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

11 In the Matter of the Accusation Against:

Case No. 5687

12 **WHITTIER PLAZA PHARMACY INC., DBA**  
13 **THE PRESCRIPTION SHOP - WHITTIER**  
14 PIC SALLY M. DEMIAN (since 7/17/15),  
15 PIC HANAA BASALIOUS (3/10/14 to 7/16/15),  
16 PIC ATEF NEMETALLA (6/6/2011 to 3/10/14), and  
17 NAGI YOUSSEFF, OWNER, PRES./SEC.  
18 14350 Whittier Blvd #103  
19 Whittier, CA 90605  
20 **Pharmacy Permit No. PHY 44877,**

**ACCUSATION**

21 **HANAA BASALIOUS,**  
22 10420 Rosa Ann Circle  
23 Cypress, CA 90630.  
24 **Pharmacist License No. RPH 61004,**

25 **ATEF RIAD NEMETALLA**  
26 15012 Baylor Cir.  
27 Huntington Beach, CA 92647  
28 **Pharmacist License No. RPH 65460,**

29 **NAGI YOUSSEFF**  
30 275 S. San Gabriel Blvd.,  
31 Pasadena, CA 91107-4893  
32 **Pharmacy Technician Registration No. TCH 30442,**

33 and

34 **ANTOINETTE PEREZ,**  
35 4351 E. 55th ST. #8  
36 Maywood, CA 90270  
37 **Pharmacy Technician Registration No. TCH 75855**

38 Respondents.

1 Complainant alleges:

2 **PARTIES**

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

5 2. On or about June 14, 2001, the Board of Pharmacy issued Pharmacy Permit Number  
6 PHY 44877 to Whittier Plaza Pharmacy Inc., dba The Prescription Shop – Whittier (Respondent  
7 Pharmacy). Respondent Nagi Youssef is and has been the owner, President and Secretary since  
8 May 18, 2011. Nagi M. Youssef is and has been the Director, Chief Executive Officer, and  
9 Treasurer/Chief Financial Officer of Respondent Pharmacy since May 18, 2011. Sally M.  
10 Demian, RPH 64473 is and has been the Pharmacist-in-Charge since July 17, 2015. Respondent  
11 Hanaa Basalious, RPH 61004 was the Pharmacist-in-Charge from March 10, 2014 to July 16,  
12 2015. Respondent Atef Nemetalla, RPH 65460 was the Pharmacist-in-Charge from June 6, 2011  
13 to March 10, 2014. The Pharmacy Permit was in full force and effect at all times relevant to the  
14 charges brought herein and will expire on June 1, 2017, unless renewed.

15 3. On or about June 12, 2008, the Board issued Original Pharmacist License Number  
16 RPH 61004 to Hanaa Basalious (Respondent Basalious). Pharmacist License Number RPH  
17 61004 was in full force and effect at all times relevant to the charges brought herein and will  
18 expire on September 30, 2017, unless renewed.

19 4. On or about May 10, 2011, the Board issued Original Pharmacist License Number  
20 RPH 65460 to Atef Riad Nemetalla (Respondent Nemetalla). Pharmacist License Number RPH  
21 65460 was in full force and effect at all times relevant to the charges brought herein and will  
22 expire on September 30, 2016, unless renewed.

23 5. On or about August 24, 1999, the Board issued Original Pharmacy Technician  
24 Registration Number TCH 30442 to Nagi Youssef (Respondent Youssef). Pharmacy Technician  
25 Registration Number TCH 30442 was in full force and effect at all times relevant to the charges  
26 brought herein and will expire on October 31, 2016, unless renewed.

27 6. On or about April 25, 2007, the Board issued Original Pharmacy Technician  
28 Registration Number TCH 75855 to Antoinette Tricia Perez (Respondent Perez). Pharmacy

1 Technician Registration Number TCH 75855 was in full force and effect at all times relevant to  
2 the charges brought herein and will expire on September 30, 2016, unless renewed.

