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

In the Matter of the Accusation and Petition to Revoke Probation Against: TAREK M. EBRAHIM 222 Monterey Rd. #1206 Glendale, CA 91206 Pharmacist License No. RPH 36038 and ECHO PARK PHARMACY 1310 Echo Park Avenue TAREK MOHAMED EBRAHIM Pharmacist–in-charge Pharmacy Permit No. PHY 40631 and FARMACIA PACIFICA 2550 C East Saluson Avenue Huntington Park, California 90255 TAREK M MOHAMED EBRAHIM Pharmacist-in-charge Original Pharmacy Permit No. PHY-34312, Respondents.	Case No. 2856 OAH No. L2005120303

PROPOSED DECISION

Sandra L. Hitt, Administrative Law Judge (ALJ), Office of Administrative Hearings, heard this matter at Los Angeles, California on March 6, 2006.

Complainant was represented by Anne Hunter, Deputy Attorney General.

Respondent was represented by Michael R. Hecker, Attorney at Law.

Evidence was received, the matter argued, and the case submitted for decision. The Administrative Law Judge hereby makes her factual findings, legal conclusions, and orders:

FACTUAL FINDINGS

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

2. On or about December 12, 1980, the Board issued Original Pharmacist License No. RPH 36038 to Respondent Tarek M. Ebrahim (Ebrahim). That license is due to expire on June 30, 2007, unless renewed.

3. On or about May 4, 1995, the Board issued Original Pharmacy Permit No. PHY 40631 to Tarek Pharmacy, Inc., to do business as Echo Park Pharmacy (Respondent Echo Park), with Ebrahim as the Pharmacist-in-charge. The permit was in full force and effect at all relevant times. The permit is due to expire on May 1, 2006, unless renewed.

4. On or about December 4, 1987, the Board issued Original Pharmacy Permit No. PHY 34312 to Tarek Pharmacy, Inc. to do business as Farmacia Pacifica (Respondent Farmacia Pacifica). This permit expired on December 1, 2003, and has not been renewed.

5. On or about June 3, 2002, the Board brought an Accusation against Ebrahim and Farmacia Pacifica in Pharmacy Board Case No. 2506. That case was settled pursuant to a stipulation between the parties whereby the pharmacist license issued to Ebrahim (RPH 36038) and the pharmacy permit issued to Farmacia Pacifica (PHY 34312) were placed on probation for three years. The stipulation for settlement and disciplinary order (Stipulation) became effective on May 2, 2003. As a condition of probation, Ebrahim and Farmacia Pacifica were ordered to (among other things):

- Obey all state and federal laws and regulations.
- Report to the Board any plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint.
- Provide the Board with quarterly status reports.
- Reimburse the Board for costs of $4,000 incurred for investigation and prosecution of Case No. 2506.
- Pay fines totaling $5,000 to the Board.
- Hire a consultant pharmacist responsible for reviewing pharmacy operations at Farmacia Pacifica on a quarterly basis for compliance with state and federal laws and regulations governing the practice of pharmacy and for compliance with the obligations of a pharmacist-in-charge.

- Pay the costs of probation monitoring.

As part of the Stipulation, Ebrahim agreed that should either he or Farmacia Pacifica violate probation in any respect, the Board may revoke probation and carry out the disciplinary order (revocation of Original Pharmacist License No. RPH 36038, issued to Tarek M. Ebrahim, and Original Pharmacy Permit No. PHY 34312, issued to Tarek Pharmacy, Inc. dba Farmacia Pacifica).

