BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation and Petition to Revoke Probation Against: **KHALED HUSSEIN-AHMED, a.k.a. Khaled Ahmed Hussein, Omar Latif, and Kal Ahmed** **Original Pharmacist License No. RPH 45552** **Respondent.**	**Case No. 2555** **OAH No. L2004110231**

PROPOSED DECISION

This matter came on regularly for hearing on December 7 and 8, 2005, and February 15, 2006, in Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Patricia F. Harris (Complainant) was represented by Jennifer S. Cady, Deputy Attorney General.

Khaled Hussein-Ahmed (Respondent) was present and was represented by Ronald S. Marks, Attorney at Law.

During the hearing, Complainant amended the First Amended Accusation and Petition to Revoke Probation at page 6, line 20, by deleting the words, "and fraudulently billed Medi Cal under false pretenses."

Oral and documentary evidence was received. The record was closed on February 15, 2006, and the matter was submitted for decision.

///

FACTUAL FINDINGS

The Administrative Law Judge makes the following Factual Findings:

1. Patricia F. Harris made the First Amended Accusation and Petition to Revoke Probation in her official capacity as Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).

2. On September 1, 1992, the Board issued Original Pharmacist License No. 45552 to Respondent. The license was in full force and effect at all relevant times. It will expire on November 30, 2007, unless renewed.

Other Disciplinary Matter

3. In approximately January 1999, Complainant filed an Accusation against Respondent and others[1]. A First Amended and Superseding Accusation, and a Second Amended and First Supplemental Accusation, were subsequently filed. In May, 2000, Respondent and La Botica Pharmacy entered into a stipulated settlement to resolve the disciplinary matter. The stipulated settlement was adopted by the Board on August 22, 2000, with an effective date of September 21, 2000.

4. As part of the stipulated settlement, Respondent admitted to certain allegations in the Second Amended and First Supplemental Accusation relating to a failure to keep and maintain records of acquisition and disposition of dangerous drugs in three subject pharmacies.

///

///

///

///

///

///

///

---

[1] *In the Matter of the Accusation Against La Botica Pharmacy; Khaled Hussein-Ahmed aka Khaled Ahmed Hussein, Owner; and Anne V. Tadini, Pharmacist-in-Charge,* Case No. 2098; OAH No. L1999030089.

5. As a result of the stipulated settlement, Respondent's pharmacist license was revoked. The revocation was stayed, and Respondent was placed on probation for three years under various terms and conditions, including but not limited to the following:

1. **ACTUAL SUSPENSION**

As part of probation, Respondent is suspended from the practice of pharmacy for forty (40) days beginning the effective date of this decision. During suspension, Respondent shall not enter any pharmacy area or any portion of the licensed the premises (*sic*) of a wholesaler, medical device retailer or any other distributor of drugs which is licensed by the Board, or any manufacturer, or where dangerous drugs, controlled substances or legend drugs are maintained. Respondent shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the Board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs or controlled substances . . . Respondent shall not direct or control any aspect of the practice of pharmacy. Subject to the above restrictions, Respondent may continue to own or hold an interest in any pharmacy in which he holds an interest at the time this decision becomes effective.

2. **OBEY ALL LAWS**

Respondent shall obey all federal and state laws and regulations substantially related to or governing the practice of pharmacy.

[¶] . . . [¶]

5. **COOPERATION WITH BOARD STAFF**

Respondent shall cooperate with the Board's inspectional program and in the Board's monitoring and investigation of the Respondent's compliance with the terms and conditions of his probation. Failure to cooperate shall be considered a violation of probation.

[¶] . . . [¶]

///

///

///

///

18. **VIOLATION OF PROBATION**

If Respondent violates probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke probation or an accusation is filed against Respondent during probation, the Board shall have continuing jurisdiction, and the period of probation shall be extended, until the petition to revoke probation is heard and decided. If Respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over Respondent, and probation shall automatically be extended until all terms and conditions have been met or the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty which was stayed.

The Coover Pharmacy Transaction

6. In approximately August of 1999, Respondent read an advertisement for the sale of Coover Pharmacy in San Pedro, California. He was interested in purchasing the pharmacy and reselling it quickly for a profit, and he contacted David Barry (Barry), a commercial real estate salesperson with whom he had previously done business. Barry arranged for a meeting between Respondent and the owner of Coover Pharmacy, Burton Fadish (Fadish). He informed Fadish that an individual named "Kal" was coming to view the pharmacy. Respondent represented himself as "Kal" at that meeting.