3 **JURISDICTION**

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

7 **STATUTORY PROVISIONS**

8 8. Section 4300 provides in pertinent part, that every license issued by the Board is  
9 subject to discipline, including suspension or revocation.

10 9. Section 4300.1 of the Code states:

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

16 10. Section 4301 of the Code states, in part:

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

20 ...

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

23 ...

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

28

1           11. Section 4302 of the Code states:

2           “The board may deny, suspend, or revoke any license of a corporation where conditions  
3 exist in relation to any person holding 10 percent or more of the corporate stock of the  
4 corporation, or where conditions exist in relation to any officer or director of the corporation that  
5 would constitute grounds for disciplinary action against a licensee.”

6           12. Section 4307, subdivision (a), of the Code states, in pertinent part:

7           “Any person who has been denied a license or whose license has been revoked or is  
8 under suspension, or who has failed to renew his or her license while it was under suspension, or  
9 who has been a manager, administrator, owner, member, officer, director, associate, or partner of  
10 any partnership, corporation, firm, or association whose application for a license has been denied  
11 or revoked, is under suspension or has been placed on probation, and while acting as the manager,  
12 administrator, owner, member, officer, director, associate, or partner had knowledge of or  
13 knowingly participated in any conduct for which the license was denied, revoked, suspended, or  
14 placed on probation, shall be prohibited from serving as a manager, administrator, owner,  
15 member, officer, director, associate, or partner of a licensee as follows:

16           (1) Where a probationary license is issued or where an existing license is placed on  
17 probation, this prohibition shall remain in effect for a period not to exceed five years.

18           (2) Where the license is denied or revoked, the prohibition shall continue until the  
19 license is issued or reinstated.”

20           13. Section 4113 of the Code states, in part:

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

23           14. Section 4115, subdivision (h), states that “[t]he pharmacist on duty shall be directly  
24 responsible for the conduct of a pharmacy technician supervised by that pharmacist.”

25           15. Section 4022 of the Code states

26           “Dangerous drug” or “dangerous device” means any drug or device unsafe for self-use in  
27 humans or animals, and includes the following:

28

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

3           (b) Any device that bears the statement: "Caution: federal law restricts this device to sale  
4 by or on the order of a \_\_\_\_\_," "Rx only," or words of similar import, the blank to be filled  
5 in with the designation of the practitioner licensed to use or order use of the device.

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

8           16. Section 4059.5 of the Code states, in part:

9           “(a) Except as otherwise provided in this chapter, dangerous drugs or dangerous devices  
10 may only be ordered by an entity licensed by the board and shall be delivered to the licensed  
11 premises and signed for and received by a pharmacist.”

12           17. Section 4060 of the Code states:

13           "No person shall possess any controlled substance, except that furnished to a person upon  
14 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
15 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified  
16 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a  
17 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,  
18 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of  
19 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not  
20 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,  
21 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified  
22 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly  
23 labeled with the name and address of the supplier or producer.

24           "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a  
25 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and  
26 devices."

1 **REGULATORY PROVISIONS**

2 18. California Code of Regulations, title 16, section 1770, states:

3 "For the purpose of denial, suspension, or revocation of a personal or facility license  
4 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a  
5 crime or act shall be considered substantially related to the qualifications, functions or duties of a  
6 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a  
7 licensee or registrant to perform the functions authorized by his license or registration in a manner  
8 consistent with the public health, safety, or welfare."

9 19. California Code of Regulations, title 16, section 1714 states, in part:

10 "(b) Each pharmacy licensed by the board shall maintain its facilities, space, fixtures, and  
11 equipment so that drugs are safely and properly prepared, maintained, secured and distributed.  
12 The pharmacy shall be of sufficient size and unobstructed area to accommodate the safe practice  
13 of pharmacy."

14 ...

15 "(d) Each pharmacist while on duty shall be responsible for the security of the prescription  
16 department, including provisions for effective control against theft or diversion of dangerous  
17 drugs and devices, and records for such drugs and devices. Possession of a key to the pharmacy  
18 where dangerous drugs and controlled substances are stored shall be restricted to a pharmacist."