6. On or about May 11, 2004, a Board inspector performed a probation inspection of Echo Park Pharmacy, where Ebrahim was the owner and pharmacist-in-charge. During that investigation, the inspector found numerous deficiencies:

- Failure to have a correct and (demonstrably) current self assessment form, in violation of California Code of Regulations title 16, section 1715. The self-assessment form on-file at the pharmacy was on an outdated form, and was undated.
- Failure to have a complete and correct DEA inventory, in violation of California Code of Regulations title 16, section 1715. The DEA inventory on file at Echo Park at the time of the inspection was undated and unsigned by the pharmacist.
- Failure to maintain confidentiality of patient records, in violation of California Code of Regulations, title 16, section 1764. The inspector found several patient prescription labels discarded in the trash. While the trash can was not accessible to the public, Ebrahim admitted that the trash was emptied into a dumpster. The contents of the dumpster, while not available to the general public (the dumpster was kept in a gated parking lot), were presumably available to the trash collectors and whoever handled the trash at its final destination.
- Failure to remove expired drugs from the regular stock, in violation of California Business and Professions Code section 4342. Although some of the expired drugs were located on a separate shelf, this was not by design. Rather, they were injectables that had been kept on a high shelf and forgotten about. Moreover, Cyclosporine Capsules that had expired in March of 2003 were found among the regular stock, and Humulin-R Insulin, U-100, 10ML that expired on April 1, 2004, was found in the pharmacy refrigerator along with non-expired drugs.
- Allowing a non-pharmacist to receive, transcribe and interpret new prescriptions, in violation of Business and Professions Code section 4300 and California Code of Regulations, title 16, section 1717, subdivision (c), and section 1793.1, subdivisions (a) and (c). The inspector found that Ebrahim had allowed his pharmacy technician to take new prescriptions over the telephone on several occasions and allowed her to write a copy of a prescription from a prescription where only one of several prescriptions were filled, in violation of Business and Professions Code section 4300 and California Code of Regulations title 16, section 1793.1, subdivisions (a) and (c).

7. On February 24, 2005, in the Superior Court of California for Los Angeles County, in Case No. 5GL00494, Respondent was convicted, on a plea of guilty, of violating section 273, subdivision (a) of the California Penal Code (willful cruelty to children—a misdemeanor), for going to work and leaving his six and seven year old sons at home unattended during a holiday period. However, that action was dismissed pursuant to section 1385 of the Penal Code after Ebrahim completed required parenting classes.

8. Respondents did not comply with the Stipulation and its conditions for probation. Ebrahim did not "obey all state and federal laws and regulations;" he operated Echo Park in violation of various statutes and regulations: (e.g. he did not remove expired drugs from the saleable stock; he allowed his pharmacy technician to take new prescriptions over the telephone). He did not provide quarterly status reports to the Board; he did not report to the Board his plea of guilty in Case No. 5GL00494. As of the date of the hearing, neither Ebrahim nor Farmacia Pacifica had paid to the Board any of the costs or fines that Ebrahim had agreed to pay as a condition of probation.

Ebrahim testified that he had called and spoken to someone at the Board to inform it that he was unable to pay. He stated that he was instructed to write a letter explaining why he could not pay, which he did. This occurred around 2004. Ebrahim did not bring a copy of that letter to the hearing. He testified that he was unable to pay because during the time period of 2003 to about November of 2005, the IRS had levied his Medicare payments and accounts, causing him financial difficulties. Ebrahim offered to pay approximately $500 per month toward his obligation for costs and fines, but he did not adequately explain why he has not yet paid anything toward his obligation.

9. Complainant also faulted Ebrahim for failing to hire a consulting pharmacist to review the operations at Farmacia Pacifica on a quarterly basis (para. 17 of the Stipulation--Ex. 2). However, according to Complainant's own witness, inspector Nahral Bahrampour, as of at least October 6, 2003, Farmacia Pacifica had been closed for "some time." Perhaps the Stipulation should have included a provision that Ebrahim was to hire a consultant for any pharmacy operation he owned; however, that is not what the Stipulation provides. Echo Park Pharmacy is specifically mentioned in paragraph 17 of the Stipulation, but there is no requirement set forth for Ebrahim to hire a consulting Pharmacist for Echo Park. Therefore, failure to hire a consulting pharmacist for Echo Park is not a violation of the terms and conditions of probation. The law does not require a futile act. There would be no point in hiring a consulting pharmacist for a closed pharmacy. Complainant did not show that Farmacia Pacifica continued to operate after the effective date of the Stipulation. Therefore, Complainant did not meet its burden to demonstrate that failure to hire a consulting pharmacist violated the terms and conditions of either Respondent's probationary pharmacist license, or the probationary pharmacy permit of Farmacia Pacifica.

