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

11
12 In the Matter of the Accusation Against:
13 **SAMEH ABDELMALEK**
83284 Beaver Creek Ct.
Indio, CA 92203
14
15 **Pharmacist License No. RPH 65008**
16
Respondent.

Case No. 5988
FIRST AMENDED ACCUSATION

17
18 Complainant alleges:

19 **PARTIES**

20 1. Virginia Herold (Complainant) brings this First Amended Accusation solely in her
21 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
22 Affairs.

23 2. On or about November 5, 2010, the Board of Pharmacy issued Pharmacist License
24 Number RPH 65008 to Sameh Abdelmalek (Respondent). The Pharmacist License will expire on
25 September 30, 2018, unless renewed.

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1 **JURISDICTION**

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

5 4. Section 4300, subdivision (a) of the Code states: "Every license issued may be
6 suspended or revoked."

7 5. Section 4300.1 of the Code states:

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

12 **STATUTORY PROVISIONS**

13 6. Section 482 of the Code states:

14 Each board under the provisions of this code shall develop criteria to evaluate
15 the rehabilitation of a person when:

16 (a) Considering the denial of a license by the board under Section 480; or

17 (b) Considering suspension or revocation of a license under Section 490.

18 Each board shall take into account all competent evidence of rehabilitation
19 furnished by the applicant or licensee.

20 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or
21 revoke a license on the ground that the licensee has been convicted of a crime substantially
22 related to the qualifications, functions, or duties of the business or profession for which the
23 license was issued.

24 8. Section 493 of the Code states:

25 Notwithstanding any other provision of law, in a proceeding conducted by a
26 board within the department pursuant to law to deny an application for a license or to
27 suspend or revoke a license or otherwise take disciplinary action against a person who
28 holds a license, upon the ground that the applicant or the licensee has been convicted
of a crime substantially related to the qualifications, functions, and duties of the
licensee in question, the record of conviction of the crime shall be conclusive
evidence of the fact that the conviction occurred, but only of that fact, and the board
may inquire into the circumstances surrounding the commission of the crime in order

1 to fix the degree of discipline or to determine if the conviction is substantially related
2 to the qualifications, functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority,"
4 and "registration."

5 9. Section 4022 of the Code states

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

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

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

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

16 10. Section 4026 of the Code states: "'Furnish' means to supply by any means, by sale or
17 otherwise."

18 11. Section 4059 of the Code states, in pertinent part, that a person may not furnish any
19 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,
20 veterinarian, or naturopathic doctor.

21 12. Section 4060 of the Code states, in pertinent part, that a person may not possess any
22 controlled substance, except that furnished to a person upon the prescription of a physician,
23 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor.

24 13. Section 4301 of the Code states:

25 The board shall take action against any holder of a license who is guilty of
26 unprofessional conduct or whose license has been procured by fraud or
27 misrepresentation or issued by mistake. Unprofessional conduct shall include, but is
28 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.

1 (h) The administering to oneself, of any controlled substance, or the use of any
2 dangerous drug or of alcoholic beverages to the extent or in a manner as to be
3 dangerous or injurious to oneself, to a person holding a license under this chapter, or
4 to any other person or to the public, or to the extent that the use impairs the ability of
5 the person to conduct with safety to the public the practice authorized by the license.

6 (i) Except as otherwise authorized by law, knowingly selling, furnishing, giving
7 away, or administering or offering to sell, furnish, give away, or administer any
8 controlled substance to an addict.

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

11

12 (l) The conviction of a crime substantially related to the qualifications,
13 functions, and duties of a licensee under this chapter. The record of conviction of a
14 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
15 States Code regulating controlled substances or of a violation of the statutes of this
16 state regulating controlled substances or dangerous drugs shall be conclusive
17 evidence of unprofessional conduct. In all other cases, the record of conviction shall
18 be conclusive evidence only of the fact that the conviction occurred. The board may
19 inquire into the circumstances surrounding the commission of the crime, in order to
20 fix the degree of discipline or, in the case of a conviction not involving controlled
21 substances or dangerous drugs, to determine if the conviction is of an offense
22 substantially related to the qualifications, functions, and duties of a licensee under this
23 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
24 contendere is deemed to be a conviction within the meaning of this provision. The
25 board may take action when the time for appeal has elapsed, or the judgment of
26 conviction has been affirmed on appeal or when an order granting probation is made
27 suspending the imposition of sentence, irrespective of a subsequent order under
28 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
dismissing the accusation, information, or indictment. . .

19

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

25 14. Health and Safety Code section 11170 provides that "no person shall prescribe,
26 administer, or furnish a controlled substance for himself."

27 15. Health and Safety Code section 11171 provides that "no person shall prescribe,
28 administer, or furnish a controlled substance except under the conditions and in the manner
provided by this division."

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16. Health and Safety Code section 11173 states:

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

~~(b) No person shall make a false statement in any prescription, order, report, or record, required by this division.~~

(c) No person shall, for the purpose of obtaining controlled substances, falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian, registered nurse, physician s assistant, or other authorized person.

(d) No person shall affix any false or forged label to a package or receptacle containing controlled substances.

17. Health and Safety Code section 11175 states:

No person shall obtain or possess a prescription that does not comply with this division, nor shall any person obtain a controlled substance by means of a prescription which does not comply with this division or possess a controlled substance obtained by such a prescription.

18. Health and Safety Code section 11180 states that “no person shall obtain or possess a controlled substance obtained by a prescription that does not comply with this division.”

19. United States Code, title 21, section 843, subdivision (a)(3) states:

(a) It shall be unlawful for any person knowingly or intentionally – (3) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge.

REGULATORY PROVISIONS

20. California Code of Regulations, title 16, section 1769, subdivision (b) states:

(b) When considering the suspension or revocation of a facility or a personal License on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

1 (4) Whether the licensee has complied with all terms of parole, probation,
restitution or any other sanctions lawfully imposed against the licensee.

2 (5) Evidence, if any, of rehabilitation submitted by the licensee.

3 21. California Code of Regulations, title 16, section 1770, states:

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

8 COSTS

9 22. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
10 administrative law judge to direct a licentiate found to have committed a violation or violations of
11 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
12 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
13 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
14 included in a stipulated settlement.

