires a separate application and review process than is required for the Medi-Cal program.

15. In February 2013, Respondent Tru Care Pharmacy applied to be added to the CalOptima Pharmacy Provider Network. Respondent Tru Care Pharmacy did not meet the contracting requirements and was not added as a registered provider for CalOptima.

16. River's Edge Pharmacy is a Board licensed pharmacy that is located in Palm Springs, California. It was and is a registered provider for the CalOptima program.

17. On December 31, 2013, CalOptima staff called River's Edge Pharmacy regarding processing a claim for a CalOptima member under their National Provider Identifier (NPI)[1] number and were told that River's Edge Pharmacy had not processed the claim, but that Respondent Tru Care Pharmacy had processed the claim. CalOptima contacted Respondent Tru Care Pharmacy and Tru Care Pharmacy admitted to CalOptima that they were using River's Edge Pharmacy's NPI

[1] A National Provider Identifier number is a unique 10-digit identification number required by HIPAA for all health care providers. Health care providers and all health plans must use their unique NPI number in administrative and financial transactions to identify themselves in all HIPAA transactions.

number to bill for CalOptima members' prescriptions that were processed and filled at Tru Care Pharmacy.

18. Respondent Tru Care Pharmacy's computer software was programmed with River's Edge Pharmacy's NPI number to bill to CalOptima for prescriptions that were processed and filled by Tru Care Pharmacy.

19. From approximately January 1, 2012 to March 13, 2014, Respondents Tru Care Pharmacy and PIC Abdelmalik, used the NPI number of River's Edge Pharmacy to process and bill CalOptima for 642 prescriptions and/or refills, that Tru Care Pharmacy had filled. The prescriptions were for CalOptima patients RW, HV, SB, HN, PB, BJ, WM, MC, MG, RA and RG.

20. From January 1, 2012 to March 13, 2014, Respondent Tru Care Pharmacy was not a registered provider for CalOptima.

21. CalOptima did not give Respondent Tru Care Pharmacy a temporary authorization to use River's Edge Pharmacy's NPI number to bill for CalOptima prescriptions.

22. CalOptima does not give authorization to anyone to use other pharmacy's NPI numbers to process claims or request payment from CalOptima, even if the pharmacy has an application pending before CalOptima.

23. CalOptima requires each pharmacy to bill with their own NPI number, no exceptions.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Dishonesty, Fraud or Deceit)

24. Respondents Tru Care Pharmacy and PIC Abdelmalik are each subject to disciplinary action under Code section 4301(f) for dishonesty and deceit in that they arranged to submit Tru Care Pharmacy prescription claims to CalOptima using River's Edge Pharmacy's NPI number, when Tru Care Pharmacy did not have approval to bill CalOptima for prescription claims. Respondents misrepresented to CalOptima that River's Edge Pharmacy had filled the prescriptions, when in fact, Tru Care Pharmacy did. Tru Care Pharmacy received payment for claims they were not entitled to. The circumstances are set forth in detail in paragraphs 13 through 23 above, and incorporated herein as though fully referenced.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Making a Document that is False)

25. Respondents Tru Care Pharmacy and PIC Abdelmalik are each subject to disciplinary action under Code section 4301(g) for knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts in that that they arranged to submit Tru Care Pharmacy prescription claims to CalOptima using River's Edge Pharmacy's NPI number, when Tru Care Pharmacy did not have approval to bill CalOptima for prescription claims. Respondents misrepresented to CalOptima that River's Edge Pharmacy had filled the prescriptions, when in fact, Tru Care Pharmacy did. The circumstances are set forth in detail in paragraphs 13 through 23 above, and incorporated herein as though fully referenced.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Violation of Regulations)

26. Respondents Tru Care Pharmacy and PIC Abdelmalik are each subject to disciplinary action under Code section 4301(o) in conjunction with California Code of Regulations, title 22, section 51501, for submitting claims to CalOptima using a NPI number that had not been issued to Respondent Tru Care Pharmacy. The circumstances are set forth in detail in paragraphs 13 through 23 above, and incorporated herein as though fully referenced.

DISCIPLINE CONSIDERATIONS

27. To determine the degree of discipline, if any, to be imposed on Respondent Abdelmalik, Complainant alleges that on or about November 9, 2009, in a prior disciplinary action entitled *In the Matter of the Citation Against Mervat Mecheal Abdelmalik* before the Board of Pharmacy, in Case Number CI 2009 41872, Respondent Abdelmalik's Pharmacist License was cited and fined. That citation is now final and is incorporated by reference as if fully set forth herein. The citation against Respondent Abdelmalik, acting as PIC at ACD Pharmacy, was based on failing to label prescription containers with the physical description of the drug, unlicensed technician activity and lacking policies and procedures for licensed employee impairment or theft.

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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 Pharmacy Permit Number PHY 50663, issued to Han.Sam.Corp., dba Tru Care Pharmacy, Hany S. Benjamin, President, Vice President, Secretary and Treasurer/Chief Financial Officer;

2. Ordering Han.Sam.Corp., dba Tru Care Pharmacy, Hany S. Benjamin, President, Vice President, Secretary and Treasurer/Chief Financial Officer, 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;

3. Revoking or suspending Pharmacist License Number RPH 58261, issued to Hany Benjamin, aka Hany Samuel-Benjamin Gadalla;

4. Ordering Hany Benjamin, aka Hany Samuel-Benjamin Gadalla 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;

5. Revoking or suspending Pharmacist License Number RPH 56346, issued to Mervat Mecheal Abdelmalik;

6. Ordering Mervat Mecheal Abdelmalik 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

7. Taking such other and further action as deemed necessary and proper.

DATED: 1/23/15

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

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