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

10 In the Matter of the Accusation Against:
11 **DR. N. VAHEDI PHARMACY INC. DBA**
12 **FUSION RX COMPOUNDING**
13 **PHARMACY;**
NAVID VAHEDI, president
14 **12001 Westwood Blvd., Suite A**
Los Angeles, CA 90025

Case No. 5899

A C C U S A T I O N

15 **Pharmacy Permit No. PHY 49937**

16 **and**

17 **NAVID VAHEDI, (PIC)**
18 **12001 Westwood Blvd Ste A.**
Los Angeles, CA 90025

19 **Pharmacist License No. RPH 59537**

20 Respondents.

21
22 Complainant alleges:

23 **PARTIES**

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

26 2. On or about June 9, 2009, the Board of Pharmacy issued Pharmacy Permit Number
27 PHY 49937 to Dr. N. Vahedi Pharmacy Inc. dba Fusion Rx Compounding Pharmacy with Navid
28 Vahedias the President and Pharmacist in Charge (Respondent Pharmacy). The Pharmacy Permit

1 was in full force and effect at all times relevant to the charges brought herein and will expire on
2 June 1, 2017, unless renewed.

3 3. On or about May 3, 2007, the Board of Pharmacy issued Original Pharmacist License
4 Number RPH 59537 to Navid Vahedi (Respondent Vahedi). On June 9, 2009, Respondent
5 Vahedi became as PIC for Respondent Pharmacy. The Original Pharmacist License was in full
6 force and effect at all times relevant to the charges brought herein and will expire on May 31,
7 2017, unless renewed.

8 JURISDICTION

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

12 5. Section 4040 of the Code states in pertinent part:

13 "(a) "Prescription" means an oral, written, or electronic transmission order that is both of
14 the following:(1) Given individually for the person or persons for whom ordered that includes all
15 of the following:

16

17 (F) If in writing, signed by the prescriber issuing the order, or the certified nurse-midwife,
18 nurse practitioner, physician assistant, or naturopathic doctor who issues a drug order pursuant to
19 Section 2746.51, 2836.1, 3502.1, or 3640.5, respectively, or the pharmacist who issues a drug
20 order pursuant to Section 4052.1, 4052.2, or 4052.6."

21 6. Section 4081 of the Code states in pertinent part:

22 "(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs
23 or dangerous devices shall be at all times during business hours open to inspection by authorized
24 officers of the law, and shall be preserved for at least three years from the date of making. A
25 current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary food
26 animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital,
27 institution, or establishment holding a currently valid and unrevoked certificate, license, permit,
28 registration, or exemption under Division 2 (commencing with Section 1200) of the Health and

1 Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and
2 Institutions Code who maintains a stock of dangerous drugs or dangerous devices.”

3

4 7. Section 4101 of the Code states in pertinent part:

5 “(a) A pharmacist may take charge of and act as the pharmacist-in-charge of a pharmacy
6 upon application by the pharmacy and approval by the board. A pharmacist-in-charge who ceases
7 to act as the pharmacist-in-charge of the pharmacy shall notify the board in writing within 30 days
8 of the date of that change in status.”

9 8. Section 4110 of the Code states in pertinent part:

10 “(a) No person shall conduct a pharmacy in the State of California unless he or she has
11 obtained a license from the board. A license shall be required for each pharmacy owned or
12 operated by a specific person. A separate license shall be required for each of the premises of any
13 person operating a pharmacy in more than one location. The license shall be renewed annually.
14 The board may, by regulation, determine the circumstances under which a license may be
15 transferred.”

16 9. Section 4301 of the Code states:

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

20

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

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

26

27 “(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the
28 board.”

1 10. Section 4342 of the Code states:

2 “(a) The board may institute any action or actions as may be provided by law and that, in its
3 discretion, are necessary, to prevent the sale of pharmaceutical preparations and drugs that do not
4 conform to the standard and tests as to quality and strength, provided in the latest edition of the
5 United States Pharmacopoeia or the National Formulary, or that violate any provision of the
6 Sherman Food, Drug, and Cosmetic Law (Part 5 (commencing with Section 109875) of Division
7 104 of the Health and Safety Code).”