15 DRUGS

16 23. Phentermine (brand name Fastin or Ionamin) is a Schedule IV controlled substance
17 pursuant to Health and Safety Code section 11057(f)(4), and is a dangerous drug pursuant to
18 Business and Professions Code section 4022.

19 24. Oxycodone (brand name Oxycontin) is a Schedule II controlled substance pursuant
20 to Health and Safety Code section 11055, subdivision (b), and a dangerous drug pursuant to
21 Business and Professions Code section 4022.

22 25. Buprenorphine (brand name Suboxone) is a Schedule V controlled substance
23 pursuant to Health and Safety Code section 11058, subdivision (d), and a dangerous drug
24 pursuant to Business and Professions Code section 4022.

25 26. Hydrocodone/apap (brand name Norco) was a Schedule III controlled substance
26 pursuant to Health and Safety Code section 11056, subdivision (e), until October 6, 2014, when it
27 was changed to a Schedule II drug pursuant to Health and Safety Code section 11055, and is a
28 dangerous drug pursuant to Business and Professions Code section 4022.

1 the consultation room to pay for them because there was no camera in that area, then he would
2 take the medications from the store.

3 33. Further investigation determined that other hard copy prescriptions for several patient
4 profiles had been altered, some dating back to 2014, including patient profiles for: MR., AA., FF,
5 RM., RF., MP., SG., NS., DB., FF., GH., and CL. Phone calls to the physicians confirmed that
6 the prescriptions were fraudulent. In each instance, the prescriptions were paid for and the
7 medications picked up by Respondent.

8 34. Respondent admitted that he had been obtaining medication from the store this way
9 for three to four years, that he always paid for the medication, and he offered to show the loss
10 prevention personnel his bank statements. He reported that he fraudulently obtained medication
11 three to four times per week and that would either use old patient profiles or make them up. He
12 admitted that he would enter the prescription, scan the bottle, and print the label, then put the
13 prescription in will call. He would then put the medication into an empty vial, place it in his
14 pocket, and then take the medication out of the store.

15 35. When asked what Respondent did with the medication, Respondent reported that after
16 he took the medication from the store, he would give it to a person who needed it. Respondent
17 stated that "The medication is being used by someone, its crazy... They are hooked on this
18 medication." Respondent admitted that his brother lived with him from 2011 to 2014, that the
19 brother was addicted to the medication, and that he gave the medication to his brother so that he
20 did not go through withdrawals. Respondent admitted that he also started taking the medications,
21 Respondent admitted to taking 70 tablets of Oxycodone a day and reported that he was seeking
22 treatment for his addiction.

23 36. Respondent's signed statement to the store personnel reinforced his admission that he
24 had been filling fraudulent prescriptions with false patient profiles for three to four years.
25 Respondent reviewed a list of fraudulent prescriptions and admitted that he had filled all of them.
26 On July 22, 2016, Respondent was terminated from his position at Rite Aid.

27 37. Rite Aid personnel called the police department to report the matter. Respondent
28 admitted to the responding police officers that he had been filling false prescriptions for years and

1 that he was addicted to Oxycodone. Respondent emptied his pockets for the police and his
2 pockets contained an Advil bottle with 11 tablets of Oxycodone and one tablet of Phentermine.
3 Respondent admitted he did not have a prescription for the medications. Respondent also had
4 between three and four thousand dollars in his pocket. Respondent was arrested on July 13, 2016
5 for a violation of Health and Safety Code section 11350(a) (possession of narcotic controlled
6 substance).

7 **TERMINATION FROM DIVERSION PROGRAM AS PUBLIC SAFETY RISK**

8 38. On August 3, 2016, Respondent called and requested to join the Pharmacy Recovery
9 Program and the Diversion Program based upon a 3-4 year history of opiate addiction, an
10 admission that he had worked while under the influence of opiates and that he had filled
11 fraudulent prescriptions at work. On August 10, 2016, Respondent was admitted into the
12 program, but he failed to cooperate in the treatment plan. He refused to admit himself into an
13 inpatient setting, failed to sign the recovery terms and conditions agreement, he did not attend the
14 health support group, and he failed to enroll in random drug testing. Thus, on September 9, 2016,
15 Respondent was terminated from the Pharmacy Board diversion program as a public safety risk.

16 **CRIMINAL CONVICTION**

17 39. On December 9, 2016, in *People v. Sameh Maged Naguib Abdelmalek*, Riverside
18 Superior Court case no. INM1607565, Respondent pled guilty to a violation of Health and Safety
19 Code section HS M11350(a), possession of controlled substance, a misdemeanor. Respondent
20 was sentenced to three years probation and a \$1,000 fine.

21 **BOARD INSPECTION**

22 40. An ongoing inspection of the pharmacy resulted in an investigative report that
23 revealed additional instances of diversion and falsification of prescriptions. In each of these
24 instances, the prescriber was called and it was confirmed that the prescriptions were fraudulent.
25 In each instance, Respondent paid the pharmacy for the medication.

26 VIDEO SURVEILLANCE OF RESPONDENT FILLING FALSE PRESCRIPTIONS

27 41. The board's inspector reviewed video of Respondent as he was filling prescriptions
28 that were later verified to be false. On some of these occasions, Respondent disbursed the

1 medication to third parties. At other times, he appeared to fill the prescriptions but did not
2 disburse the medication at the time of sale.

3 a. On June 26, 2016, video surveillance showed Respondent as the cashier when a
4 white vehicle drove up to the drive through window and Respondent dispensed fraudulent
5 prescription number Rx295050 for patient MP.

6 b. On June 22, 2016, video surveillance showed Respondent as the cashier when
7 a white vehicle drive up to the drive through window and Respondent dispensed fraudulent
8 prescription number Rx295454 for FF and fraudulent prescription number Rx294469 for RF.

9 c. On June 20, 2016, Respondent was the cashier at the front counter. No person
10 was in front of the counter at the time of the transaction when Respondent dispensed fraudulent
11 prescription number Rx294280 for DB.

12 d. On June 16, 2016, Respondent was the cashier at the front counter. No person
13 was in front of the counter at the time of the transaction when Respondent dispensed fraudulent
14 prescription number Rx293985 for RM.

15 e. On June 12, 2016 video surveillance showed Respondent as the cashier at the
16 drive through window and Respondent dispensed fraudulent prescription numbers Rx293219,
17 Rx293265, and Rx293266 for GH and NS.