7. A few weeks later Barry notified Fadish that an offer had been made on Coover Pharmacy. A meeting took place between Respondent, Barry, Fadish, Fadish's wife, and an individual named Rashid. Fadish was given an Offer and Deposit on Sale of Business, indicating that the buyer of the pharmacy was Omar Latif and/or Assignees. Respondent had signed the name Omar Latif to the document. During the meeting, Fadish was surprised to learn that "Kal's" name was Omar Latif[2].

8. Respondent signed all subsequent documents relating to the sale of Coover Pharmacy as Omar Latif. The sale was completed in approximately October 1999.

9. Respondent is not, and has never been, Omar Latif. Omar Latif's father is the cousin of Respondent's mother. At the time of the Coover Pharmacy sale, Omar Latif was in his early 20's. Although Respondent claims that his involvement in the Coover Pharmacy sale was only to assist Omar Latif in purchasing the pharmacy, Omar Latif was not involved in the transaction in any way. In fact, Omar Latif did not even make the down payment on the pharmacy. The down payment was made by Respondent's wife, Sandra Cervantes (Cervantes).

---

[2] During the hearing, Fadish identified Respondent as the individual who represented himself as both Kal and Omar Latif.

10. Barry dealt only with Respondent on the buyer's side of the transaction. He never met Omar Latif or Cervantes.

11. At the time he sold Coover Pharmacy, Fadish reasonably believed he was selling it to Respondent, and that Respondent's name was Omar Latif. He did not learn otherwise until June 2000 when he was notified that the matter was being investigated.

12. After the sale was completed, Fadish remained on as pharmacist-in-charge, and was paid a salary. Respondent represented to Fadish that Respondent would obtain a new pharmacy permit, but he failed to do so. Instead, the pharmacy continued to be run under Fadish's permit.

13. The real Omar Latif went to work in Coover Pharmacy, bringing in the mail and making deliveries. Fadish continued to run the pharmacy. Fadish and Cervantes were the only signatories on the pharmacy's checking account. At one point, Omar Latif gave Cervantes a written power of attorney to sign documents for him.

14. While Omar Latif worked at Coover Pharmacy, Fadish was under the mistaken belief that there were two Omar Latif's. Respondent did nothing to disabuse Fadish of that misconception. Fadish did not believe that the young Omar Latif, who made deliveries for the pharmacy at Fadish's direction, was the owner of the pharmacy.

15. Syuzan Pogosyan, a long-time employee of Respondent's, testified that she worked at Coover Pharmacy after the sale, performing billing and inventory functions, and that Omar Latif both managed the pharmacy and delivered medications. She also testified that Omar Latif was "young and inexperienced," and therefore asked questions of Respondent and asked Respondent to sign documents for him. Ms. Pogosyan's testimony was not credible for the following reasons:

a. If Omar Latif was "young and inexperienced," it is illogical that he would immediately manage Coover Pharmacy. It is far more logical that he would work in the business, beginning in a position such as delivery person, in order to learn the business's operations.

b. Fadish was credible in his testimony that he continued to operate the pharmacy after the sale as he had done for many years before. To believe that he would remain on and allow the business to be run by a "young and inexperienced" individual, while the business was operating under his pharmacy permit, defies both logic and reason.

c. It is also illogical that Omar Latif would not be a signatory on the checking account of his own business.

///

///

d. Ms. Pogosyan's testimony that Omar Latif asked Respondent to sign documents on his behalf was inconsistent with the fact that he executed a written Power of Attorney for Cervantes, but not for Respondent. In addition, since Ms. Pogosyan testified that she worked at Coover Pharmacy after Omar Latif became the owner, any request Omar Latif made to Respondent to sign documents for him, would necessarily have occurred after the sale of the pharmacy was completed. Therefore, even if Ms. Pogosyan's testimony was true, it would be irrelevant to the issue of whether Omar Latif authorized Respondent to sign his name on the sales documents.

e. If Omar Latif was indeed the owner and manager of Coover Pharmacy, and if he regularly received advice from Respondent, who was an experienced owner of between four and six pharmacies, one would expect Omar Latif to have learned from Respondent that he was required to obtain a pharmacy permit in a timely manner. At the hearing, Respondent acknowledged that he knew a pharmacy owner must notify the board of a change in ownership, and that he assumed Omar Latif would do so. He did not testify that he instructed Omar Latif to obtain a pharmacy permit, and Omar Latif never did so.

f. Following the sale, Respondent signed the name Omar Latif on a Fictitious Business Name Statement. Cervantes also signed the same document, indicating that she and Omar Latif intended to do business under the name Coover Pharmacy. It is illogical that Respondent would sign another individual's name to such an official document when the other signatory had a written power of attorney to sign on Omar Latif's behalf.

g. If the real Omar Latif owned Coover Pharmacy, it strains credulity to believe he would not inform Fadish of that fact.