10. In aggravation, during an earlier inspection (in 2003), Ebrahim had been admonished by Board inspector Nahral Bahrampour about several of the same types of deficiencies which were cited by Inspector Valerie Knight in the 2004 inspection report.

11. In mitigation, during 2003 and 2004, Ebrahim was going through a difficult period in his life; his wife had left the United States for Egypt, where she remained for an extended period of time due to surgery. Apparently, the children's babysitter had left for Canada during this time period, as well. This left Ebrahim to care for his two young sons, six and seven years old, while trying to run his pharmacy business and provide for his family.

12. The Board's Costs of prosecution in this matter were $8270.75. In seeking reimbursement of these costs, Complainant did not present any evidence that it considered Ebrahim's ability to pay should his means of livelihood be adversely affected by the revocation of his pharmacist license. Ebrahim testified that from 2003 to approximately 2005 his Medicare payments and accounts had been levied by the IRS, causing him financial difficulty.

13. Respondent Ebrahim presented evidence at hearing to demonstrate that he had corrected a number of the deficiencies found by the inspectors. E.g.: He testified that he instructed the pharmacy technician not to take <u>any</u> prescriptions; he contracted with a disposal service to return expired drugs to the manufacturer or otherwise dispose of them; he now shreds prescription labels before discarding them in the trash.

LEGAL CONCLUSIONS

1. **Petition for Revocation**

Cause exists to revoke the probation of Ebrahim and Farmacia Pacifica, and re-impose the stayed discipline (revocation of Ebrahim's pharmacist license No. RPH 36038 and revocation of the Original Pharmacy Permit No. PHY 34312 issued to Tarek Pharmacy, Inc. to do business as Farmacia Pacifica). Respondents Ebrahim and Farmacia Pacifica did not comply with the terms of probation as agreed in the Stipulation (Finding 8).

2. **First Cause For Discipline (Failure to Have Current Assessment Form)**

Cause exists to discipline the license of Respondent Ebrahim and the pharmacy permit of Respondent Echo Park, pursuant to Business and Professions Code sections 4300 and 4301, subdivisions (j) and (o), in conjunction with California Code of Regulations, title 16, section 1715, for failure to maintain a current Pharmacy Self-Assessment form. Although the inspector found a self assessment form for Echo Park when she visited on May 11, 2004, the self-assessment had been done using an outdated form and it was undated and unsigned by a pharmacist, as required (Finding 6).

3. **Second Cause For Discipline (Failure to Have a Correct DEA Inventory)**

Cause exists to discipline the license of Respondent Ebrahim and the Pharmacy Permit of Respondent Echo Park, pursuant to Business and Professions Code sections 4300 and 4301, subdivision (j) and (o), in conjunction with California Code of Regulations, title 16, section 1715, for failure to maintain a correct DEA Inventory. Although the inspector found a DEA inventory for Echo Park when she visited on May 11, 2004, the inventory was undated and unsigned by a pharmacist (Finding 6), as required.

4. **Third Cause For Discipline (Failure to Maintain Patient Confidentiality)**

Cause exists to discipline the license of Respondent Ebrahim and the pharmacy permit of Respondent Echo Park, pursuant to Business and Professions Code sections 4300 and 4301, subdivision (j) and (o), in conjunction with California Code of Regulations, title 16, section 1764, for failure to maintain patient confidentiality. On May 11, 2004, when a Board inspector visited Echo Park, she found that several patient prescription labels had been discarded in the trash. Although, under the circumstances of the trash disposal process then in place at Echo Park, the general public would not be able to readily access patient information, access to this information by persons not entitled to it would have been at least possible. Echo Park was not rendering patient information unreadable before disposing of it in the trash (Finding 6), as required.

