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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 Statement of Issues
12 Against:

Case No. 5308

13 **HAN.SAM CORP., DBA RIVER'S EDGE**
14 **SPECIALTY PHARMACY; HANY**
15 **BENJAMIN, CHIEF EXECUTIVE**
16 **OFFICER AND PRESIDENT**

STATEMENT OF ISSUES

17 **Pharmacy Permit Applicant**

Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about May 21, 2014, the Board of Pharmacy (Board), Department of Consumer
24 Affairs received an application for a Pharmacy Permit from Han.Sam Corp., doing business as
25 River's Edge Specialty Pharmacy, Hany Benjamin, Chief Executive Officer and President
26 (Respondent). On or about May 17, 2014, Respondent certified under penalty of perjury to the
27 truthfulness of all statements, answers, and representations in the application. The Board denied
28 the application on July 17, 2014.

1 **JURISDICTION**

2 3. This Statement of Issues is brought before the Board under the authority of the
3 following laws. All section references are to the Business and Professions Code (Code) unless
4 otherwise indicated.

5 4. Section 4300, subdivision (c) of the Code states "The board may refuse a license to
6 any applicant guilty of unprofessional conduct."

7 **STATUTORY PROVISIONS**

8 5. Section 480 of the Code states:

9 (a) A board may deny a license regulated by this code on the grounds that the
10 applicant has one of the following:

11 ...

12 (2) Done any act involving dishonesty, fraud, or deceit with the intent to
substantially benefit himself or herself or another, or substantially injure another.

13 (3) (A) Done any act that if done by a licentiate of the business or profession
14 in question, would be grounds for suspension or revocation of license.

15 (B) The board may deny a license pursuant to this subdivision only if the
16 crime or act is substantially related to the qualifications, functions, or duties of the
business or profession for which application is made.

17

18 6. Section 4301 of the Code states:

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

22 ...

23 (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
24 licensee or otherwise, and whether the act is a felony or misdemeanor or not.

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

26 ...

27 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
28 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

1 pharmacy, including regulations established by the board or by any other state or
2 federal regulatory agency.

3 REGULATORY PROVISIONS

4 7. California Code of Regulations, title 16, section 1770, states:

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

12 8. California Code of Regulations, title 22, section 51501 states in pertinent part:

13 ...
14 (d) No provider shall submit claims to the Medi-Cal program using any
15 provider number other than that issued to the provider by the Department.

16 FACTS

17 9. On or about September 15, 2008, the Board issued Pharmacy Permit Number PHY
18 49157 to Han.Sam Corp., dba River's Edge Pharmacy, Samuel Benjamin Gadalla Hany, President,
19 Vice President, Chief Executive Officer and Treasurer/Chief Financial Officer (River's Edge
20 Pharmacy). The Pharmacy Permit will expire on September 1, 2015, unless renewed. Hany
21 Benjamin owns River's Edge Pharmacy, located in Palm Springs, California.

22 10. On or about October 3, 2011, the Board issued Pharmacy Permit Number PHY 50663
23 to Han.Sam Corp., dba Tru Care Pharmacy, Hany S. Benjamin, President, Vice President,
24 Secretary and Treasurer/Chief Financial Officer (Tru Care Pharmacy). The Pharmacy Permit will
25 expire on October 1, 2015, unless renewed. Hany Benjamin owns Tru Care Pharmacy, located in
26 Buena Park, California.

27 11. "CalOptima" is the name of an integrated health care system that administers public
28 health insurance programs for children, low income families, and persons with disabilities who are
eligible for Medi-Cal in Orange County, California.

12. In Orange County, California, pharmacies that fill prescriptions for Medi-Cal patients
obtain payment through CalOptima. In order to receive payment from CalOptima, a pharmacy

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1 must apply to CalOptima and receive approval to become a registered provider for CalOptima.
2 CalOptima requires a separate application and review process than the Medi-Cal program.

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

5 14. From January 1, 2012 to March 13, 2014, River's Edge Pharmacy was a registered
6 provider for the CalOptima program.

7 15. From approximately January 1, 2012 to March 13, 2014, Tru Care Pharmacy used the
8 National Provider Identifier¹ number of River's Edge Pharmacy to submit claims to CalOptima for
9 642 prescriptions and/or refills, that Tru Care Pharmacy had filled for CalOptima members.

10 16. Tru Care Pharmacy's computer software was programmed with River's Edge
11 Pharmacy's National Provider Identifier number to use to bill to CalOptima for prescriptions that
12 were processed and filled by Tru Care Pharmacy.