16. On April 12, 2002, Valerie Knight, an Inspector for the Board, issued a Violation Notice to Respondent alleging that he had violated Business and Professions Code[3] sections 4110, subdivision (a) and 4201, subdivision (f), "in that Pharmacist Khaled Ahmed transferred and conducted Coover Pharmacy without a pharmacy permit issued to him from the Board" and section 4332 "in that Pharmacist Khaled Ahmed falsely represented himself as Omar Latif during the purchase of Coover Pharmacy from Pharmacist Burton Fadish."

///

///

///

///

///

---

[3] All statutory references are to the Business and Professions Code unless otherwise indicated.

17. During the time that Respondent owned Coover Pharmacy using the name Omar Latif, a few conflicts concerning money arose between Fadish and Respondent. Fadish raised his hourly salary from $35 to $100, and Respondent later accused Fadish of taking $50,000 from the pharmacy's account. Fadish finally notified Respondent's attorney that he intended to resign from his position as Coover Pharmacy's pharmacist-in-charge. At the administrative hearing, Fadish admitted that he had testified in a deposition that his memory was not very good. However, nothing in Fadish's testimony indicated either that his memory was faulty or that he was biased against Respondent. Fadish's testimony is viewed as credible. However, the fact that it was Respondent, rather than Cervantes or Omar Latif, who accused Fadish of taking $50,000 from the pharmacy's account, raises an inference that it was Respondent, rather than Cervantes or Omar Latif, who was the true owner of Coover Pharmacy.

18. In December 2000, Coover Pharmacy was sold to Fariborz David Massoudi (Massoudi). Cervantes signed the Deed of Trust and Assignment of Rents relating to that sale as Attorney in Fact for Omar Latif.

19. Respondent testified that he merely assisted Omar Latif in purchasing Coover Pharmacy because he had more business experience than his young relative. Respondent further testified that he never intended to own the pharmacy under Omar Latif's name. That testimony was not credible. Had Respondent merely been assisting Omar Latif with the benefit of his business experience, Omar Latif could have signed the documents himself as the new owner of Coover Pharmacy, based on advice he received from Respondent.

20. Between October 1999 and December 2000, Respondent owned Coover Pharmacy under the false name of Omar Latif. He did not, however, actively participate in the day to day operations of the pharmacy.

21. At the hearing, Respondent admitted that he does not recall ever seeing Omar Latif sign any documents in connection with the pharmacy Omar Latif purportedly owned[4]. Respondent never obtained a written Power of Attorney from Omar Latif.

///

///

///

///

---

[4] In a declaration admitted into evidence pursuant to Government Code section 11513, subdivision (d), Sandra Cervantes claimed that Omar Latif personally signed certain escrow papers that were attached to Cervantes' declaration. No documents were attached to the declaration. Since that portion of the Cervantes declaration neither supplements nor explains other evidence, it constitutes inadmissible hearsay and is not considered.

Costs

22. Pursuant to Business and Professions Code section 125.3, Complainant's counsel requested that Respondent be ordered to pay to the Board $15,114.50 for its costs of prosecution of the case. No evidence of investigative costs was offered. The requested costs consist of $12,194.50 of incurred Attorney General's fees, and $2,920.00 in anticipated Attorney General's fees for 20 hours to be spent on the case between December 5, 2005, the date of the cost declaration, and December 6, 2005, the day the hearing was scheduled to commence. Thus, Complainant's counsel declared that it was her "good faith estimate" that she would bill the Board for 20 hours of time in a single day at an hourly rate of $146. Complainant offered no evidence that some or all of the anticipated costs were actually incurred. They are therefore disallowed.

23. The case was originally assigned to Deputy Attorney General Antonio J. Marino. It was re-assigned to Jennifer S. Cady on or around June 10, 2003. It may be reasonably inferred that a certain amount of "overlap" was necessary in order for Ms. Cady to familiarize herself with the file. Pursuant to Government Code section 11425.50, subdivision (c), three hours is deemed a reasonable amount of time for that task. During fiscal years 2002-2003 and 2003-2004, Ms. Cady's hourly rate was $120. Therefore, $360 will be deducted from the requested costs.

24. In addition, Ms. Cady's cost declaration indicated that, during fiscal year 2004-2005, Deputy Attorney General Kimberlee D. King billed 1.25 hours to the file at an hourly rate of $139. No evidence was offered to explain Ms. King's involvement with the case or the work she performed on it. The $173.75 billed for Ms. King's work is disallowed.