18 f. On June 12, 2016 video surveillance showed Respondent as the cashier at the
19 drive through window and Respondent dispensed fraudulent prescription numbers Rx293306 and
20 Rx293257 for RF and AA.

21 RESPONDENT ADMITTED FILLING THE FOLLOWING PRESCRIPTIONS WITH FAKE
22 AND OR FALSIFIED PATIENT PROFILES

23 42. Below are tables reflecting the prescriptions Rite Aid identified as filled for false
24 patient profiles created by Respondent and those which respondent admitted "these are the RX's I
25 took. I sometimes used existing (empty) patient profiles and sometimes I make a new patient
26 profile."

27 43. No actual patient picked up or bought these prescriptions. Instead, Respondent
28 created the false profiles and produced false prescriptions either by altering pre-existing

1 prescriptions or with a false verbal prescription. Most of the hard copies of the prescriptions were
 2 missing, the scanned copies were blanks, and the signatures were missing, illegible, or did not
 3 match the names on the prescriptions. Respondent would then set the medications aside, pay for
 4 them, and then remove them from the store and on some occasions he appeared to have provided
 5 the medication to third parties in the drive through. Doctors denied writing these prescriptions:

6 a. Respondent admitted using false patient profile MR to divert 1460 oxycodone 20mg;
 7 680 oxycodone 30mg; and 30 zolpidem 10mg:

Patient name/DOB:	Rx number and date, Drug, Quantity:	Hard copy present:	Scanned Copy:	Signature log cashier:
MR; 8/31/1980	294826 on 6/15/16, oxycodone 30mg #160	No	Blank	001467527 register 9 Rx 294826
MR	292523 on 5/26/16; oxycodone 30mg #160	No	Blank	001467527 register 1 Rxs 292497, 292498, 292523
MR	289941 on 5/9/16; oxycodone 30mg #120	No	Blank	001467527 register Rx 289941
MR	287567 on 4/22/16; oxycodone 20mg #180	No	Yes, name on Rx-MR DOB 10/31/60	001467527 register 1 Rx 287567
MR	284225 on 3/31/16; oxycodone 20mg #180	No	Blank	Not available on this date
MR	281039 on 3/9/16; oxycodone 30mg #240	No	Blank	001467527 register 9 Rx 281039, 282333
MR	276278 on 2/12/16; oxycodone 20mg #180	No	Blank	001467527 register 1 Rx 276278
MR	269947 on 1/4/16; oxycodone 20mg #180	No	Blank	Not available on this date
MR	264866 on 11/25/15; oxycodone 20mg #120	No	Scanned copy-sticker on Rx dated 11/2/15	

Patient name/DOB:	Rx number and date, Drug, Quantity:	Hard copy present:	Scanned Copy:	Signature log cashier:
MR	264867 on 11/25/15; zolpidem 10mg #30	No	Scanned copy-sticker on RX dated 11/2/15	
MR	201397 on 8/18/14; oxycodone 20mg #180 by RPH PHL	No	Scanned copy	Signature log not available
MR	196627 on 7/12/14; oxycodone 20mg #180	No	Scanned copy	Signature log not available
MR	192622 on 6/4/14; oxycodone 20mg #160	No	Scanned copy	Signature log not available
MR	190709 on 5/17/14; oxycodone 20mg #100	No	Scanned copy	Signature log not available

b. Respondent admitted using false patient profile RF to divert 775 oxycodone 30mg; 120 oxycodone 20mg; and 240 hydrocod/apap 10/325mg:

Patient name/DOB:	Rx number and date, Drug, Quantity/RPH:	Hard copy present:	Scanned Copy:	Signature log cashier:
RF; 10/23/86	297733 on 7/1/16; oxycodone 30mg #120/ SA1	No	Blank	001467527 register 9 RX297733
RF	294469 on 6/13/16; oxycodone 30mg #120/ PHL	No	Blank	001467527 register 1 RX295454, 294469
RF	293257 on 6/3/16; oxycodone 30mg #60/ SA1	No	None	001467527 register 9 RX293257, 293306
RF	291179 on 5/18/16; oxycodone 30mg #120/ SA1	No	None	001467527 register 1 RX291179
RF	288357 on 4/28/16; oxycodone 30mg #120/ SA1	No	None	001467527 register 1 RX288357

Patient name/DOB:	Rx number and date, Drug, Quantity/RPH:	Hard copy present:	Scanned Copy:	Signature log cashier:
RF	285574 on 4/8/16; oxycodone 30mg #150/ SA1	No	None	001467527 register 1 RX285963, 285574
RF	282618 on 3/21/16; oxycodone 30mg #100/ PHL	No	None	001467527 register 1 RX282618
RF	277694 on 2/22/16 (Monday); oxycodone 30mg #120/ MDM	No	Blank	001467527 register 1 RX277694
RF	270752 on 1/10/16; oxycodone 30mg 000#120/ SA1	No	Scanned copy with sticker; dated 12/18/15	001467527 register 1 RX270752
RF	264870 on 11/25/15; oxycodone 20mg #120/ SA1	No	Blank	001467527 register 9 RX264870
RF	264871 on 11/25/15; hydrocodone/apap 10-325mg #120/ SA1	No	Blank	001467527 register 9 RX264871
RF	258950 on 10/14/15; hydrocodone/apap 10-325mg #120/ SA1	No	Scanned copy with sticker dated 7/23/15	001467527 register 1 RX258950

c. Respondent admitted using false patient profile RM to divert 1110 oxycodone 30mg; and 180 oxycodone 10mg;

Patient name/DOB:	Rx number and date, Drug, Quantity/RPH:	Hard copy present:	Scanned Copy:	Signature log cashier:
RM; 7/23/82	293985 on 6/9/16; oxycodone 30mg #180	No	Blank	NA
RM	291763 on 5/16/16; oxycodone 30mg #100	No	Blank	NA
RM	288764 on 5/2/16; oxycodone 30mg #120	No	Blank	NA
RM	286348 on 4/14/16; oxycodone 30mg #150	No	Blank	NA