13 17. River's Edge Pharmacy knew that Tru Care Pharmacy was using River's Edge
14 Pharmacy's National Provider Identifier number to submit claims and receive payment from
15 CalOptima for prescriptions that were processed by Tru Care Pharmacy.

16 18. CalOptima did not give Tru Care Pharmacy a temporary authorization to use River's
17 Edge Pharmacy's National Provider Identifier number to submit claims for CalOptima
18 prescriptions.

19 19. CalOptima does not give authorization to anyone to use another pharmacy's National
20 Provider Identifier number to process claims or request payment from CalOptima, even if the
21 pharmacy has an application pending before CalOptima.

22 20. CalOptima requires each pharmacy to bill with their own National Provider Identifier
23 number.

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

1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 **(Acts Involving Dishonesty, Fraud, or Deceit)**

3 21. Respondent's application is subject to denial under Code section 480, subdivision
4 (a)(2) in that Respondent committed acts of dishonesty and deceit during the operation of his two
5 pharmacies, Tru Care Pharmacy and River's Edge Pharmacy. The circumstances are set forth in
6 paragraphs 9 through 20 above, and incorporated herein as though fully referenced, and as
7 follows:

8 a. Because Tru Care Pharmacy was not approved to submit claims to CalOptima,
9 Respondent used River's Edge Pharmacy's National Provider Identifier number under which to
10 submit claims to CalOptima for payment to Tru Care Pharmacy.

11 b. Tru Care Pharmacy misrepresented to CalOptima that River's Edge Pharmacy had
12 filled the prescriptions for the claims that Tru Care Pharmacy had submitted under River's Edge
13 Pharmacy's National Provider Identifier number, when in fact, Tru Care Pharmacy had filled them.

14 c. River's Edge Pharmacy aided and abetted Tru Care Pharmacy in submitting claims to
15 CalOptima using River's Edge Pharmacy's National Provider Identifier number, when Tru Care
16 Pharmacy did not have approval to submit claims to CalOptima.

17 d. River's Edge Pharmacy allowed Tru Care Pharmacy to misrepresent to CalOptima that
18 River's Edge Pharmacy had filled the prescriptions for the claims that Tru Care Pharmacy had
19 submitted, when in fact, River's Edge Pharmacy had not filled them.

20 e. Tru Care Pharmacy received payment for claims submitted to CalOptima that True
21 Care Pharmacy was not entitled to.

22 **SECOND CAUSE FOR DENIAL OF APPLICATION**

23 **(Commission of Acts Which if Done by a Licensee Would be**
24 **Grounds for Suspension or Revocation of License- Dishonesty)**

25 22. Respondent's application is subject to denial under Code section 480, subdivision
26 (a)(3)(A) in that Respondent committed acts, that if done by a licensee, would be grounds for
27 suspension or revocation of the license under Code section 4301(f) for dishonesty and deceit. The
28

1 circumstances are set forth in paragraphs 9 through 20 above, and incorporated herein as though
2 fully referenced, and as follows:

3 a. Because Tru Care Pharmacy was not approved to submit claims to CalOptima,
4 Respondent used River's Edge Pharmacy's National Provider Identifier number under which to
5 submit claims to CalOptima for payment to Tru Care Pharmacy.

6 b. Tru Care Pharmacy misrepresented to CalOptima that River's Edge Pharmacy had
7 filled the prescriptions for the claims that Tru Care Pharmacy had submitted under River's Edge
8 Pharmacy's National Provider Identifier number, when in fact, Tru Care Pharmacy had filled them.

9 c. River's Edge Pharmacy aided and abetted Tru Care Pharmacy in submitting claims to
10 CalOptima using River's Edge Pharmacy's National Provider Identifier number, when Tru Care
11 Pharmacy did not have approval to submit claims to CalOptima.

12 d. River's Edge Pharmacy allowed Tru Care Pharmacy to misrepresent to CalOptima that
13 River's Edge Pharmacy had filled the prescriptions for the claims that Tru Care Pharmacy had
14 submitted, when in fact, River's Edge Pharmacy had not filled them.

15 e. Tru Care Pharmacy received payment for claims submitted to CalOptima that True
16 Care Pharmacy was not entitled to.