5. **Fourth Cause For Discipline (Failure to Remove Expired Drugs)**

Section 4300 of the Business and Professions Code permits the Board to take disciplinary action to suspend or revoke a license. Business and Professions Code section 4342, subdivision 9 (a), states, in pertinent part, that the board may institute any action or actions as may be provided by law and that, in its discretion, are necessary to prevent the sale of pharmaceutical preparations and drugs that do not conform to the standard and tests as to quality and strength provided in the latest edition of the United States Pharmacopoeia or the National Formulary. Ebrahim did not remove expired drugs from his saleable stock at Echo Park (Finding 6). Expired drugs are by definition non-conforming drugs. Therefore, cause exists to discipline the pharmacy permit of Respondent Echo Park and the license of Respondent Ebrahim, for violation of Business and Professions Code section 4342.

6. **Fifth Cause For Discipline (Allowing Non-pharmacist to Receive, Transcribe and Interpret Prescriptions)**

Cause exists to discipline the license of Respondent Ebrahim and the pharmacy permit of Respondent Echo Park, pursuant to Business and Professions Code section 4300 and section 4301, subdivision (j) and (o), in conjunction with California Code of Regulations, title 16, sections 1717 and 1793.1, subdivisions (a) and (c) for repeatedly allowing a pharmacy technician to receive new prescriptions, and allowing her to write a copy of a prescription from a prescription where only one of several prescriptions are filled (Finding 6).

7. **Sixth Cause For Discipline (Conviction of a Crime)**

Cause does not exist for the discipline of the pharmacy permit of Respondent Echo Park or the license of respondent Ebrahim for conviction of a crime. Although Respondent Ebrahim was convicted, on a plea of guilty, of violating section 273, subdivision (a) (willful cruelty to children—a misdemeanor), for leaving his six and seven year old sons at home unattended, that conviction was dismissed pursuant to California penal Code section 1385 (in furtherance of the interests of justice) after he completed required parenting classes (Finding 7).

In our case, Respondent Ebrahim was not criminally charged with any misconduct or unprofessional conduct relating to the operations of his pharmacy business. Rather, he went to work leaving his six and seven year old sons at home unattended during a holiday period while

his wife was in Egypt having surgery and the children's babysitter left to go to Canada (Findings 7 and 11).

Business and Professions Code section 490 provides that "A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A crime of moral turpitude would be considered substantially related to the qualifications, functions, or duties of a pharmacist. In *People v. Sanders* (1992) 10 Cal. App 4th 1268, 1275 the court found that while a violation of California Penal Code section 273, subdivision (d) constituted a crime of moral turpitude (citing *People v. Brooks* (1992) 3 Cal.App4th 669), a violation of penal Code section 273, subdivision (a) did not. Even though a crime may not be one of moral turpitude per se, it may nevertheless be a crime of moral turpitude as committed. Under the facts and circumstances of this case, the ALJ finds that Ebrahim's misdemeanor, as committed, did not constitute a crime of moral turpitude, is not substantially related to the licensed activity, and does not constitute a basis for discipline of Ebrahim's license or permits.

8. **Rehabilitation**

Although Respondent Ebrahim presented evidence to demonstrate that he had corrected a number of deficiencies found by the Board inspectors (Finding 13), Respondent's rehabilitation effort appears to be a case of "too little too late."

9. **Reimbursement of Costs**

Under Business and Professions Code section 125.3, the ALJ has authority to order the licensee to repay the reasonable costs of the investigation and enforcement of the case. Although costs of $8,270.75 for investigation and enforcement of this case would be reasonable, providing they are not duplicative of any costs of probation monitoring for which Ebrahim is already obligated, it would not be reasonable to require Ebrahim to pay these costs if his ability to earn a livelihood is greatly diminished. Under *Zuckerman v. State Board of Chiropractic Examiners*, (2002) 29 Cal.App.4th 32, 45 (Zuckerman), the Board must exercise its discretion to reduce or eliminate cost awards in a manner which will ensure that the statute does not deter licensees with potentially meritorious claims or defenses from exercising their right to a hearing. Also, in Zuckerman, the court held that the Board must consider the licensee's ability to make payment. In seeking reimbursement of $8,270.75, Complainant did not present any evidence or argument that it considered Ebrahim's ability to pay should his ability to earn a living be adversely affected by the revocation of his pharmacist license. (Finding 12).

