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

11 In the Matter of the Accusation Against:

Case No. 5278

12 **HAN.SAM.CORP., DBA RIVER'S EDGE**
13 **PHARMACY, SAMUEL BENJAMIN**
14 **GADALLA HANY, PRESIDENT;**
15 **BASSEM KEROLIS, PHARMACIST-IN-**
16 **CHARGE**
17 **36919 Cook Street, Suite 102**
Palm Desert, CA 92211

A C C U S A T I O N

18 **Pharmacy Permit No. PHY 49157**

19 **HANY BENJAMIN**
20 **AKA, HANY SAMUEL-BENJAMIN**
GADALLA
812 Ventana Ridge
Palm Springs, CA 92262

21 **Pharmacist License No. RPH 58261**

22 **BASSEM MAHDY MOUSA KEROLIS**
23 **150 Don Miguel Circle**
24 **Palm Springs, CA 92211**

25 **Pharmacist License No. RPH 68607**

26 Respondents.

27
28 Complainant alleges:

PARTIES

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

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

8 3. On or about February 28, 2013, the Board issued Original Pharmacist License Number
9 RPH 68607 to Bassem Mahdy Mousa Kerolis (Respondent Kerolis). The Pharmacist License was
10 in full force and effect at all times relevant to the charges brought herein and will expire on May
11 31, 2016, unless renewed.

12 4. On or about September 15, 2008, the Board issued Pharmacy Permit Number PHY
13 49157 to Han.Sam.Corp., dba River's Edge Pharmacy, Samuel Benjamin Gadalla Hany, President,
14 Vice President, Chief Executive Officer and Treasurer/Chief Financial Officer (Respondent River's
15 Edge Pharmacy). Respondent Benjamin was the Pharmacist-in-Charge (PIC) for Respondent
16 River's Edge Pharmacy from September 1, 2009 to June 13, 2013. Respondent Kerolis was
17 associated as the PIC for Respondent River's Edge Pharmacy from June 13, 2013 to present. The
18 Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein and
19 will expire on September 1, 2015, unless renewed.

20 **JURISDICTION**

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

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

25 . . .

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

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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.

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

2 . . .

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

5 **COSTS**

6 12. Section 125.3 of the Code states, in pertinent part, that the Board may request the
7 administrative law judge to direct a licensee 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 13. "CalOptima" is the name of an integrated health care system that administers public
12 health insurance programs for children, low income families, and persons with disabilities who are
13 eligible for Medi-Cal in Orange County, California.

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

19 15. Respondent River's Edge Pharmacy was and is a registered provider for CalOptima.

20 16. Tru Care Pharmacy is a Board licensed pharmacy that is located in Buena Park,
21 California. Tru Care Pharmacy is owned by Respondent Benjamin. In February 2013, Tru Care
22 Pharmacy applied to be added to the CalOptima Pharmacy Provider Network. Tru Care Pharmacy
23 did not meet the contracting requirements and was not added as a registered provider for
24 CalOptima.

25 17. On December 31, 2013, CalOptima staff called Respondent River's Edge Pharmacy
26 regarding processing a claim for a CalOptima member under River's Edge Pharmacy's National

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1 Provider Identifier (NPI)¹ number and was told that River's Edge Pharmacy had not processed the
2 claim, but that Tru Care Pharmacy had processed the claim. CalOptima contacted Tru Care
3 Pharmacy and Tru Care Pharmacy admitted to CalOptima that they were using River's Edge
4 Pharmacy's NPI number to bill for CalOptima members' prescriptions that were processed and
5 filled at Tru Care Pharmacy.

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

9 19. From approximately January 1, 2012 to March 13, 2014, Tru Care Pharmacy used the
10 NPI number of Respondent River's Edge Pharmacy to process and bill CalOptima for 642
11 prescriptions and/or refills, that Tru Care Pharmacy had filled. The prescriptions were for
12 CalOptima members/patients RW, HV, SB, HN, PB, BJ, WM, MC, MG, RA and RG.
13 Respondents River's Edge Pharmacy, Benjamin and Kerolis knew that Tru Care Pharmacy was
14 using River's Edge Pharmacy's NPI number to bill CalOptima for prescriptions that were
15 processed by Tru Care Pharmacy.

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

18 21. CalOptima did not give Tru Care Pharmacy a temporary authorization to use
19 Respondent River's Edge Pharmacy's NPI number to bill for CalOptima prescriptions, nor did
20 CalOptima give Respondent River's Edge Pharmacy permission to let Tru Care Pharmacy use their
21 NPI number to bill for CalOptima prescriptions.