17 **THIRD CAUSE FOR DENIAL OF APPLICATION**

18 **(Commission of Acts Which if Done by a Licensee Would be**

19 **Grounds for Suspension or Revocation of License- Making a Document That is False)**

20 23. Respondent's application is subject to denial under Code section 480, subdivision
21 (a)(3)(A) in that Respondent committed acts, that if done by a licensee, would be grounds for
22 suspension or revocation of the license under Code section 4301(g) for knowingly making or
23 signing any certificate or other document that falsely represents the existence or nonexistence of a
24 state of facts in that Respondent arranged to submit Tru Care Pharmacy prescription claims to
25 CalOptima using River's Edge Pharmacy's National Provider Identifier number, when Tru Care
26 Pharmacy did not have authorization to submit claims to CalOptima. Respondent also
27 misrepresented to CalOptima that River's Edge Pharmacy had filled the prescriptions for the
28 claims that Tru Care Pharmacy had submitted using River's Edge Pharmacy's national Provider

1 Identifier number, when in fact, Tru Care Pharmacy had filled them. The circumstances are set
2 forth in paragraphs 9 through 20 above, and incorporated herein as though fully referenced.

3 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

4 **(Commission of Acts Which if Done by a Licensee Would be**

5 **Grounds for Suspension or Revocation of License- Violation of Regulations)**

6 24. Respondent's application is subject to denial under Code section 480, subdivision
7 (a)(3)(A) in that Respondent committed acts, that if done by a licensee, would be grounds for
8 suspension or revocation of the license under Code section 4301(o) for violation of regulations in
9 conjunction with California Code of Regulations, title 22, section 51501, for Tru Care Pharmacy
10 submitting claims to CalOptima using a National Provider Identifier number that was not its own,
11 and had been issued to another pharmacy. The circumstances are set forth in detail in paragraphs 9
12 through 20 above, and incorporated herein as though fully referenced.

13 **PRIOR DISCIPLINE**

14 25. In determining whether licensure should be granted to Respondent, Complainant
15 alleges that on or about July 17, 2010, in a prior disciplinary action entitled *In the Matter of the*
16 *Citation Against River's Edge Pharmacy* before the Board of Pharmacy, in Citation Number CI
17 2009 42563, the Pharmacy License of Respondent's business, River's Edge Pharmacy, was cited
18 and fined. That citation is now final and is incorporated by reference as if fully set forth herein.
19 The citation was based on River's Edge Pharmacy's failure to report to the Board and the DEA
20 that controlled substances were lost during a night break-in at the pharmacy and that it failed to do
21 a complete inventory to document the loss.

22 26. In determining whether licensure should be granted to Respondent, Complainant
23 alleges that on or about August 11, 2011, in a prior disciplinary action entitled *In the Matter of the*
24 *Citation Against River's Edge Pharmacy* before the Board of Pharmacy, in Citation Number CI
25 2010 45075, the Pharmacy License of Respondent's business, River's Edge Pharmacy, was cited
26 and fined. That citation is now final and is incorporated by reference as if fully set forth herein.

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1 The citation was based on River's Edge Pharmacy, dispensing a prescription which contained an
2 error and variation from a prescription.

3 27. In determining whether licensure should be granted to Respondent, Complainant
4 alleges that on or about June 17, 2010, in a prior disciplinary action entitled *In the Matter of the*
5 *Citation Against Hany Benjamin* before the Board of Pharmacy, in Citation Number CI 2009
6 44779, Respondent's Pharmacist License was cited and fined. That citation is now final and is
7 incorporated by reference as if fully set forth herein. The citation was based on Respondent acting
8 as the Pharmacist-in-Charge (PIC) for his pharmacy, River's Edge Pharmacy, and his failure to
9 report to the Board and the DEA that controlled substances were lost during a night break-in at
10 the pharmacy and that he failed to do a complete inventory to document the loss.

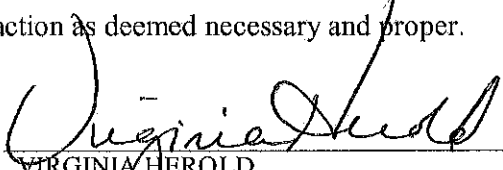
11 28. In determining whether licensure should be granted to Respondent, Complainant
12 alleges that on or about August 11, 2011, in a prior disciplinary action entitled *In the Matter of the*
13 *Citation Against Hany Benjamin* before the Board of Pharmacy, in Citation Number CI 2011
14 49204, Respondent's Pharmacist License was cited and fined. That citation is now final and is
15 incorporated by reference as if fully set forth herein. The citation was based on Respondent acting
16 as the PIC for River's Edge Pharmacy and dispensing a prescription which contained an error and
17 variation from a prescription.

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. Denying the application of Han.Sam Corp., doing business as River's Edge Specialty
22 Pharmacy, Hany Benjamin, Chief Executive Officer and President, for a Pharmacy Permit; and
23 2. Taking such other and further action as deemed necessary and proper.

24
25 DATED: 1/23/15


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

SD2014708037