19 20. California Code of Regulations, title 16, section 1717, subdivision (c), states:

20 "(c) Promptly upon receipt of an orally transmitted prescription, the pharmacist shall  
21 reduce it to writing, and initial it, and identify it as an orally transmitted prescription. If the  
22 prescription is then dispensed by another pharmacist, the dispensing pharmacist shall also initial  
23 the prescription to identify him or herself. All orally transmitted prescriptions shall be received  
24 and transcribed by a pharmacist prior to compounding, filling, dispensing, or furnishing. Chart  
25 orders as defined in section 4019 of the Business and Professions Code are not subject to the  
26 provisions of this subsection."

1 21. California Code of Regulations, title 16, section 1718 states:

2 "Current Inventory' as used in Sections 4081 and 4332 of the Business and Professions  
3 Code shall be considered to include complete accountability for all dangerous drugs handled by  
4 every licensee enumerated in Sections 4081 and 4332.

5 "The controlled substances inventories required by Title 21, CFR, Section 1304 shall be  
6 available for inspection upon request for at least 3 years after the date of the inventory."

7 **FEDERAL REGULATIONS**

8 22. Code of Federal Regulations, title 21, section 1304.11, states, in pertinent part:

9 "a. General requirements. Each inventory shall contain a complete and accurate record of  
10 all controlled substances on hand on the date the inventory is taken, and shall be maintained in  
11 written, typewritten, or printed form at the registered location. An inventory taken by use of an  
12 oral recording device must be promptly transcribed. Controlled substances shall be deemed to be  
13 'on hand' if they are in the possession of or under the control of the registrant, including  
14 substances returned by a customer, ordered by a customer but not yet invoiced, stored in a  
15 warehouse on behalf of the registrant, and substances in the possession of employees of the  
16 registrant and intended for distribution as complimentary samples. A separate inventory shall be  
17 made for each registered location and each independent activity registered, except as provided in  
18 paragraph (e)(4) of this section. In the event controlled substances in the possession or under the  
19 control of the registrant are stored at a location for which he/she is not registered, the substances  
20 shall be included in the inventory of the registered location to which they are subject to control or  
21 to which the person possessing the substance is responsible. The inventory may be taken either as  
22 of opening of business or as of the close of business on the inventory date and it shall be indicated  
23 on the inventory.

24 "b. Initial inventory date. Every person required to keep records shall take an inventory of  
25 all stocks of controlled substances on hand on the date he/she first engages in the manufacture,  
26 distribution, or dispensing of controlled substances, in accordance with paragraph (e) of this  
27 section as applicable. In the event a person commences business with no controlled substances on  
28 hand, he/she shall record this fact as the initial inventory.

1 “c. Biennial inventory date. After the initial inventory is taken, the registrant shall take a  
 2 new inventory of all stocks of controlled substances on hand at least every two years. The biennial  
 3 inventory may be taken on any date which is within two years of the previous biennial inventory  
 4 date.”

5 **COST RECOVERY**

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

12 24. **DRUG CLASSIFICATIONS**

Brand Name(s)	Generic Name	Dangerous Drug Per Bus. & Prof. Code § 4022	Scheduled Drug per Health & Safety Code (HSC)	Indications For Use
Klonopin	Clonazepam 2mg	Yes	Schedule IV HSC § 11057(d)(7)	Anxiety
Lorcet, Norco, Vicodin	Hydrocodone/ Acetaminophen (APAP)	Yes	Schedule III per HSC § 11056(e)(4) and Schedule II per 21 CFR 1308 (as of 10/6/14)	Moderate to Severe Pain
Phenergan-Codeine	Promethazine/codeine syrup 10 mg-6.25mg/5ml	Yes	Schedule V Per HSC § 11058(c)(1)	Cough Suppressant
Xanax	Alprazolam (non-barbiturate, benzodiazepine sedative hypnotic)	Yes	Schedule IV per HSC § 11057(d)(1)	Anxiety



