

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 KAREN R. DENVIR
Deputy Attorney General
4 State Bar No. 197268
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5333
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 5795

13 **DINA M. EL-SAYED**
P.O. Box 254615
Sacramento, CA 95865

ACCUSATION

14 **Original Pharmacist License No. RPH 43830**

15 Respondent.

16
17 Virginia Herold ("Complainant") alleges:

18 **PARTIES**

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

21 2. On or about August 21, 1990, the Board issued Original Pharmacist License Number
22 RPH 43830 to Dina M. El-Sayed, also known as Dina Hallack ("Respondent"). The Original
23 Pharmacist License was in full force and effect at all times relevant to the charges brought herein
24 and will expire on September 30, 2016, unless renewed.

25 **JURISDICTION**

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

1 4. Code section 4011 provides, in pertinent part, that the Board shall administer and
2 enforce both the Pharmacy Law [Code, § 4000 et seq.] and the Uniform Controlled Substances
3 Act [Health & Safety Code, § 11000 et seq.].

4 5. Code section 4300 states, in pertinent part, that every license issued may be
5 suspended or revoked.

6 6. Code section 4300.1 states:

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

STATUTORY PROVISIONS

13 7. Code section 4301 states, in pertinent part:

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

18 (f) The commission of any act involving moral turpitude, dishonesty,
19 fraud, deceit, or corruption, whether the act is committed in the course of
20 relations as a licensee or otherwise, and whether the act is a felony or
21 misdemeanor or not.

22 (h) The administering to oneself, of any controlled substance, or the use
23 of any dangerous drug or of alcoholic beverages to the extent or in a manner
24 as to be dangerous or injurious to oneself, to a person holding a license under
25 this chapter, or to any other person or to the public, or to the extent that the
26 use impairs the ability of the person to conduct with safety to the public the
27 practice authorized by the license

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

 (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

8. Code section 4021 states, "Controlled Substance' means any substance listed in
Chapter 2 (commencing with section 11053) of Division 10 of the Health and Safety Code."

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1 9. Code section 4022 states:

2 "Dangerous drug" or "dangerous device" means any drug or device unsafe for
3 self-use in humans or animals, and includes the following:

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

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

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

12 10. Code section 4059(a) states, in pertinent part, that, "A person may not furnish any
13 dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist,
14 veterinarian, or naturopathic doctor pursuant to Section 3640.7."

15 11. Code section 4060 states, in pertinent part:

16 No person shall possess any controlled substance, except that furnished to a
17 person upon the prescription of a physician, dentist, podiatrist, optometrist,
18 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
19 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
20 nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to
21 Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist
22 pursuant to Section 4052.1, 4052.2, or 4052.6.

23 12. Health and Safety Code section 11170 states, "no person shall prescribe,
24 administer, or furnish a controlled substance for himself."

25 13. Health and Safety Code section 11173(a), states:

26 No person shall obtain or attempt to obtain controlled substances, or procure or
27 attempt to procure the administration of or prescription for controlled substances,
28 (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a
material fact.

14. Health and Safety Code section 11350(a), states:

Except as otherwise provided in this division, every person who possesses
(1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of
subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of
subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of
Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled
substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon
the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to
practice in this state, shall be punished by imprisonment pursuant to subdivision (h)
of Section 1170 of the Penal Code.

1 COST RECOVERY

2 15. Code section 125.3 provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
6 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
7 included in a stipulated settlement.

8 DRUG

9 16. *Hydrocodone bitartrate* and acetaminophen, is designated a Schedule II controlled
10 substance by Health and Safety Code section 11055(b)(1)(i), and is a dangerous drug pursuant to
11 Code section 4022. It is designated a Schedule II controlled substance by the Code of Federal
12 Regulations, Title 21, section 1308.12(b)(1)(vi).

13 BACKGROUND

14 17. Between on or about July 22, 2012, until her termination on or about March 23, 2014,
15 Respondent was employed as a licensed pharmacist for Costco Pharmacy No. 1043 ("Costco"),
16 located in West Sacramento, California. Respondent was responsible for confirming the accuracy
17 (by hand counting tablets) of electronically received prescriptions that were mechanically filled
18 and for entering her verification in a computer.

19 18. On or about March 23, 2014, while on duty at Costco, Respondent verified an order
20 for hydrocodone/acetaminophen 10/325. Respondent's work was checked and the order was
21 found to be short three tablets. Video surveillance footage revealed Respondent taking tablets
22 from the order. Costco management subsequently interviewed Respondent regarding the incident
23 and, after confronted with video surveillance footage, she admitted that she took three tablets
24 from the order, ingested one, and flushed the remaining tablets down the toilet.

25 19. On or about April 4, 2014, "P.Y.", the pharmacist in charge for Costco, notified the
26 Board that Respondent was terminated from Costco for her alleged theft of hydrocodone
27 including, but not limited to, March 23, 2014.

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1 a user's mental and/or physical abilities, while on duty as a pharmacist at Costco, as set forth
2 more fully in paragraphs 18 and 20, above.

3 **THIRD CAUSE FOR DISCIPLINE**

4 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)

5 23. Respondent is subject to disciplinary action pursuant to Code section 4301(f), for
6 unprofessional conduct, in that while on duty as a pharmacist at Costco, she committed acts of
7 moral turpitude, dishonesty, fraud, or deceit, when:

8 a. Between on or about January 27, 2014, and March 23, 2014, Respondent stole
9 hydrocodone in violation of Health & Safety Code section 11173(a).

10 b. On or about March 23, 2014, while on duty as a pharmacist at Costco, Respondent
11 self-administered hydrocodone, a narcotic known to impair a user's mental and/or physical
12 abilities.

13 **FOURTH CAUSE FOR DISCIPLINE**

14 (Violation of the Pharmacy Law)

15 24. Respondent is subject to disciplinary action pursuant to Code section 4301(o), for
16 unprofessional conduct, in that she violated laws governing pharmacy, as set forth in
17 paragraphs 21 through 23, above.

18 **PRAYER**

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

21 1. Revoking or suspending Original Pharmacist License Number RPH 43830, issued to
22 Dina M. El-Sayed, also known as Dina Hallack;

23 2. Ordering Dina M. El-Sayed, also known as Dina Hallack, to pay the Board of
24 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to
25 Business and Professions Code section 125.3; and,

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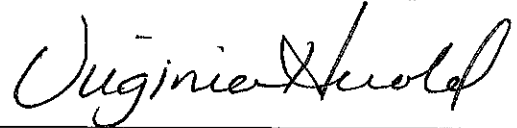
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3. Taking such other and further action as deemed necessary and proper.

DATED: 9/16/16



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

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