8 11. Section 11162.1 of the Health and Safety Code states in pertinent part:

9 “(a) The prescription forms for controlled substances shall be printed with the following
10 features:

11 (1) A latent, repetitive "void" pattern shall be printed across the entire front of the
12 prescription blank; if a prescription is scanned or photocopied, the word "void" shall appear in a
13 pattern across the entire front of the prescription.

14 ...

15 (b) Each batch of controlled substance prescription forms shall have the lot number printed
16 on the form and each form within that batch shall be numbered sequentially beginning with the
17 numeral one.”

18 12. Section 11164 of the Health and Safety Code states in pertinent part:

19 Except as provided in Section 11167, no person shall prescribe a controlled substance, nor
20 shall any person fill, compound, or dispense a prescription for a controlled substance, unless it
21 complies with the requirements of this section.

22 (a) Each prescription for a controlled substance classified in Schedule II, III, IV, or V,
23 except as authorized by subdivision (b), shall be made on a controlled substance prescription form
24 as specified in Section 11162.1 and shall meet the following requirements:

25 (1) The prescription shall be signed and dated by the prescriber in ink and shall contain the
26 prescriber's address and telephone number; the name of the ultimate user or research subject, or
27 contact information as determined by the Secretary of the United States Department of Health and
28 Human Services; refill information, such as the number of refills ordered and whether the

1 prescription is a first-time request or a refill; and the name, quantity, strength, and directions for
2 use of the controlled substance prescribed.

3

4 (b) (1) Notwithstanding paragraph (1) of subdivision (a) of Section 11162.1, any controlled
5 substance classified in Schedule III, IV, or V may be dispensed upon an oral or electronically
6 transmitted prescription, which shall be produced in hard copy form and signed and dated by the
7 pharmacist filling the prescription or by any other person expressly authorized by provisions of
8 the Business and Professions Code. Any person who transmits, maintains, or receives any
9 electronically transmitted prescription shall ensure the security, integrity, authority, and
10 confidentiality of the prescription.

11 (2) The date of issue of the prescription and all the information required for a written
12 prescription by subdivision (a) shall be included in the written record of the prescription; the
13 pharmacist need not include the address, telephone number, license classification, or federal
14 registry number of the prescriber or the address of the patient on the hard copy, if that information
15 is readily retrievable in the pharmacy.

16 13. Section 11165 of the Health and Safety Code states in pertinent part:

17 . . .

18 (d) For each prescription for a Schedule II, Schedule III, or Schedule IV controlled
19 substance, as defined in the controlled substances schedules in federal law and regulations,
20 specifically Sections 1308.12, 1308.13, and 1308.14, respectively, of Title 21 of the Code of
21 Federal Regulations, the dispensing pharmacy, clinic, or other dispenser shall report the following
22 information to the Department of Justice as soon as reasonably possible, but not more than seven
23 days after the date a controlled substance is dispensed, in a format specified by the Department of
24 Justice: (1) Full name, address, and, if available, telephone number of the ultimate user or
25 research subject, or contact information as determined by the Secretary of the United States
26 Department of Health and Human Services, and the gender, and date of birth of the ultimate user.

27 (2) The prescriber's category of licensure, license number, national provider identifier (NPI)
28 number, if applicable, the federal controlled substance registration number, and the state medical

1 license number of any prescriber using the federal controlled substance registration number of a
2 government-exempt facility.

3 (3) Pharmacy prescription number, license number, NPI number, and federal controlled
4 substance registration number.

5 (4) National Drug Code (NDC) number of the controlled substance dispensed.

6 (5) Quantity of the controlled substance dispensed.

7 (6) International Statistical Classification of Diseases, 9th revision (ICD-9) or 10th revision
8 (ICD-10) Code, if available.

9 (7) Number of refills ordered.

10 (8) Whether the drug was dispensed as a refill of a prescription or as a first-time request.

11 (9) Date of origin of the prescription.

12 (10) Date of dispensing of the prescription.”

13 13. Section 11167 of the Health and Safety Code states in pertinent part:

14 “Notwithstanding subdivision (a) of Section 11164, in an emergency where failure to issue
15 a prescription may result in loss of life or intense suffering, an order for a controlled substance
16 may be dispensed on an oral order, an electronic data transmission order, or a written order not
17 made on a controlled substance form as specified in Section 11162.1, subject to all of the
18 following requirements:(a) The order contains all information required by subdivision (a) of
19 Section 11164.