25. Although Complainant did not prevail on every cause for discipline alleged in the First Amended Accusation and Petition to Revoke Probation, no set-off for the unproven matters is warranted in this case because the time spent in preparing to try the unproven matters is not deemed appreciably different from the time spent in preparing to try the proven matters.

26. Based on the requested cost recovery and the deductions referenced above, Complainant will recover costs of $11,660.75.

LEGAL CONCLUSIONS

Pursuant to the foregoing Factual Findings, the Administrative Law Judge makes the following legal conclusions:

1. Cause exists to discipline Respondent's pharmacist license, pursuant to Business and Professions Code sections 4110, subdivision (a), and 4201, subdivision (f), for failure to obtain a pharmacy permit, as set forth in Findings 6 through 21.

///

2. Cause does not exist to discipline Respondent's pharmacist license, pursuant to Business and Professions Code section 4322, for false representation in the securing of licensure or fraudulent representation of being registered, as set forth in Findings 6 through 21. Respondent made no attempt to obtain a pharmacy permit for Coover Pharmacy and therefore made no false representations in that regard; and he did not represent himself as being registered in connection with Coover Pharmacy.

3. Cause exists to discipline Respondent's pharmacist license, pursuant to Business and Professions Code section 4301, subdivisions (f), (g), (o), and (p), for unprofessional conduct, as set forth in Findings 6 through 21.

4. Cause does not exist to discipline Respondent's pharmacist license, pursuant to Business and Professions Code section 4301, subdivision (q), for engaging in conduct that subverts or attempts to subvert a Board investigation. No evidence was offered on that issue.

5. Cause exists to revoke Respondent's probation, for noncompliance with Probationary Term 2, as set forth in Findings 6 through 21.

6. Cause does not exist to revoke Respondent's probation, for noncompliance with Probationary Term 1 in that Respondent owned, but did not operate Coover Pharmacy during the time his license was suspended. Pursuant to the same probationary term, he was permitted to own or hold an interest in any pharmacy in which he held an interest as of the effective date of the decision to adopt the stipulated settlement. He already owned Coover Pharmacy as of the effective date of that decision.

7. Cause does not exist to revoke Respondent's probation, for noncompliance with Probationary Term 5. No evidence was offered to show that Respondent failed to cooperate with the Board's staff. In fact, the Board's investigator admitted that she did not interview Respondent in connection with his purchase of Coover Pharmacy.

8. Cause exists to order Respondent to pay costs claimed under Business and Professions Code section 125.3, as set forth in Findings 22 through 26.

9. Respondent purchased Coover Pharmacy using a false name and then failed to obtain a pharmacy permit for the business. His use of Fadish's pharmacy permit was not an acceptable alternative because that permit was not transferable. (Section 4201, subdivision (f).)

10. Although Respondent claimed he merely assisted his inexperienced and unknowledgeable relative in purchasing the pharmacy, that claim was not borne out by the evidence, which established that Respondent caused the former owner of Coover Pharmacy and the public to believe he was Omar Latif, while making it appear to the Board that the real Omar Latif owned the pharmacy. At no time did the real Omar Latif demonstrate any indicia of pharmacy ownership, either prospective or actual.

11. Respondent claimed that he had Omar Latif's consent to sign his name to certain documents, including those involved with the purchase of the pharmacy. However, unlike his wife, Respondent failed to obtain a written Power of Attorney from Omar Latif. What little evidence was offered to establish that Omar Latif had given his consent for Respondent to sign his name on legally binding documents was not credible. Further, on the first day of hearing, Respondent, through his counsel, asserted that he would obtain a declaration from Omar Latif, whom he claimed was in Australia at the time of the hearing. Respondent failed to do so, and he failed to provide an explanation for that failure. Therefore, the remainder of Respondent's evidence, offered to show that he had Omar Latif's consent to purchase the pharmacy in Omar Latif's name, is viewed with distrust. (Evid. Code § 412.)

12. Although Complainant failed to prove that Respondent actually operated the pharmacy, Respondent did continue to own it until its sale in December 2000, well into his probationary period in Case No. 2098.