Ebrahim already owes over $9000 to the board (findings 5 and 8). Revocation of Ebrahim's license and permits, thereby severely reducing his means of earning a livelihood, will make Ebrahim's restitution burden all the more onerous. The purpose of disciplining a professional or occupational license is to protect the public, not to punish the licensee. See, e.g. *Yakov v. Board of Medical Examiners* (1968) 68 Cal.2d 67. See, also, *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, and authorities cited therein. An award of costs in this matter would be unduly punitive.

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WHEREFORE, THE FOLLOWING ORDER is hereby made:

ORDER

Pharmacist license No. RPH 36038, issued to Tarek M. Ebrahim, pharmacy permit No. PHY 40631 issued to Tarek Pharmacy, Inc. dba Echo Park Pharmacy, and pharmacy permit No. PHY 34312, issued to Tarek Pharmacy, Inc. dba Farmacia Pacifica, are hereby REVOKED.

Date: April 4, 2006

Sandra L. Hitt

SANDRA L. HITT
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: TAREK M. EBRAHIM 222 Monterey Rd. #1206 Glendale, CA 91206 Pharmacist License No. RPH 36038 and ECHO PARK PHARMACY 1310 Echo Park Avenue TAREK MOHAMED EBRAHIM Pharmacist–in-charge Pharmacy Permit No. PHY 40631 and FARMACIA PACIFICA 2550 C East Saluson Avenue Huntington Park, California 90255 TAREK M MOHAMED EBRAHIM Pharmacist-in-charge Original Pharmacy Permit No. PHY-34312, Respondents.	Case No. 2856 OAH No. L2005120303

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 31, 2006.

IT IS SO ORDERED this 1st day of May 2006.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

STANLEY W. GOLDENBERG
Board President

lcp

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BEFORE THE
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In the Matter of the Accusation and Petition to Revoke Probation Against: TAREK M. EBRAHIM 222 Monterey Rd., #1206 Glendale, CA 91206 Pharmacist License No. RPH 36038 and ECHO PARK PHARMACY 1310 Echo Park Avenue Los Angeles, CA 90026 TAREK MOHAMED EBRAHIM Pharmacist-in-Charge Pharmacy Permit No. PHY 40631 and FARMACIA PACIFICA 2550 C East Saluson Avenue Huntington Park, California 90255 TAREK M. MOHAMED EBRAHIM Pharmacist-in-Charge Original Pharmacy Permit No. PHY 34312 Respondents.	Case No. 2856 OAH No. **ACCUSATION AND PETITION TO REVOKE PROBATION**

Complainant alleges:

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PARTIES

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

2. On or about December 12, 1980, the Board issued Original Pharmacist License No. RPH 36038 to Tarek M. Ebrahim (Respondent Ebrahim). The license will expire on June 30, 2007, unless renewed.

3. On or about May 4, 1995, the Board issued Original Pharmacy Permit No. PHY 40631 to Tarek Pharmacy, Inc., to do business as Echo Park Pharmacy (Respondent Echo Park), with Tarek M. Ebrahim as the Pharmacist-in-Charge. The Original Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein. The permit will expire on May 1, 2006, unless renewed.

4. On or about December 4, 1987, the Board of Pharmacy issued Original Pharmacy Permit No. PHY 34312 to Tarek Pharmacy Inc. to do business as Farmacia Pacifica (Respondent Farmacia). The Original Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein. It expired on December 1, 2003, without being renewed..

JURISDICTION

5. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

6. Section 4300 permits the Board to take disciplinary action to suspend or revoke a license.

7. Section 4301 states that 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:

. . . .

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

. . . .

"(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee. . . . [Except for convictions for violating statutes regulating controlled substances or dangerous drugs], the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee. . . ."

. . . .

"(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."