20 (b) Any written order is signed and dated by the prescriber in ink, and the pharmacy
21 reduces any oral or electronic data transmission order to hard copy form prior to dispensing the
22 controlled substance.

23 (c) The prescriber provides a written prescription on a controlled substance prescription
24 form that meets the requirements of Section 11162.1, by the seventh day following the
25 transmission of the initial order; a postmark by the seventh day following transmission of the
26 initial order shall constitute compliance.

27 (d) If the prescriber fails to comply with subdivision (c), the pharmacy shall so notify the
28 Department of Justice in writing within 144 hours of the prescriber's failure to do so and shall

1 make and retain a hard copy, readily retrievable record of the prescription, including the date and
2 method of notification of the Department of Justice.

3 (e) This section shall become operative on January 1, 2005.”

4 **REGULATIONS**

5 14. 16 California Code of Regulations Section 1707.5 states in pertinent part:

6

7 “(d) The pharmacy shall have policies and procedures in place to help patients with limited
8 or no English proficiency understand the information on the label as specified in subdivision (a)
9 in the patient's language. The pharmacy's policies and procedures shall be specified in writing and
10 shall include, at minimum, the selected means to identify the patient's language and to provide
11 interpretive services in the patient's language. The pharmacy shall, at minimum, provide
12 interpretive services in the patient's language, if interpretive services in such language are
13 available, during all hours that the pharmacy is open, either in person by pharmacy staff or by use
14 of a third-party interpretive service available by telephone at or adjacent to the pharmacy
15 counter.”

16 15. 16 California Code of Regulations Section 1761 states:

17 (a) No pharmacist shall compound or dispense any prescription which contains any
18 significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon receipt of any
19 such prescription, the pharmacist shall contact the prescriber to obtain the information needed to
20 validate the prescription.

21 (b) Even after conferring with the prescriber, a pharmacist shall not compound or dispense
22 a controlled substance prescription where the pharmacist knows or has objective reason to know
23 that said prescription was not issued for a legitimate medical purpose.

24 **COST RECOVERY**

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

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Policies for Interpretive Services)**

3 17. Respondents Pharmacy and Vahedi are subject to disciplinary action under California
4 Code of Regulations section 1707.5 subdivision (d) in that Respondent Pharmacy and Vahedi, as
5 PIC, and owner of Respondent Pharmacy failed to provide Board inspectors with policies and
6 procedures in place to help patients with limited or no English proficiency understand the
7 information on the label as specified in subdivision (a) in the patient's language during an
8 inspection by the Pharmacy Board on August 26, 2015 or on a date thereafter.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Sale of Drugs Lacking Quality and Strength)**

11 18. Respondents Pharmacy and Vahedi are subject to disciplinary action under Business
12 and Professions Code section 4342 subdivision (a) in that Respondent Pharmacy and Vahedi, as
13 PIC, and owner of Respondent Pharmacy, were selling pharmaceutical preparations and drugs that
14 do not conform to the standard and tests as to quality and strength. The circumstances of the
15 violation are that on August 26, 2015, during a Board inspection, Respondent Pharmacy had
16 fourteen (14) jars of expired compounded medications on the stock medication shelves. In
17 addition, several expired medications were found in the drug closet and refrigerator.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Erroneous or Uncertain Prescriptions)**

20 19. Respondents Pharmacy and Vahedi are subject to disciplinary action under California
21 Code of Regulations section 1761 subdivisions (a) and (b) in that on August 26, 2015, during a
22 Board inspection, it was discovered that Vahedi, as PIC, and owner of Respondent Pharmacy, was
23 filling prescriptions for HCG (a controlled substance) from an order form completed by a sales
24 representative. The drug and strength were preprinted on the order form and the physician did not
25 sign the form. In addition, the orders were transferred to a hard copy prescription by a technician
26 and not completed or verified by the pharmacist

27 **FOURTH CAUSE FOR DISCIPLINE**

28 **(Unlicensed Activity: License Required)**

1 was determined that Respondent Pharmacy and Vahedi, as PIC, and owner of Respondent
2 Pharmacy were operating another pharmacy called "Fusion IV Specialty Pharmacy," from the
3 same location as Respondent Pharmacy. The drugs were dispensed from Respondent Pharmacy
4 with a label for Fusion IV Specialty Pharmacy. The brochure and intake papers for Fusion IV
5 Specialty Pharmacy had a different address (1990 Westwood Blvd. Ste 135, Los Angeles, CA
6 90025) and claimed to be a pharmacy in full operation. Fusion IV Specialty Pharmacy has not
7 been licensed by the Board.