13. In addition to his failure to obtain a pharmacy permit for Coover Pharmacy, Respondent's conduct, with respect to Coover Pharmacy, constituted knowing and intentional misrepresentations which he perpetuated until the pharmacy was sold approximately 14 months after the purchase (section 4301, subdivision (g)). As set forth in section 4301, subdivision (f), his acts involved dishonesty, fraud, deceit, and moral turpitude. In *Clerici v. Department of Motor Vehicles* (1990) 224 Cal.App.3d 1016, 1027, the court stated:

> Our Supreme Court has defined moral turpitude as "an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." (In re Craig (1938) 12 Cal.2d 93, 97 [82 P.2d 442].) Moral turpitude has also been described as any crime or misconduct committed without excuse, or any "dishonest or immoral" act not necessarily a crime. (In re Higbie (1972) 6 Cal.3d 562, 569 [99 Cal.Rptr. 865, 493 P.2d 97].) The definition depends on the state of public morals and may vary according to the community or the times, as well as on the degree of public harm produced by the act in question. (Golde v. Fox (1979) 98 Cal.App.3d 167, 181 [159 Cal.Rptr. 864].) Its purpose as a legislated standard is not punishment but protection of the public. (Rice v. Alcoholic Beverage etc. Appeals Bd. (1979) 89 Cal.App.3d 30, 36 [152 Cal.Rptr. 285].)

///

///

///

///

///

14. Respondent argued that section 4301, subdivisions (f) and (g) apply only to the practice of pharmacy and interactions with the Board, and do not apply to private matters such as business transactions. That argument's lack of merit is apparent in the plain language of the statute. In *California Real Estate Loans, Inc. v. Wallace* (1993) 18 Cal.App.4th 1575, 1582, the Court stated:

> "The fundamental goal of statutory construction is to ascertain the intent of the Legislature to effectuate the purpose of the law. To determine that intent, we must look first to the statutory language itself, giving words their usual and ordinary meaning. [Citations.] We are not authorized to insert qualifying provisions and exceptions which have not been included by the Legislature, and may not rewrite a statute to conform to an intention which does not appear in the statutory language. [Citations.]

15. Section 4301 states in pertinent part:

> 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:
>
> [¶] . . . [¶]
>
> (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. (Emphasis added.)

16. The plain language of the statute is unambiguous and unequivocal. The acts contemplated by section 4301, subdivisions (f) and (g) are not limited to the practice of pharmacy and or interactions with the Board, and shall not be so construed.

17. Respondent also argued that this action should not have been brought as a Petition to Revoke Probation in Case No. 2098 because (1) the sale of the pharmacy pre-dated the effective date of the Board's decision to adopt the stipulated settlement; (2) his probation terminated in 2003; and (3) he was not afforded notice that his probation had been extended. Those arguments are not well taken.

///

///

18. It is true that Respondent's initial misrepresentation occurred before he was placed on probation in Case No. 2098. However, as of the effective date of his disciplinary order in that case, he continued to perpetuate that misrepresentation by owning Coover Pharmacy under a false name, failing to inform the Board and Fadish of the actual facts relating to the ownership of the pharmacy, failing to obtain a pharmacy permit, and using the real Omar Latif as a "straw man" for the transaction. Those representations continued until the pharmacy was again sold, in December 2000, well into Respondent's probationary period. Given that Respondent was already on probation at the time of the December 2000 sale, it is not surprising that Respondent's wife used her Power of Attorney to sell the pharmacy on behalf of "Omar Latif," rather than Respondent simply signing the name Omar Latif on the sales documents as he did when he purchased the business.

19. By perpetuating the misrepresentations relating to his purchase of Coover Pharmacy, and by his continuing failure to obtain a pharmacy permit, Respondent failed to comply with Probationary Term No. 2. Therefore, Complainant was justified in filing a Petition to Revoke Probation. Further, by violating one of the conditions of probation, Respondent's probation was extended pursuant to Probationary Term No. 18. Although, as that probationary term expressly states, the extension of probation was automatic, Respondent was nonetheless placed on notice of his probation violation when he received the April 12, 2002 Violation Notice from the Board investigator.

20. However, Complainant attempted to further justify the Petition to Revoke Probation on the basis of a certification by Complainant stating that, in addition to his failure to comply with the probation terms alleged in the First Amended Accusation and Petition to Revoke Probation, Respondent also failed to provide written quarterly reports pursuant to Condition 3, and failed to retain an independent consultant pharmacist to review pharmacy operations pursuant to Condition 9. The certification was admitted over Respondent's hearsay objection on grounds that it fell under the hearsay exception for records by a public employee (Evid. Code § 1280.) However, violations of Conditions 3 and 9 are not alleged in the operative pleading. Accordingly, to find cause to revoke Respondent's probation on those grounds would constitute a deprivation of Respondent's due process rights. Therefore, the allegations of violations of Conditions 3 and 9 are not considered.