8. Section 118(b) states the suspension, expiration, or forfeiture by operation of law of a license issued by a Board in the department, or its suspension, forfeiture, or cancellation by order of the Board or by order of a court of law, or its surrender without the written consent of the Board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the Board of its authority to institute or continue a disciplinary proceeding against the licensee.

9. Section 4402 states, in pertinent part, that any pharmacist license not renewed within three years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the three-year period. However, the Board may proceed with any accusation filed before the three-year period expired.

10. Section 4342, subdivision (a), states, in pertinent part, that the Board may institute any action or actions as may be provided by law and that, in its discretion, are necessary,

to prevent the sale of pharmaceutical preparations and drugs that do not conform to the standard and tests as to quality and strength, provided in the latest edition of the United States Pharmacopoeia or the National Formulary.

11. Section 490 states that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

12. California Code of Regulations, title 16, section 1715 states, in pertinent(a) the pharmacist-in-charge of each pharmacy as defined under section 4029 or section 4037 of the Business and Professions Code shall complete a self-assessment of the pharmacy's compliance with federal and state pharmacy law. The assessment shall be performed before July 1 of every odd-numbered year. The primary purpose of the self-assessment is to promote compliance through self-examination and education.

13. California Code of Regulations, title 16, section 1773, states:

(a) Unless otherwise directed by the Board in its sole discretion, any pharmacist who is serving a period of probation shall comply with, but not limited to, the following conditions:

"(1) Obey all laws and regulations substantially related to the practice of Pharmacy;

"(2) Report to the Board or its designee quarterly either in person or in writing as directed; the report shall include the name and address of the probationer's employer. If the final probation report is not made as directed, the period of probation shall be extended until such time as the final report is made."

14. California Code of Regulations, title 16, section 1717, states:

. . . .

"(c) Promptly upon receipt of an orally transmitted prescription, the pharmacist shall reduce it to writing, and initial it, and identify it as an orally transmitted prescription. If the

prescription is then dispensed by another pharmacist, the dispensing pharmacist shall also initial the prescription to identify him or herself."

15. California Code of Regulations, title 16, section 1764 states that no pharmacist shall exhibit, discuss, or reveal the contents of any prescription, the therapeutic effect thereof, the nature, extent, or degree of illness suffered by any patient or any medical information furnished by the prescriber with any person other than the patient or his or her authorized representative, the prescriber or other licensed practitioner then caring for the patient, another licensed pharmacist serving the patient, or a person duly authorized by law to receive such information.

16. California Code of Regulations, title 16, section 1793.1 states that only a pharmacist, or an intern pharmacist acting under the supervision of a pharmacist, may:

"(a) Receive a new prescription order orally from a prescriber or other person authorized by law.

. . . .

"(c) Identify, evaluate and interpret a prescription.

"(d) Interpret the clinical data in a patient medication record system or patient chart."

17. Title 21, Code of Federal Regulations, section 1304.11, subdivision (a), provides in pertinent part:

"Each inventory shall contain a complete and accurate record of all controlled substances on hand on the date the inventory is taken, and shall be maintained in written, typewritten, or printed form at the registered location. . . . A separate inventory shall be made for each registered location and each independent activity registered, except as provided in paragraph (e)(4) of this section."

18. Title 21, Code of Federal Regulations, section 1304.11, subdivision (d), governs the inventory date for newly controlled substances: "On the effective date of a rule by the Administrator pursuant to §§ 1308.45, 1308.46, or 1308.47 of this chapter adding a substance to any schedule of controlled substances, which substance was, immediately prior to that date,

not listed on any such schedule, every registrant required to keep records who possesses that substance shall take an inventory of all stocks of the substance on hand. Thereafter, such substance shall be included in each inventory made by the registrant pursuant to paragraph (c) of this section."

19. Section 125.3 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 Have Current Assessment Form)

20. Respondents have subjected their license and permit to discipline pursuant to section 4300 for unprofessional conduct as defined in sections 4301, subdivisions (j) and (o), in conjunction with California Code of Regulations, title 16, section 1715, in that on or about May 11, 2004, when a Board inspector performed a probation inspection, the inspector found that Respondents failed to have a current Pharmacy Self-Assessment form at Echo Park Pharmacy.