Patient name/DOB:	Rx number and date, Drug, Quantity/RPH:	Hard copy present:	Scanned Copy:	Signature log cashier:
RM	283315 on 3/25/16; oxycodone 30mg #120	No	Blank	NA
RM	278127 on 2/23/16; oxycodone 30mg #200	No	Blank	NA
RM	272962 on 1/24/16; oxycodone 30mg #240	No	Blank	NA
RM	267315 on 12/14/15; oxycodone 10mg #180	No	Scanned copy-sticker for name dated 11/19/15	NA
RM	265960 on 12/4/15; oxycodone 30mg #70	No	Scanned copy-sticker for name; dated 12/1/15	NA
RM	261417 on 11/2/15; hydrocodone/apap 10-325mg #120	No	Scanned copy-sticker for name dated 11/16/15	NA
RM	261418 on 11/2/15; oxycontin 20mg #60	No	Scanned copy-sticker for name dated 5/6/15	NA

d. Respondent admitted using false patient profile AA to divert 285 oxycodone 30mg; 20 phentermine 37.5mg; 340 oxycodone 20mg; and 770 oxycodone 15mg:

Patient name/DOB:	Rx number and date, Drug, Quantity/RPH:	Hard copy present:	Scanned Copy:	Signature log cashier:
AA; 4/1/67	297423 on 7/1/16; oxycodone 30mg #200	No	Blank copy	Could not print
AA	297425 on 7/1/16; phentermine 37.5 #20	No	Blank copy	Could not print
AA	293306 on 6/3/16; oxycodone 15mg #300	No	None	001467527 register 9 RX293306, 293257
AA	286776 on 4/18/16; oxycodone 20mg #240	No	None	001467527 register 1 RX286776

Patient name/DOB:	Rx number and date, Drug, Quantity/RPH:	Hard copy present:	Scanned Copy:	Signature log cashier:
AA	282447 on 3/20/16; oxycodone 15mg #150	No	None	001467527 register 9 RX282448, 282447
AA	279102 on 2/29/16; oxycodone 30mg #70	No	None	001467527 register 1 RX279103, 279102
AA	274734 on 2/4/16; oxycodone 15mg #150	No	None	001467527 register 1 RX274734
AA	263799 on 11/18/15; oxycodone 20mg #15	No	None	001467527 register 1 RX263799
AA	267099 on 12/13/15; oxycodone 15mg #120	No	None	001467527 register 1 RX267099
AA	269572 on 12/31/15; oxycodone 15mg #150	No	None	001467527 register NA RX269572
AA	260600 on 10/26/15; oxycodone 20mg #100	No	Scanned copy-strength changed dated 8/28/15	001467527 register 1 RX260600

e. Respondent admitted using false patient profile GH to divert 240 oxycodone 20mg; 270 oxycodone 30mg; and 450 oxycodone 15mg:

Patient name/DOB:	Rx number and date, Drug, Quantity/RPH:	Hard copy present:	Scanned Copy:	Signature log cashier:
GH; 1/8/80	293265 on 6/3/16; oxycodone 20mg #240	No	Blank	NA
GH	291426 on 5/20/16; oxycodone 30mg #120	No	Blank	NA
GH	287906 on 4/25/16; oxycodone 30mg #60	No	Blank	NA
GH	284824 on 4/4/16; oxycodone 30mg #90 RPH PHL	No	Blank	NA

Patient name/DOB:	Rx number and date, Drug, Quantity/RPH:	Hard copy present:	Scanned Copy:	Signature log cashier:
GH	282086 on 3/17/16; oxycodone 15mg #150	No	Blank	NA
GH	278122 on 2/23/16; oxycodone 15mg #150	No	Blank	NA

f. Respondent admitted using false patient profile DB to divert 360 oxycodone 20mg and 360 hydrocod/apap 10/325mg:

Patient name/DOB:	Rx number and date, Drug, Quantity/RPH:	Hard copy present:	Scanned Copy:	Signature log cashier:
DB; 9/14/73	294280 on 6/12/16; oxycodone 20mg #180	No	Blank	NA
DB	289294 on 5/4/16; oxycodone 20mg #180	No	Blank	NA
DB	159318 on 9/4/13; hydrocodone/apap 10-325mg #240	No	Scanned copy-dated 8/24/13 with a refill	NA

g. Respondent admitted using false patient profile FF to divert 1,710 oxycodone 30mg:

Patient name/DOB:	Rx number and date, Drug, Quantity/RPH:	Hard copy present:	Scanned Copy:	Signature log cashier:
FF; 8/25/46	295454 on 6/17/16; oxycodone 30mg #240	No	Blank	NA
FF	292497 on 5/29/16; oxycodone 30mg #180	No	Blank	NA
FF	289524 on 5/6/16; oxycodone 30mg #180	No	Blank	NA
FF	287269 on 4/20/16; oxycodone 30mg #80	No	Blank	NA

Patient name/DOB:	Rx number and date, Drug, Quantity/RPH:	Hard copy present:	Scanned Copy:	Signature log cashier:
FF	202694 on 8/27/14; oxycodone 30mg #180	No	Scanned copy with a sticker, quantity changed to 180. Sequence no: 125328 SP14	NA
FF	198390 on 7/26/14; oxycodone 30mg #210	No	Scanned copy with sticker. Quantity changed to 210 SP14	NA
FF	195607 on 7/2/14; oxycodone 30mg #210	No	Scanned copy – name visibly changed; quantity changed to 210. Sequence: 164380 SP14	NA
FF	193321 on 6/11/14; oxycodone 30mg #170	No	Scanned copy quantity changed to 170; Sequence: 800503 SP14	NA
FF	191803 on 5/28/14; oxycodone 30mg #100	No	Scanned copy- date, name and quantity changed Sequence 800421 SP14	NA
FF	189475 on 5/7/14; oxycodone 30mg #80	No	No- TCH wrote “image not available” edited by RXPSA19	NA
FF	187020 on 4/16/14; oxycodone 30mg #80	No	Scanned copy- directions and quantity changed Sequence: 125326 SP14	NA

h. Respondent admitted using false patient profile MP to divert a total of 1,960 oxycodone 20mg:

Patient name/DOB:	Rx number and date, Drug, Quantity/RPH:	Hard copy present:	Scanned Copy:	Signature log cashier:
MP; 5/11/84 (Exhibit 18)	295050 on 6/17/16; oxycodone 20mg #240	No	Blank	001467527 register 9 RX295050