8 **EIGHTH CAUSE FOR DISCIPLINE**

9 **(Unprofessional Conduct – False Certifications)**

10 24. Respondents Pharmacy and Vahedi are subject to disciplinary action under Business
11 and Professions Code section 4301 (g) for unprofessional conduct for knowingly making or
12 signing any certificate or other document that falsely represents the existence or nonexistence of a
13 state of facts. Specifically, during a Board inspection on August 26, 2015, it was determined that
14 Respondent Pharmacy and Vahedi, as PIC, and owner of Respondent Pharmacy were operating
15 another pharmacy called "Fusion IV Specialty Pharmacy," from the same location as Respondent
16 Pharmacy. The drugs were dispensed from Respondent Pharmacy used a label for "Fusion IV
17 Specialty Pharmacy." The brochure and intake papers for Fusion IV Specialty Pharmacy had a
18 different address (1990 Westwood Blvd. Ste 135, Los Angeles, CA 90025) and claimed to be a
19 pharmacy in full operation. Fusion IV Specialty Pharmacy has not been licensed by the Board.

20 **NINTH CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct – Failure to Cooperate with Investigation)**

22 25. Respondents Pharmacy and Vahedi are subject to disciplinary action under Business
23 and Professions Code section 4301 subdivision (q) in that between August 26, 2015 and February
24 29, 2016 Respondent Pharmacy and Vahedi, as PIC, and owner of Respondent Pharmacy failed to
25 respond to the Board's multiple requests for documents including a dispensing report of all
26 products dispensed from January 1, 2013 to January 1, 2016, order forms for HCG, policies and
27 procedures requested at the time of the inspection, and statements from the pharmacist-in-charge.

28 ///

1 **TENTH CAUSE FOR DISCIPLINE**

2 **(Failure to Report Controlled Substances to Cures)**

3 26. Respondents Pharmacy and Vahedi are subject to disciplinary action under Health
4 and Safety Code section 11165(d)(1-10) in that Respondent Pharmacy and Vahedi, as PIC, and
5 owner of Respondent Pharmacy failed to report identified information relating to controlled
6 substances that required under the code for controlled substances to the Department of Justice
7 CURES program from February 22, 2013 to May 2015.

8 **DISCIPLINE CONSIDERATIONS**

9 27. To determine the degree of discipline, if any, to be imposed on Respondents
10 Pharmacy and Vahedi, Complainant alleges as follows:

11 **Fusion Rx Compounding Pharmacy**

12 a. On or about October 27, 2015, in a prior action, the Board of Pharmacy issued Citation
13 Number CI 2013 59594 based on violations of CCR, Title 16, § 1713 [Participating in an
14 arrangement where prescriptions or prescription medications is left at, picked up from, accepted
15 by, or delivered to any place not licensed as a retail pharmacy] and Bus. & Prof. Code § 4052(a)
16 and CCR, Title 16, § 1735.2 [Compounded medications not for office use and in quantity for
17 advanced medical in excess of 72 hour supply of compounded medications.] Respondent
18 was ordered to pay \$5,000.00. That Citation is now final and is incorporated by reference as if
19 fully set forth.

20 b. On or about September 10, 2015, in a prior action, the Board of Pharmacy issued
21 Citation Number CI 2014 62948 based on violations of Health & Safety Code § 111397 (a)
22 [Compounding with an Unapproved Foreign Drug], Bus. & Prof. Code § 4169(a) and CCR, Title
23 16, § 1735.3(c) [Prohibited act/obtaining compounding chemicals from unreliable source] ,
24 1735(d) [Compounding commercially available drugs/patent infringement] and ordered
25 Respondent to pay \$3,000.00. That Citation is now final and is incorporated by reference as if
26 fully set forth.