21. Respondent's wrongdoing was directly related to the ownership of a pharmacy. He misrepresented his identity and used a "straw man" to pose as the prospective and actual owner of the pharmacy. He perpetuated his misrepresentations to the former pharmacy owner and to the public, while using another's name to attempt to circumvent the statutory requirement to obtain a pharmacy permit. Finally, he continued to perpetuate his wrongful acts even after his pharmacist license had been placed on probation and suspended in connection with a different disciplinary matter.

22. Respondent's acts are not of such a nature that he can be rehabilitated by way of another probationary period or even license suspension of up to one year. The public health, safety, welfare and interest cannot be adequately protected should Respondent be permitted to retain his pharmacist license.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

License number RPH 45552, issued to Respondent, Khaled Hussein-Ahmed, is revoked pursuant to Legal Conclusions 1, 3 and 5, separately and together. Respondent shall relinquish his wall license and pocket renewal license to the Board within 10 days of the effective date of this decision. Respondent may not petition the Board for reinstatement of his revoked license for three years from the effective date of this decision. Respondent shall pay to the board its costs of prosecution in the amount of $11,660.75 within 15 days of the effective date of this decision.

DATED: March 9, 2006

H. Stuart Waxman

H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation and Petition to Revoke Probation Against: KHALED HUSSEIN-AHMED, a.k.a. Khaled Ahmed Hussein, Omar Latif, and Kal Ahmed Original Pharmacist License No. RPH 45552 Respondent.	Case No. 2555 OAH No. L2004110231

DECISION

The attached proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Board of Pharmacy as its Decision in the above-entitled matter.

This Decision shall become effective on May 17, 2006.

IT IS SO ORDERED this 17th day of April 2006.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

STANLEY W. GOLDENBERG
Board President

lcp

BILL LOCKYER, Attorney General
of the State of California
JENNIFER CADY, State Bar No. 100437
Supervising Deputy Attorney General
California Department of Justice
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2442
Facsimile: (213) 897-2804

Attorneys for Complainant

BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation and Petition to Revoke Probation Against: KHALED HUSSEIN-AHMED, a.k.a., KHALED AHMED HUSSEIN, OMAR LATIF, and KAL AHMED P.O. Box 667 Huntington Park, CA 90255 Original Pharmacist License No. RPH 45552 Respondent.	Case No. 2555 **ACCUSATION AND PETITION TO REVOKE PROBATION**

Complainant alleges:

PARTIES

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

2. On or about September 1, 1992, the Board of Pharmacy issued Original Pharmacist License No. RPH 45552 to Khaled Hussein-Ahmed, also known as, Khaled Ahmed Hussein, Omar Latif, and Kal Ahmed (Respondent). The license was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2005, unless renewed.

///

JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), under the authority of the following sections of the Business and Professions Code (Code).

4. Section 118(b) of the Code provides that the suspension, expiration, or forfeiture by operation of law of a license does not deprive the Board of authority or jurisdiction to institute or continue with disciplinary action against the license or to order suspension or revocation of the license, during the period within which the license may be renewed, restored, reissued or reinstated.

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

6. 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:

"(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.

[¶] . . . [¶]

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

"(p) Actions or conduct that would have warranted denial of a license.

"(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the board."

7. Section 4110(a) of the Code states:

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

8. Section 4201(f) of the Code states:

"Notwithstanding any other provision of law, the pharmacy license shall authorize the holder to conduct a pharmacy. The license shall be renewed annually and shall not be transferable."

9. Section 4322 of the Code states:

"Any person who attempts to secure or secures licensure for himself or herself or any other person under this chapter by making or causing to be made any false representations, or who fraudulently represents himself or herself to be registered, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding five thousand ($5,000), or by imprisonment not exceeding 50 days, or by both that fine and imprisonment."

10. Section 810 of the Code states:

"a) It shall constitute unprofessional conduct and grounds for disciplinary action, including suspension or revocation of a license or certificate, for a health care professional to do any of the following in connection with his or her professional activities:

"(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.

"(2) Knowingly prepare, make, or subscribe any writing, with intent to present or use the same, or to allow it to be presented or used in support of any false or fraudulent claim.

"(b) It shall constitute cause for revocation or suspension of a license or certificate for a health care professional to engage in any conduct prohibited under Section 1871.4 of the Insurance Code or Section 550 of the Penal Code."

11. Section 125.3 of the Code states, 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.

FIRST CAUSE FOR DISCIPLINE

(Failure to Obtain a Pharmacy Permit)

12. Respondent is subject to disciplinary action under sections 4110(a) and 4201(f) of the Code, in that Respondent, in on or about September through October, 1999, transferred and conducted Coover Pharmacy without a pharmacy permit issued to him from the Board.