SECOND CAUSE FOR DISCIPLINE

(Failure to Have Correct DEA Inventory)

21. Respondents have subjected their license and permit to discipline pursuant to section 4300 for unprofessional conduct as defined in sections 4301, subdivisions (j) and (o), in conjunction with California Code of Regulations, title 16, section 1715, in that on or about May 11, 2004, when a Board inspector performed a probation inspection, the inspector found that Respondents failed to have a complete DEA Inventory at Echo Park Pharmacy. The most current DEA Inventory completed for Echo Park Pharmacy was undated and unsigned by a pharmacist.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Patient Confidentiality)

22. Respondents have subjected their license and permit to discipline pursuant to section 4300 for unprofessional conduct as defined in sections 4301, subdivisions (j) and (o), in conjunction with California Code of Regulations, title 16, section 1764, in that on or about

May 11, 2004, when a Board inspector performed a probation inspection, the inspector found that Respondents had failed to maintain patient confidentiality. The inspector found discarded patient confidential records in Echo Park Pharmacy's trash receptacles. The receptacles were accessible to the public.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Remove Expired Drugs)

23. Respondents have subjected their license and permit to discipline pursuant to section 4300 for unprofessional conduct as defined in sections 4301, subdivisions (j) and (o), in violation of section 4342 in that on or about May 11, 2004, when a Board inspector performed a probation inspection, the inspector found that Respondents failed to remove expired drugs in the pharmacy stock of Echo Park Pharmacy. Respondents held the expired medications for sale in the pharmacy stock despite the Board's November 2003 direction to remove them.

FIFTH CAUSE FOR DISCIPLINE

(Allowing Non-Pharmacist to Receive, Transcribe and Interpret Prescriptions)

24. Respondents have subjected their license and permit to discipline pursuant to section 4300 for unprofessional conduct as defined in sections 4301, subdivisions (j) and (o), in conjunction with California Code of Regulations, title 16, sections 1717, subdivision (c), 1793.1, subdivisions (a) and (c), in that on or about May 11, 2004, when a Board inspector performed a probation inspection, the inspector found that Respondent Ebrahim allowed Irma M., a non-pharmacist, to receive and transcribe orally transmitted orders and to review patient charts and copy them as prescriptions.

SIXTH CAUSE FOR DISCIPLINE

(Conviction of a Crime)

25. Respondents have subjected their license and permit to discipline pursuant to section 4300 for unprofessional conduct as defined in sections 4301, subdivision (l), and 490 in that Respondent Ebrahim was convicted of a crime substantially related to the qualifications, functions, or duties of a pharmacist, by reason of the following:

a. On February 24, 2005, Respondent was convicted on a plea of guilty to

one count of violating section 273a, subdivision (b), of the Penal Code (willful cruelty to children - a misdemeanor) in the Superior Court of California, County of Los Angeles, North Central District, Case No. 5GL00494, entitled *People v. Tarek Mohammed Ebrahim.*

The circumstances surrounding the conviction are that at approximately 5:00 p.m. on December 29, 2004, two police officers responding to a 911 dispatch call, knocked on the door of respondent's residence. Respondent's sons, ages 6 and 7 years, opened the door. The officers determined that the boys had been left alone since approximately 9:30 a.m. that morning. The officers noted that the residence is a 12th story condo with a large exposed balcony. The sliding glass door to the balcony had no secondary or childproof locking mechanism. One of the boys showed the officer how he had opened the door to retrieve the Christmas lights that had been hung on the balcony railing.

PETITION TO REVOKE PROBATION

26. In a disciplinary action entitled "In the Matter of the Accusation Against Farmacia Pacifica, Tarek M. Mohamed Ebrahim, Pharmacist-in-Charge, Original Pharmacy Permit No. PHY 34312, and Tarek M. Mohamed Ebrahim, Original Pharmacist License No. RPH 36038," Case No. 2506, the Board, issued a decision, effective May 2, 2003, Respondent Ebrahim's license and Farmacia Pacifica's permit were revoked; however, the revocation orders were stayed, and both the license and permit were placed on probation for three (3) years under terms and conditions. A true and correct copy of that decision is attached as exhibit "A" and is incorporated by reference.