	Patient name/DOB:	Rx number and date, Drug, Quantity/RPH:	Hard copy present:	Scanned Copy:	Signature log cashier:
1	MP	290622 on 5/15/16; oxycodone 20mg #240	No	Blank	001467527 register 1 RX291762, 290622
2	MP	288356 on 4/28/16; oxycodone 20mg #120	No	Blank	001467527 register 1 RX288356
3	MP	285963 on 4/4/16; oxycodone 20mg #240	No	Blank	001467527 register 1 RX285963, 285574
4	MP	282449 on 3/20/16; oxycodone 20mg #100	No	Blank	001467527 register 9 RX282449
5	MP	279636 on 2/26/16; oxycodone 20mg #240	No	Blank	001467527 register 1 RX279636
6	MP	274264 on 2/1/16; oxycodone 20mg #120	No	Blank	001467527 register 1 RX274264
7	MP	267974 on 12/18/15; oxycodone 20mg #120	No	Blank	001467527 register 1 RX267974
8	MP	202122 on 8/22/14; oxycodone 20mg #90 RPH PHL	No	Scanned copy – sticker over name; date changed to 7/19/14; Sequence 64	001467527 register 1 RX202122
9	MP	197286 on 7/17/14; oxycodone 20mg #90 RPH PHL	No	Scanned copy – sticker over name; date changed to 6/27/14; sequence:74	001467527 register 1 RX197286
10	MP	194216 on 6/19/14; oxycodone 20mg #90	No	Scanned copy – name altered, date 6/17/14; sequence:74	001467527 register 1 RX194216
11	MP	192117 on 5/31/14; oxycodone 20mg #90	no	Scanned copy – name altered, date 5/28/14 Sequence: 14	001467527 register 1 RX192117
12	MP	185573 on 4/5/14; oxycodone 20mg #90	No	Scanned copy – named altered, date 3/19/14; sequence:2135	001467527 register 1 RX185573

1	Patient name/DOB:	Rx number and date, Drug, Quantity/RPH:	Hard copy present:	Scanned Copy:	Signature log cashier:
2	MP	188940 on 5/3/14; oxycodone 20mg #90	No	Scanned copy – name altered, date 4/14/14; sequence:37	001467527 register 9 RX188940

ADDITIONAL MEDICATIONS OBTAINED BY FALSIFIED PATIENT PROFILES OR VALID PROFILES BUT FALSIFIED PRESCRIPTIONS:

6 44. Falsified patient profile CL was used to divert 90 phentermine 37.5mg. The
7 prescription for these medications was fraudulently produced, verified, and dispensed by
8 Respondent. The provider listed on the prescription reported he would never call in that dosage
9 or quantity of phentermine:
10

11	Patient name/DOB:	Rx number and date, Drug, Quantity/RPH:	Hard copy present:	Scanned Copy:	Signature log cashier:
12	CL; 6/1/80	287272 on 6/25/16; phentermine 37.5mg #25	No	Scanned copy-by Dr. Derum; verbal taken by SA1 RF 1x; dated 3/10/16	NA
15	CL	287272 on 5/15/16; phentermine 37.5mg #20	No	Used RX287272 for refill with different quantity	NA
17	CL	287272 on 4/20/16; phentermine 37.5mg #45	No	Used RX287272 for refill with different quantity	NA

20 45. Falsified prescriptions for patient MP2 were filled and this patient profile was used
21 to create the false patient profile for patient MP¹ above. The prescription for these medications
22 was fraudulently produced, verified, and dispensed by Respondent:

23 ///

24 ///

26 ¹ The prescriptions filled for MP2, a valid patient profile, were used to alter the name, quantity
27 and date for many of the RX's filled for patient MP, a falsified patient profile, that Respondent
28 admitted creating and using to fill falsified prescriptions.

Patient name/DOB:	Rx number and date, Drug, Quantity/RPH:	Hard copy present:	Scanned Copy:	Signature log cashier:
MP2; 9/22/56	242559 on 6/12/15; oxycodone 20mg #120 RPH PHL	No	Scanned copy-sequence: 74 same as RXs 197286 & 194216 for MP	NA
MP2	196505 on 7/11/14; oxycodone 20mg #90 RPH PHL	No	Scanned copy – sequence 64 same as RX 202122 for MP	NA
MP2	193450 on 6/12/14; oxycodone 20mg #90 RPH SA1	No	Scanned copy – sequence 74	NA
MP2	190508 on 5/15/14; oxycodone 20mg #90 RPH SA1	No	Scanned copy – sequence 14; same as RX 192117 for MP	NA
MP2	186990 on 4/16/14; oxycodone 20mg #90 RPH SA1	No	Scanned copy – sequence 37; same as RX 188940 for MP	

46. Falsified prescriptions for patient RR were filled and this patient profile was used to create the false patient profile for patient MR² in the table above. The prescription for these medications was fraudulently produced, verified, and dispensed by Respondent:

Patient name/DOB:	Rx number and date, Drug, Quantity/RPH:	Hard copy present:	Scanned Copy:	Signature log cashier:
RR; 6/22/59 (Exhibit 20, page 38)	238597 on 5/8/15; methadone 5mg #90 RPH SA1	No	Scanned copy-sequence 0779 unknown if used	NA
(Exhibit 20, page 36)	261527 on 11/2/15; oxycodone 20mg #120 RPH SA1	No	Scanned copy-sequence 1872	NA
(Exhibit 20, page 36)	261528 on 11/2/15; zolpidem 10mg #30 SA1	No	Scanned copy-sequence 1872	NA
(Exhibit 20, page 37)	214243 on 11/21/14; hydrocodone/apap	No	Scanned copy-sequence 213	NA

² Rx's 261527 and 261528 for RR were used to alter Rx's 264866 and 264867 on the profile for MR above.

1	Patient name/DOB:	Rx number and date, Drug, Quantity/RPH:	Hard copy present:	Scanned Copy:	Signature log cashier:
2		10/325mg #90 AC6			

3
4 MEDICATIONS OBTAINED BY FALSIFIED PRESCRIPTIONS FOR RESPONDENT'S RELATIVES

5 47. The patient profile for Respondent's relative, SG, reflected that Respondent would
6 fill verbal prescriptions for this individual, no hard copy prescriptions were ever found, and each
7 of the missing prescriptions was originally verified by Respondent in his handwriting. The
8 prescribing doctor denied that SG was his patient:

9
10 a. Rx296597 for oxycodone 20mg #180. There was no scan or hard copy of the
11 prescription. Respondent admitted that this was a false prescription.