1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Failure to Conduct DEA Biennial Inventory)**

3 25. Respondent Pharmacy, Respondent Nemetalla, and Respondent Basalious are subject  
4 to disciplinary action under section 4301, subdivision (o), in that they violated Code of Federal  
5 Regulations, title 21, section 1304.11 and California Code of Regulations, title 16, section 1718,  
6 by failing to conduct the Drug Enforcement Administration (DEA) biennial inventory of  
7 controlled substances as required. The circumstances are as follows:

8 26. On or about March 13, 2015, during a Board inspection of Respondent Pharmacy's  
9 facility, located at 14350 Whittier Blvd. #103, Whittier, CA 90605, Respondent Pharmacy was  
10 unable to retrieve the DEA biennial inventory allegedly performed by Respondent Nemetalla,  
11 while he served as Pharmacist-in-Charge.

12 27. Respondent Basalious failed to indicate on the inventories that she performed on  
13 March 6, 2014, of Schedule II drugs and on June 3, 2014, of Schedule III, IV, and V drugs  
14 whether she conducted the inventory at the open or close of business day as required.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Failure to Maintain Operational Standards and Security)**

17 28. Respondent Pharmacy, Respondent Nagi Youssef as the owner of Respondent  
18 Pharmacy, and Respondent Basalious are subject to disciplinary action under section 4301,  
19 subdivision (o), for violating California Code of Regulations, title 16, section 1714, subdivisions  
20 (b) and (d), in that they failed to secure the pharmacy to prevent loss of controlled substances.

21 The circumstances are as follows:

22 29. Between June 3, 2014, and March 13, 2015, while Respondent Basalious was serving  
23 as the Pharmacist-in-Charge and was responsible for the pharmacy, Respondent Pharmacy could  
24 not account for the following losses of controlled substances:

- 25 a. 200 tablets of alprazolam 1 mg,  
26 b. 1188 tablets of alprazolam 2 mg,  
27 c. 155 of clonazepam 2 mg,  
28 d. 106 tablets of hydrocodone/acetaminophen 7.5-325 mg,

- 1 e. 1825 tablets of hydrocodone/acetaminophen 10-325 mg, and  
2 f. 11922 milliliters (approximately 25 pints/bottles) of promethazine/codeine syrup  
3 10mg-6.25mg/5ml.

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Delivery of Dangerous Drugs)**

6 30. Respondent Pharmacy, Respondent Basalious, and Respondent Nemetalla are subject  
7 to disciplinary action under section 4301, subdivision (j), for violating section 4059.5,  
8 subdivision (a), in that while Respondent Basalious was serving as Pharmacist-in-Charge,  
9 personnel who were not pharmacists signed for and received dangerous drugs upon delivery. The  
10 circumstances are as follows:

11 31. Between August 1, 2014, and August 29, 2014, personnel who were not pharmacists  
12 signed for and received delivery of dangerous drugs shipped from Associated Pharmacies Inc., a  
13 drug wholesaler, approximately twenty-four (24) times.

14 32. On April 5, 2014, August 16, 2014, January 17, 2015, and February 14, 2015, while  
15 Respondent Nemetalla was on duty, personnel who were not pharmacists signed for and received  
16 delivery of dangerous drugs shipped from Cardinal Health, a drug wholesaler.

17 **FOURTH CAUSE FOR DISCIPLINE**

18 **(Failure to Initial Orally Transmitted Prescriptions)**

19 33. Respondent Nemetalla is subject to disciplinary action under section 4301,  
20 subdivision (o), for violating California Code of Regulations, title 16, section 1717, subdivision  
21 (c). The circumstances are as follows:

22 34. Respondent Nemetalla received and transcribed the following orally transmitted  
23 prescriptions without initialing them, as required:

- 24 a. Prescription #301042 for M.W. on January 17, 2015.  
25 b. Prescription #302372 for F.H. on February 14, 2015.  
26 c. Prescription #302373 for A.N. on February 14, 2015.