SECOND CAUSE FOR DISCIPLINE

(False Representation)

13. Respondent is subject to disciplinary action under section 4322 of the Code, in that Respondent, in on or about September through October, 1999, falsely represented himself as "Omar Latif" during the purchase of Coover Pharmacy from Pharmacist Burton Fadich.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

14. Respondent is subject to disciplinary action under sections 4300 and 4301(f), 4301(g), 4301(o), 4301(p), and 4301(q), for unprofessional conduct, on the grounds that Respondent fraudulently, knowingly, and willingly, violated, and conspired to violate with other persons, by engaging in the sale, transfer, and procurement of Coover Pharmacy without obtaining a pharmacy permit and by means of false representation, as more fully set forth in paragraphs 12 and 13 above.

FOURTH CAUSE FOR DISCIPLINE

(False or Fraudulent Claims)

15. Respondent is subject to disciplinary action under section 4300 and 4301, subdivisions (f), (g), (o) and (p) as provided in section 810 of the Code, in that Respondent

knowingly presented or cause to be presented false or fraudulent claims for payment under a contract of insurance, as follows:

a. In and about August 1998, Respondent was president and director of Apex Reference Lab, Inc., a corporation formed to manage Apex Medical Laboratory, a clinical laboratory located in Huntington Park, California. During the period between on and about April 1998 to on or about February 2000, Respondent was the owner/operator of Clinica Santa Maria, Clinica Kholy and Clinica Leslie.

b. From between on or about April 1998, and continuing at least until February 2000, Respondent knowingly and willfully executed and attempted to execute a scheme and artifice to defraud health care benefit programs, in that Respondent falsely billed and caused to be billed the Medi-Cal Program and the Family PACT Program for certain laboratory testing he claimed had been completed for Medi-Cal and Family PACT recipients, when in truth and in fact, as he well knew: (1) Apex Medical Laboratory did not have the equipment to perform certain of the tests, even though the laboratory billed the Medi-Cal and Family PACT programs as if the tests had been conducted; (2) Apex Medical Laboratory did not purchase sufficient reagents with which to perform certain other tests, even though the laboratory billed the Medi-Cal and Family PACT programs for the performance of such tests; (3) many of the laboratory requisitions were false in that they in fact were not referred by the named referring provider; and (4) Respondent directed personnel at clinics operated by him to request multiple laboratory tests on each patient, many of which were medically unnecessary, which tests were then referred to Apex Medical Laboratory at Respondent's direction. As a result of the above scheme (see paragraph 15 (a) and (b)), Respondent defrauded and attempted to defraud the Medi-Cal and Family PACT programs of in excess of $14 million. A Federal Indictment is currently pending in the above matter in Federal District Court, Eastern District of California, in *United States v. Khaled Ahmed*, Case No. CRS-02-0097 LKK (filed March 7, 2002).

c. Respondent also owned and operated a pharmacy group called La Botica Pharmacy, which had three locations in Huntington Park, California. Each of the pharmacies was a Medi-Cal provider purportedly providing necessary medical supplies and equipment to

Medi-Cal recipients.

d. Between on or about January 1996, and continuing at least until April 2000, Respondent knowingly and willfully executed and attempted to execute a scheme and artifice to defraud health care benefit programs in that Respondent falsely billed and caused to be falsely billed the Medi-Cal and Family PACT programs for excessive and/or medically unnecessary treatments and services, and excessive and/or medically unnecessary prescriptions for pharmaceutical drugs and family planning supplies. Specifically, Respondent: (1) billed for greater and more expensive services that were actually provided; (2) billed for services purportedly rendered by certain doctors that those doctors did not perform; (3) knowingly billed for services performed by individuals not licensed to perform those services by the State of California; (4) ordered and billed for excessive and unnecessary prescription drugs and clinical testing procedures; (5) billed the Family PACT Program for more medical supplies than were actually provided to the patients; (6) billed for medically unnecessary pharmaceuticals; (7) billed for filling prescriptions that purportedly had been issued by licensed California doctors from specific locations knowing the doctors had not issued those prescriptions and indeed, were not at the locations shown on the prescription; and (8) knowingly falsely billed for services by a doctor or medical personnel purportedly at a specific location when they knew the billing was false.

e. As a result of the scheme set forth in paragraphs 15 (c), and (d), above, Respondent billed the Medi-Cal Program and the Family Pact program for more than $40 million in fraudulent claims. A Federal Indictment is currently pending in this matter (see paragraphs 15 (c) and (d), above, in Federal District Court, Eastern District of California, in *United States v. Khaled Ahmed*, Case No. CRS 03-0432 GEB (filed October 9, 2003).