12 b. Rx240181 for alprazolam 1mg #30. A scanned verbal Rx was available. No initials
13 of the RPH who took the RX were on the blank.

14 c. Rx219104 for alprazolam 1mg #90 with 1 refill on 12/27/14. A scanned verbal Rx
15 was available. No initials of the RPH who took the RX were on the blank.

16
17 48. The patient profile for another relative, SN, reflected that Respondent would fill
18 verbal prescriptions for this individual, no hard copy prescriptions were ever found, and each of
19 the missing prescriptions was originally verified by Respondent in his handwriting. NS's doctor
20 was contacted and he told the Board investigator that he had never prescribed oxycodone to this
21 patient:

22 a. Rx293219 for oxycodone 20mg #160 on 6/3/16. No scanned copy available.
23 Respondent admitted that this was a false prescription.

24 b. Rx286827 for oxycodone 15mg #100 on 4/18/16. No scanned copy available.
25 Respondent admitted that this was a false prescription.

26
27 ///

1 c. Rx227205 for alprazolam 1mg #90 on 2/16/15. Scanned copy available. No initials
2 of the RPH on the blank.

3 d. Rx217294 for alprazolam 1mg #60 on 1/19/15. Scanned copy available. No initials
4 of the RPH on the blank.

5 e. Rx295850 for oxycodone 20mg #180 on 6/23/16. No scanned copy available.
6 Respondent admitted that this was a false prescription.

7 RESPONDENT DISPENSED CONTROLLED SUBSTANCES TO HIMSELF

8 49. Respondent took and/or filled prescriptions for controlled substances for himself
9 while working at Rite Aid. None of the hard copies of the prescriptions were ever located. The
10 verbal prescriptions were taken by Respondent, scanned by him, and reviewed or verified by
11 Respondent or another pharmacist. Respondent then filled the following prescriptions for
12 himself:
13

14 a. Rx 284467 for Axiron 30mg #30 on 4/1/16 and 5/18/16. The fill date of 7/9/16 was
15 still on the shelf waiting for pickup but was no longer on the profile.

16 b. Rx160840 for Vicodin 5/325mg was filled and verified by another pharmacist.

17 c. Rx158987 for Vicodin ES 7.5 mg/750mg #30 with 1 refill was filled by Respondent
18 on 8/24/13 and 8/29/13.
19

20 FIRST CAUSE FOR DISCIPLINE
21 **(December 9, 2016 Criminal Conviction for**
22 **Possession of Controlled Substance on July 13, 2016)**

23 50. Respondent has subjected his license to discipline under sections 490 and 4301,
24 subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the
25 qualifications, duties, and functions of a pharmacist. The circumstances are as follows: On
26 December 9, 2016, in *People v. Sameh Maged Naguib Abdelmalek*, Riverside Superior Court case
27 no. INM1607565, Respondent pled guilty to a violation of Health and Safety Code section HS
28 M11350(a), possession of controlled substance, a misdemeanor. Respondent was sentenced to

1 three years probation and a \$1,000 fine. The facts that led to the convictions are described in
2 paragraphs 29 TO 39 above and are incorporated herein by reference.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct - Commission of Acts Involving Dishonesty,
5 Fraud, Deceit & Corruption)**

6 51. Respondent has subjected his license to discipline under section 4301, subdivision (f)
7 of the Code for unprofessional conduct in that Respondent created fraudulent prescriptions to
8 obtain narcotics from his employer using fraud, deceit, and dishonesty, as described in paragraphs
9 29 to 48 above which are hereby incorporated by reference.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Unprofessional Conduct – Creating False Prescription Documents)**

12 52. Respondent has subjected his license to discipline under section 4301, subdivision (g)
13 of the Code for unprofessional conduct in that Respondent knowingly made fraudulent
14 prescription documents, as described in paragraphs 29 to 48 above which are hereby incorporated
15 by reference.

16 **FOURTH CAUSE FOR DISCIPLINE**

17 **(Unprofessional Conduct – Fraudulently Prescribed Controlled Substances to Himself and
18 Possessed Controlled Substances without a Valid Prescription)**

19 53. Respondent has subjected his license to discipline under section 4301, subdivision (j),
20 and Health and Safety Code sections 11170, 11171, 11173, 11175, and 11180 of the Code for
21 unprofessional conduct in that Respondent fraudulently prescribed controlled substances to
22 himself and possessed controlled substances without a valid prescription as described in
23 paragraphs 29 to 48 above which are hereby incorporated by reference.

24 **FIFTH CAUSE FOR DISCIPLINE**

25 **(Unprofessional Conduct – Use if Controlled Substances in a Dangerous Manner)**

26 54. Respondent has subjected his license to discipline under section 4301, subdivision (h)
27 of the Code for unprofessional conduct in that Respondent knowingly administered narcotics to
28 himself without a prescription, while he was addicted to those medications, and such that he was
intoxicated at work, in a manner that was dangerous and injurious to himself, potentially to the

1 patrons of the pharmacy, and to the public as described in paragraphs 29 to 48 above which are
2 hereby incorporated by reference.

3 **SIXTH CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct – Furnishing Controlled Substances to an Addict)**

5 55. Respondent has subjected his license to discipline under section 4301, subdivision (i)
6 of the Code for unprofessional conduct in that Respondent admitted knowingly furnishing
7 narcotics to his brother, when he alleged that his brother was addicted to those narcotics, as
8 described in paragraphs 29 to 48 above which are hereby incorporated by reference.

9 **SEVENTH CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct - Violation of California Statutes
11 Regulating Controlled Substances)**

12 56. Respondent has subjected his license to discipline under section 4301, subdivision (j)
13 of the Code for unprofessional conduct in that Respondent knowingly violated Health and Safety
14 Code sections 11170, 11171, 11173, 11175, and 11180; Title 21 U.S.C. section 843, subdivision
15 (a)(3), and the California Uniform Controlled Substances Act (Health and Safety Code 11000, et
16 seq.), as described in paragraphs 29 to 48 above which are hereby incorporated by reference.