27 c. On or about September 27, 2012, in a prior action, the Board of Pharmacy issued
28 Citation Number CI 2011 50096 based on violations of Bus. & Prof. Code § 4076(a)(9)

1 [Prescription label date beyond manufacturing date], Health & Safety Code § 11165(d) [Failure to
2 Report to Cures], and Title 21 CFR § 1304.11 [Failure to take DEA Inventory] and ordered
3 Respondent to pay \$1750.00. That Citation is now final and is incorporated by reference as if
4 fully set forth.

5 **Navid Vahedi**

6 d. On or about October 27, 2015, in a prior action, the Board of Pharmacy issued Citation
7 Number CI 2015 67653 based on violations of CCR, Title 16, § 1713 [Participating In An
8 Arrangement Where Prescriptions Or Prescription Medications Is Left At, Picked Up From,
9 Accepted By, Or Delivered To Any Place Not Licensed As A Retail Pharmacy] and Bus. & Prof.
10 Code § 4052(a) and CCR, Title 16, § 1735.2 [Compounded medications not for office use and in
11 quantity for advanced medical in excess of 72 hour supply of compounded medications.]
12 Respondent to pay \$2,000.00. That Citation is now final and is incorporated by reference as if
13 fully set forth.

14 e. On or about September 10, 2015, in a prior action, the Board of Pharmacy issued
15 Citation Number CI 2015 66976 based on violations of Health & Safety Code § 111397 (a)
16 [Compounding with an Unapproved Foreign Drug], Bus. & Prof. Code § 4169(a) and CCR, Title
17 16, § 1735.3(c) [Prohibited Act/Obtaining Compounding Chemicals from Unreliable Source] ,
18 1735(d) [Compounding Commercially Available Drugs/Patent Infringement] and ordered
19 Respondent to pay \$3,000.00. That Citation is now final and is incorporated by reference as if
20 fully set forth.

21 f. On or about September 27, 2012, in a prior action, the Board of Pharmacy issued
22 Citation Number CI 2012 53992 based on violations of Bus. & Prof. Code § 4076(a)(9)
23 [Prescription label date beyond manufacturing date], Health & Safety Code § 11165(d) [Failure to
24 Report to Cures], and Title 21 CFR § 1304.11 [Failure to take DEA Inventory] and ordered
25 Respondent to pay \$1250.00. That Citation is now final and is incorporated by reference as if
26 fully set forth.

27 **OTHER MATTERS**

28 28. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number

1 PHY 49937 issued to Fusion Rx Compounding Pharmacy, Navid Vahedi shall be prohibited from
2 serving as a manager, administrator, owner, member, officer, director, associate, or partner of a
3 licensee for five years if Pharmacy Permit Number PHY 49937 is placed on probation or until
4 Pharmacy Permit Number PHY 49937 is reinstated if it is revoked.

5 29. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit
6 Number PHY 49937 issued to Fusion Rx Compounding Pharmacy while Navid Vahedi had been
7 an officer and owner and had knowledge of or knowingly participated in any conduct for which
8 the licensee was disciplined, Navid Vahedi shall be prohibited from serving as a manager,
9 administrator, owner, member, officer, director, associate, or partner of a licensee for five years if
10 Pharmacy Permit Number PHY 49937 is placed on probation or until Pharmacy Permit Number
11 PHY 49937 is reinstated if it is revoked.

12 **PRAYER**

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

15 1. Revoking or suspending Pharmacy Permit Number PHY 49937, issued to Fusion Rx
16 Compounding Pharmacy, with Navid Vahedi as the President, Pharmacist in Charge and owner;

17 2. Revoking or suspending Pharmacist License Number RPH 59537, issued to Navid
18 Vahedi;

19 3. Prohibiting Navid Vahedi 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 49937 is placed on probation or until Pharmacy Permit Number PHY 44317 is reinstated if
22 Pharmacy Permit Number 49937 is revoked;

23 4. Ordering Fusion Rx Compounding Pharmacy, and Navid Vahedi jointly and
24 severally, to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement
25 of this case, pursuant to Business and Professions Code section 125.3;

26 ///

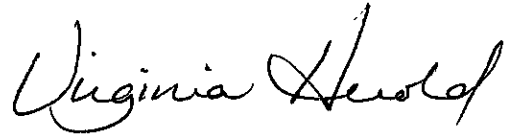
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5. Taking such other and further action as deemed necessary and proper.

DATED: 1/30/17



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

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