DISCIPLINE CONSIDERATIONS

16. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about September 21, 2000, in a prior disciplinary action entitled In the Matter of the Accusation Against Khaled Hussein-Ahmed before the Board of Pharmacy, in Case Number 2098. Respondent's Original Pharmacist License No. RPH 45552

was revoked, stayed for three (3) years with terms and conditions for violating sections 4301(f), 4301(g), 4301(j), 4301(n), 4301(o), 4301(q), 4008(a), 4101(a), 4116(a), 4165(a), 4201(a), 4201(b), 4322, 4332, 4332(c), 4333, 4333(a), 4333(b), 4305(a), 4305(c), 4342(a), 4081(a), and 4081(b). That decision is now final and is incorporated by reference as if fully set forth.

PETITION TO REVOKE PROBATION

(Noncompliance with Terms and Probation)

1. Effective September 21, 2000, Respondent's Original Pharmacist License No. RPH 45552 was revoked. However, revocation was stayed and Respondent was placed on probation for three (3) years with terms and conditions including, but not limited to the following:

A. Term No. 1: "Actual Suspension: As part of probation, Respondent is suspended from the practice of pharmacy for forty (40) days beginning the effective date of this decision. During suspension, Respondent shall not enter any pharmacy area of any portion of the licensed premises of a wholesaler, medical device retailer or any other distributor of drugs which is licensed by the Board, or any manufacturer, or where dangerous drugs, controlled substances or legend drugs are maintained. Respondent shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall Respondent manage, administer, or be a consultant to any licensee of the Board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs or controlled substances. Respondent shall not direct or control any aspect of the practice of pharmacy. Subject to the above restrictions, Respondent may continue to own or hold an interest in any pharmacy in which he holds an interest at the time this decision becomes effective.

B. Term No. 2: "Obey all laws: Respondent shall obey all federal and state laws and regulations substantially related to or governing the practice of pharmacy.

C. Term No. 5: "Cooperation with the Board Staff: Respondent shall cooperate with the Board's monitoring and investigation of the Respondent's compliance with the terms and conditions of his probation. Failure to cooperate shall be considered a violation of probation.

D. Term No. 18: "Violation of Probation: If Respondent violates probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke probation or an accusation is filed against Respondent during probation, the Board shall have continuing jurisdiction, and the period of probation shall be extended, until the petition to revoke probation is heard and decided. If Respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over Respondent, and probation shall automatically be extended until all terms and conditions have been met or the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty which was stayed."

GROUNDS FOR REVOKING PROBATION

2. Grounds exist for revoking probation and reimposing the Order of revocation of Respondent's license in that Respondent failed to comply with the following terms of probation:

A. Probation Term No. 1: Respondent failed to adhere to the suspension from the practice of pharmacy for forty days beginning the effective date of the decision (September 21, 2000), in that in or about October 2000, Respondent was operating Coover Pharmacy and billing Medi-cal for prescriptions filled at the pharmacy under the name of "Omar Latif," in violation of Condition No. 1.

B. Probation Term No. 2: Respondent failed to obey all state and local laws, in that, on or about April 12, 2002, Respondent was issued a "Violation Notice," for transferring and conducting Coover Pharmacy without a Pharmacy permit issued to him by the Board, and for falsely representing himself as "Omar Latif" during the purchase of Coover Pharmacy from Pharmacist Burton Fadich, in violation of Condition No. 2.

C. Probation Term No. 5: Respondent failed to cooperate with the Board's staff, in that Respondent, while on probation, used a false name in order to operate Coover Pharmacy and fraudulently billed Medi-cal under false pretenses, thereby creating false

misrepresentations to the Board of his actions and procuring their investigation, in violation of Condition No. 5

D. Probation Term No. 18: As outlined more fully in sub-paragraphs (A), (B), and (C), above, Respondent has not complied with the terms and conditions of probation and has violated probation. The Board has continuing jurisdiction and Respondent is subject to revocation and other discipline pursuant to condition 18.

PRAYER

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

1. Revoking or suspending Original Pharmacist License No. RPH 45552, issued to Khaled Hussein-Ahmed ;

2. Ordering Khaled Hussein-Ahmed to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 2/25/04

P. F. Harris

PATRICIA F. HARRIS
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

03583110-LA2002AD1301
jz
CML (11/18/2003)

ahmed-acc.6