17 **EIGHTH CAUSE FOR DISCIPLINE**

18 **(Unprofessional Conduct - Violating Federal & State Laws &
19 Regulations Governing Pharmacy)**

20 57. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the
21 Code for unprofessional conduct in that he violated Business and Professions Code sections 4059
22 and 4060, and Board of Pharmacy Regulations (California Code of Regulations, Title 16, Section
23 1700, et seq.), when he obtained controlled substances using fraud and deceit, as described in
24 paragraph 29 to 48 above which are hereby incorporated by reference.

25 **DISCIPLINARY CONSIDERATIONS**

26 58. On August 10, 2016, Respondent was voluntarily admitted to the Pharmacy Board
27 Diversion Program based upon his report of being addicted to narcotics, obtaining narcotics from
28 his work place with false prescriptions, and being under the influence of narcotics at the
workplace. Respondent was terminated from the Pharmacy Board diversion program as a public

1 safety risk because he failed to participate in the treatment program prescribed for him, as
2 described in paragraph 38 above.

3 **PRAYER**

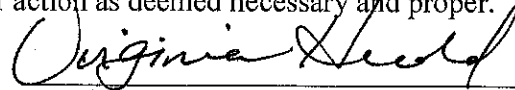
4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the Board of Pharmacy issue a decision:

6 1. Revoking or suspending Pharmacist License Number RPH 65008, issued to Sameh
7 Abdelmalek;

8 2. Ordering Sameh Abdelmalek to pay the Board of Pharmacy the reasonable costs of
9 the investigation and enforcement of this case, pursuant to Business and Professions Code section
10 125.3; and,

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

12 DATED: 3/21/17



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

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14
15
16 SD2016702653;81617475.docx

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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. 5988

12 **SAMEH ABDELMALEK**
13 **83284 Beaver Creek Ct.**
14 **Indio, CA 92203**

A C C U S A T I O N

15 **Pharmacist License No. RPH 65008**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about November 5, 2010, the Board of Pharmacy issued Pharmacist License
23 Number RPH 65008 to Sameh Abdelmalek (Respondent). The Pharmacist License expired on
24 September 30, 2016, and has not been renewed.

25 **JURISDICTION**

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

1 4. Section 4300, subdivision (a) of the Code states: "Every license issued may be
2 suspended or revoked."

3 5. Section 4300.1 of the Code states:

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

8 STATUTORY PROVISIONS

9 6. Section 4022 of the Code states

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

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

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

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

20 7. Section 4026 of the Code states: "'Furnish' means to supply by any means, by sale or
21 otherwise."

22 8. Section 4059 of the Code states, in pertinent part, that a person may not furnish any
23 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,
24 veterinarian, or naturopathic doctor.

25 9. Section 4060 of the Code states, in pertinent part, that a person may not possess any
26 controlled substance, except that furnished to a person upon the prescription of a physician,
27 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor.

28 10. 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:

1

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

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

7 (h) The administering to oneself, of any controlled substance, or the use of any
8 dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous
9 or injurious to oneself, to a person holding a license under this chapter, or to any other
10 person or to the public, or to the extent that the use impairs the ability of the person to
11 conduct with safety to the public the practice authorized by the license.

12 (i) Except as otherwise authorized by law, knowingly selling, furnishing, giving
13 away, or administering or offering to sell, furnish, give away, or administer any controlled
14 substance to an addict.

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

17

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

22 11. Health and Safety Code section 11173, subdivision (a) states:

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

27 12. United States Code, title 21, section 843, subdivision (a)(3) states:

28 (a) It shall be unlawful for any person knowingly or intentionally – (3) to acquire or
obtain possession of a controlled substance by misrepresentation, fraud, forgery,
deception, or subterfuge.

COSTS

13. Section 125.3 of the Code provides, 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, with failure of the licentiate to comply subjecting the license to not being

1 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
2 included in a stipulated settlement.

3 DRUG

4 14. Phentermine is a Schedule IV controlled substance pursuant to Health and Safety
5 Code section 11057(f)(4), and is a dangerous drug pursuant to Business and Professions Code
6 section 4022.

7 15. Oxycodone is a Schedule II controlled substance pursuant to Health and Safety
8 Code section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions
9 Code section 4022.

10 FACTUAL ALLEGATIONS

11 16. Respondent started working as a staff pharmacist at Rite Aid 6532 in Indio, California,
12 in 2009. On June 28, 2016, the board received notification from the Pharmacy Manager at the
13 store that Respondent had been filling prescriptions at the pharmacy under his wife's name for
14 Phentermine. An investigation determined that Respondent also was filling scripts under the false
15 name, Celeste L., for the same medication. Respondent would fill the medications at the
16 pharmacy, then pick them up from will call when the other staff was at lunch or gone for the day.

17 17. Further investigation determined that other possibly fraudulent prescriptions were
18 filled by Respondent for Oxycodone. No hard copies of these prescriptions were ever located. A
19 loss prevention investigation was commenced and video cameras were installed at the store.

20 18. On June 23, 2016, Respondent filled one prescription for oxycodone 20 mg 180
21 tablets for his mother-in-law, GS, and the same prescription for his father-in-law, NS. Another
22 pharmacist knew that both patients had insurance, so it was odd that the prescriptions were paid
23 for in cash. When the management looked into the prescriptions, they noticed that the medicines
24 were supposedly placed in the will call area, but they could not be located in the store. There was
25 also no hard copy of either prescription in the store. A video reflected that Respondent had paid
26 for the prescriptions on June 30, 2016, after the pharmacy was closed.

27 19. In a July 12, 2016, interview with loss prevention personnel, Respondent admitted that
28 the two prescriptions for his in-laws were fraudulent. He admitted that he had fraudulently

1 obtained other medications as well, that he would put them on the will call list, then take them to
2 the consultation room to pay for them because there was no camera in that area, then he would
3 take the medications from the store.

4 20. Further investigation determined that other hard copy prescriptions for several patient
5 profiles had been altered, some dating back to 2014, including patient profiles for: Michael R.,
6 Ravi F., Rafael M., Raul F., Mary P., Sabry G., David B., Frank F., Gina H. Phone calls to the
7 physicians confirmed that the prescriptions were fraudulent. In each instance, the prescriptions
8 were paid for and the medications picked up by Respondent.