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

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

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

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct – Dishonesty, Fraud or Deceit)**

3 24. Respondents River’s Edge Pharmacy, PIC Benjamin and PIC Kerolis are each subject
4 to disciplinary action under Code section 4301(f) for dishonesty and deceit in that they aided and
5 abetted Tru Care Pharmacy in submitting claims to CalOptima using River’s Edge Pharmacy’s NPI
6 number, when Tru Care Pharmacy did not have approval from CalOptima to bill for prescription
7 claims. Respondents River’s Edge Pharmacy, PIC Benjamin and PIC Kerolis also allowed Tru
8 Care Pharmacy to misrepresent to CalOptima that River’s Edge Pharmacy had filled the
9 prescriptions, when in fact, Tru Care Pharmacy had. The circumstances are set forth in detail in
10 paragraphs 13 through 23 above, and incorporated herein as though fully referenced.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct – Violation of Regulations)**

13 25. Respondents River’s Edge Pharmacy, PIC Benjamin and PIC Kerolis are each subject
14 to disciplinary action for unprofessional conduct under Code section 4301(o) in conjunction with
15 California Code of Regulations, title 22, section 51501, for assisting in or abetting the violation of
16 or conspiring to violate regulations, in that they knew Tru Care Pharmacy was submitting claims to
17 CalOptima for payment by using River’s Edge Pharmacy’s NPI number. The circumstances are set
18 forth in detail in paragraphs 13 through 23 above, and incorporated herein as though fully
19 referenced.

20 **DISCIPLINE CONSIDERATIONS**

21 26. To determine the degree of discipline, if any, to be imposed on Respondent River’s
22 Edge Pharmacy, Complainant alleges that on or about June 17, 2010, in a prior disciplinary action
23 entitled *In the Matter of the Citation Against River’s Edge Pharmacy* before the Board of
24 Pharmacy, in Citation Number CI 2009 42563, Respondent River’s Edge Pharmacy’s Pharmacy
25 License was cited and fined. That citation is now final and is incorporated by reference as if fully
26 set forth herein. The citation was based on River’s Edge Pharmacy’s failure to report to the Board
27 and the DEA that controlled substances were lost during a night break-in at the Pharmacy and that
28 it failed to do a complete inventory to document the loss.

1 27. To determine the degree of discipline, if any, to be imposed on Respondent River's
2 Edge Pharmacy, Complainant alleges that on or about August 11, 2011, in a prior disciplinary
3 action entitled *In the Matter of the Citation Against River's Edge Pharmacy* before the Board of
4 Pharmacy, in Citation Number CI 2010 45075, Respondent River's Edge Pharmacy's Pharmacy
5 License was cited and fined. That citation is now final and is incorporated by reference as if fully
6 set forth herein. The citation was based on Respondent River's Edge Pharmacy, dispensing a
7 prescription which contained an error and variation from a prescription.

8 28. To determine the degree of discipline, if any, to be imposed on Respondent Benjamin,
9 Complainant alleges that on or about June 17, 2010, in a prior disciplinary action entitled *In the*
10 *Matter of the Citation Against Hany Benjamin* before the Board of Pharmacy, in Citation Number
11 CI 2009 44779, Respondent Benjamin's Pharmacist License was cited and fined. That citation is
12 now final and is incorporated by reference as if fully set forth herein. The citation was based on
13 Respondent Benjamin's, acting as the PIC for River's Edge Pharmacy, failure to report to the
14 Board and the DEA that controlled substances were lost during a night break-in at the Pharmacy
15 and that he failed to do a complete inventory to document the loss.

16 29. To determine the degree of discipline, if any, to be imposed on Respondent Benjamin,
17 Complainant alleges that on or about August 11, 2011, in a prior disciplinary action entitled *In the*
18 *Matter of the Citation Against Hany Benjamin* before the Board of Pharmacy, in Citation Number
19 CI 2011 49204, Respondent Benjamin's Pharmacist License was cited and fined. That citation is
20 now final and is incorporated by reference as if fully set forth herein. The citation was based on
21 Respondent Benjamin, acting as the PIC for River's Edge Pharmacy, dispensing a prescription
22 which contained an error and variation from a prescription.

23 PRAYER

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

26 1. Revoking or suspending Pharmacy Permit Number PHY 49157, issued to
27 Han.Sam.Corp., dba River's Edge Pharmacy, Samuel Benjamin Gadalla Hany, President, Vice
28 President, Chief Executive Officer and Treasurer/Chief Financial Officer;

1 2. Ordering Han.Sam.Corp., dba River's Edge Pharmacy, Samuel Benjamin Gadalla
2 Hany, President, Vice President, Chief Executive Officer and Treasurer/Chief Financial Officer to
3 pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case,
4 pursuant to Business and Professions Code section 125.3;

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

7 4. Ordering Hany Benjamin, aka Hany Samuel-Benjamin Gadalla to pay the Board of
8 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to
9 Business and Professions Code section 125.3;

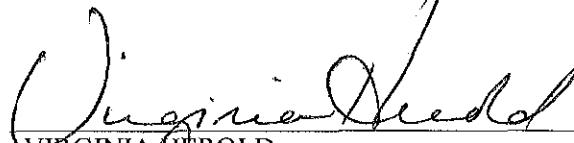
10 5. Revoking or suspending Pharmacist License Number RPH 68607, issued to Bassem
11 Mahdy Mousa Kerolis;

12 6. Ordering Bassem Mahdy Mousa Kerolis to pay the Board of Pharmacy the reasonable
13 costs of the investigation and enforcement of this case, pursuant to Business and Professions Code
14 section 125.3; and

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

16
17 DATED: _____

1/23/15



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

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