1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Unlawful Possession of a Controlled Substance)**

3 35. Respondent Perez is subject to disciplinary action under section 4301, subdivision (j),  
4 in conjunction with sections 4060, for violating Health and Safety Code section 11350, in that she  
5 was in unlawful possession of a controlled substance, namely, promethazine with codeine. The  
6 circumstances are as follows:

7 36. In 2014, while employed at Respondent Pharmacy, Respondent Perez removed two  
8 bottles of promethazine with codeine from Respondent Pharmacy without having a prescription  
9 for them.

10 **OTHER MATTERS**

11 37. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number  
12 PHY 44877 issued to Whittier Plaza Pharmacy Inc., dba The Prescription Shop – Whittier shall be  
13 prohibited from serving as a manager, administrator, owner, member, officer, director, associate,  
14 or partner of a licensee for five years if Pharmacy Permit Number PHY 44877 is placed on  
15 probation or until Pharmacy Permit Number PHY 44877 is reinstated if it is revoked.

16 38. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number  
17 PHY 44877 issued to Whittier Plaza Pharmacy Inc., dba The Prescription Shop – Whittier while  
18 Nagi Youssef has been an officer and/or owner and had knowledge of or knowingly participated  
19 in any conduct for which the licensee was disciplined, Nagi Youssef shall be prohibited from  
20 serving as a manager, administrator, owner, member, officer, director, associate, or partner of a  
21 licensee for five years if Pharmacy Permit Number PHY 44877 is placed on probation or until  
22 Pharmacy Permit Number PHY 44877 is reinstated if it is revoked.

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1 **PRAYER**

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

4 1. Revoking or suspending Pharmacy Permit Number PHY 44877, issued to Whittier  
5 Plaza Pharmacy Inc., dba The Prescription Shop - Whittier,

6 2. Revoking or suspending Pharmacy Technician Registration No. TCH 30442, issued  
7 Nagi Youssef;

8 3. Revoking or suspending Pharmacist License No. RPH 61004, issued to Hanaa  
9 Basalious;

10 4. Revoking or suspending Pharmacist License No. RPH 65460, issued to Atef Riad  
11 Nemetalla;

12 5. Revoking or suspending Pharmacy Technician Registration No. TCH 75855, issued  
13 to Antoinette Perez;

14 6. Prohibiting Whittier Plaza Pharmacy Inc. from serving as a manager, administrator,  
15 owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy  
16 Permit Number PHY 44877 is placed on probation or until Pharmacy Permit Number PHY 44877  
17 is reinstated if Pharmacy Permit Number 44877 issued to Whittier Plaza Pharmacy Inc., dba The  
18 Prescription Shop – Whittier is revoked;

19 7. Prohibiting Nagi Youssef from serving as a manager, administrator, owner, member,  
20 officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY  
21 44877 is placed on probation or until Pharmacy Permit Number PHY 44877 is reinstated if  
22 Pharmacy Permit Number PHY 44877 issued to Whittier Plaza Pharmacy Inc., dba The  
23 Prescription Shop – Whittier is revoked;

24 8. Ordering Whittier Plaza Pharmacy Inc., dba The Prescription Shop – Whittier, Nagi  
25 Youssef, Hanaa Basalious, Atef Riad Nemetalla, and Antoinette Perez to pay the Board of  
26 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to  
27 Business and Professions Code section 125.3; and,

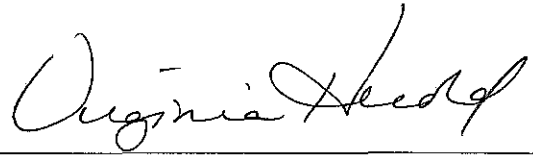
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9. Taking such other and further action as deemed necessary and proper.

DATED: \_\_\_\_\_

6/13/16



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

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