9 21. Respondent admitted that he had been obtaining medication from the store this way
10 for three to four years, that he always paid for the medication, and he offered to show the loss
11 prevention personnel his bank statements. He reported that he fraudulently obtained medication
12 three to four times per week and that would either use old patient profiles or make them up. He
13 admitted that he would enter the prescription, scan the bottle, and print the label, then put the
14 prescription in will call. He would then put the medication into an empty vial, place it in his
15 pocket, and then take the medication out of the store.

16 22. When asked what Respondent did with the medication, Respondent reported that after
17 he took the medication from the store, he would give it to a person who needed it. Respondent
18 stated that "The medication is being used by someone, its crazy... They are hooked on this
19 medication." Respondent admitted that his brother lived with him from 2011 to 2014, that the
20 brother was addicted to the medication, and that he gave the medication to his brother so that he
21 did not go through withdrawals. Respondent admitted that he also started taking the medications,
22 Respondent admitted to taking 70 tablets of Oxycodone a day and reported that he was seeking
23 treatment for his addiction.

24 23. Respondent's signed statement to the store personnel reinforced his admission that he
25 had been filling fraudulent prescriptions with false patient profiles for three to four years.
26 Respondent reviewed a list of fraudulent prescriptions and admitted that he had filled all of them.
27 Respondent was terminated from his position at Rite Aid.

28

1 24. Rite Aid personnel called the police department to report the matter. Respondent
2 admitted to the responding police officers that he had been filling false prescriptions for years and
3 that he was addicted to oxycodone. Respondent emptied his pockets for the police and his
4 pockets contained an Advil bottle with 11 tablets of Oxycodone and one tablet of Phentermine.
5 Respondent also had between three and four thousand dollars in his pocket. Respondent was
6 arrested on July 13, 2016 for a violation of Health and Safety Code section 11350(a) (possession
7 of narcotic controlled substance).

8 25. On August 3, 2016, Respondent called and requested to join the Pharmacy Recovery
9 Program and the Diversion Program based upon a 3-4 year history of opiate addiction, an
10 admission that he had worked while under the influence of opiates and that he had filled fraudulent
11 prescriptions at work. On August 10, 2016, Respondent was admitted into the program, but he
12 failed to cooperate in the treatment plan. He refused to admit himself into an inpatient setting,
13 failed to sign the recovery terms and conditions agreement, he did not attend the health support
14 group, and he failed to enroll in random drug testing. Thus, on September 9, 2016, Respondent
15 was terminated from the Pharmacy Board diversion program as a public safety risk.

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Unprofessional Conduct - Commission of Acts Involving Dishonesty,
18 Fraud, Deceit & Corruption)**

19 26. Respondent has subjected his license to discipline under section 4301, subdivision (f)
20 of the Code for unprofessional conduct in that Respondent created fraudulent prescriptions to
21 obtain narcotics from his employer using fraud, deceit, and dishonesty, as described in paragraphs
22 17 to 25 above which are hereby incorporated by reference.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(Unprofessional Conduct – Creating False Prescriptions)**

25 27. Respondent has subjected his license to discipline under section 4301, subdivision (g)
26 of the Code for unprofessional conduct in that Respondent knowingly made fraudulent
27 prescription documents, as described in paragraphs 17 to 25 above which are hereby incorporated
28 by reference.

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct – Use if Controlled Substances in a Dangerous Manner)**

3 28. Respondent has subjected his license to discipline under section 4301, subdivision (h)
4 of the Code for unprofessional conduct in that Respondent knowingly administered narcotics to
5 himself without a prescription, while he was addicted to those medications, and such that he was
6 intoxicated at work, in a manner that was dangerous and injurious to himself, potentially to the
7 patrons of the pharmacy, and to the public as described in paragraphs 17 to 25 above which are
8 hereby incorporated by reference.

9 **FOURTH CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct – Furnishing Controlled Substances to an Addict)**

11 29. Respondent has subjected his license to discipline under section 4301, subdivision (i)
12 of the Code for unprofessional conduct in that Respondent knowingly furnished narcotics to his
13 brother, when his brother was addicted to those narcotics, as described in paragraphs 17 to 25
14 above which are hereby incorporated by reference.

15 **FIFTH CAUSE FOR DISCIPLINE**

16 **(Unprofessional Conduct - Violation of California Statutes
17 Regulating Controlled Substances)**

18 30. Respondent has subjected his license to discipline under section 4301, subdivision (j)
19 of the Code for unprofessional conduct in that Respondent knowingly violated Health and Safety
20 Code section 11173, subdivision (a), Title 21 U.S.C. section 843, subdivision (a)(3), and the
21 California Uniform Controlled Substances Act (Health and Safety Code 11000, et seq.), as
22 described in paragraphs 17-25 above which are hereby incorporated by reference.

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27 **SIXTH CAUSE FOR DISCIPLINE**

28 **(Unprofessional Conduct - Violating Federal & State Laws &**

Regulations Governing Pharmacy)

1 31. Respondent is subject to disciplinary action under section 4301, subdivision (o)
2 of the Code for unprofessional conduct in that he violated Business and Professions Code sections
3 4059 and 4060, and Board of Pharmacy Regulations (California Code of Regulations, Title 16,
4 Section 1700, et seq.), when he obtained controlled substances using fraud and deceit, as described
5 in paragraph 17 to 25 above which are hereby incorporated by reference.

DISCIPLINARY CONSIDERATIONS

7 On August 10, 2016, Respondent was voluntarily admitted to the Pharmacy Board Diversion
8 Program based upon his report of being addicted to narcotics, obtaining narcotics from his work
9 place with false prescriptions, and being under the influence of narcotics at the workplace.
10 Respondent was terminated from the Pharmacy Board diversion program as a public safety risk
11 because he failed to participate in the treatment program prescribed for him, as described in
12 paragraph 25 above.

PRAYER

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

- 16 1. Revoking or suspending Pharmacist License Number RPH 65008, issued to Sameh
17 Abdelmalek;
18 2. Ordering Sameh Abdelmalek to pay the Board of Pharmacy the reasonable costs of the
19 investigation and enforcement of this case, pursuant to Business and Professions Code section
20 125.3; and,
21 3. Taking such other and further action as deemed necessary and proper.

22 DATED: 10/19/16

Virginia Herold

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

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