The terms and conditions included:

Condition 1 of Probation:

"1 **Obey All Laws.** Respondents shall obey all state and federal laws and regulations substantially related to or governing the practice of pharmacy.

Respondents shall report any of the following occurrences to the Board, in writing, within 72 hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal

controlled substances laws

- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- discipline, citation, or other administrative action filed by any state and federal agency which involves Respondent's license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling or distribution or billing or charging for any drug, device or controlled substance.

Condition 2 of Probation:

"2. **Reporting to the Board.** Respondents shall report to the Board quarterly. The report shall be made either in person or in writing, as directed. Respondents shall state under penalty of perjury whether there has been compliance with all the terms and conditions of probation. If the final probation report is not made as directed, probation shall be extended automatically until such time as the final report is made and accepted by the Board.

. . . .

Condition 10 of Probation:

"10 **Reimbursement of Board Costs.** Respondents admit that the reasonable costs of investigation and prosecution of this matter are $4000.00. Respondents shall pay the Board theses costs within two hundred seventy (270) days (9 months) of the effective date of this order.

The filing of bankruptcy by either Respondent shall not relieve Respondent Ebrahim of his responsibility to reimburse the Board its costs of investigation and prosecution.

Condition 11 of Probation:

"11. **Payment of Fines for Citation No. CI 1999 19010.** Respondent Ebrahim shall pay the Board the fines total $5000.00 in full by May 31, 2003.

. . . .

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Condition 17 of Probation:

"17. **Consultant for Owner or Pharmacist-in-Charge.** Respondent Ebrahim shall not supervise any intern pharmacist, perform any of the duties of a preceptor or serve as a consultant to any entity licensed by the Board. Respondent Ebrahim may be a pharmacist-in-charge. However, for the first two years of his probation Respondent Ebrahim shall retain an independent consultant at his own expense who shall be responsible for reviewing pharmacy operations at Farmacia Pacifica on a quarterly basis for compliance with state and federal laws and regulations governing the practice of pharmacy and for compliance by Respondent with the obligations of a pharmacist-in-charge. The consultant shall be a pharmacist licensed by and not on probation with the Board and whose name shall be submitted to the Board, for its prior approval, within 30 days of the effective date of this decision. Respondent shall not be a pharmacist-in-charge at more than one pharmacy or any pharmacy of which he is not the sole owner, except that Respondent Ebrahim may continue to serve as a pharmacist-in-charge at Echo Park Pharmacy as long as he is the only pharmacist at both Farmacia Pacifica and Echo Park Pharmacy and as long as the two pharmacies do not have overlapping hours of business."

GROUNDS FOR REVOKING PROBATION

26. Grounds exist for revoking probation and reimposing the Order of revocation of Respondent Ebrahim's Certificate and of Farmacia Pacifica's Permit in that they failed to comply with the following terms of probation:

FIRST CAUSE FOR VIOLATION OF PROBATION

(Failure to Obey State and Federal Laws)

27. Respondent Ebrahim violated Condition 1 of his probation in that he failed to obey State and Federal laws related as set forth in paragraphs 18 - 22 above. In addition, Respondent Ebrahim failed to notify the Board of his conviction within 72 hours of the occurrence as set forth above in paragraph 24.

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SECOND CAUSE FOR VIOLATION OF PROBATION

(Failure to Report to the Board)

28. Respondents Ebrahim and Farmacia violated Condition 2 of their probation in that they failed to report to the Board on a quarterly basis as required.

THIRD CAUSE FOR VIOLATION OF PROBATION

(Failure to Reimburse Board Costs)

29. Respondents Ebrahim and Farmacia violated Condition 10 of their probation in that they failed to pay the reasonable costs of investigation ands prosecution of $4000.00 within two hundred seventy (270) days (9 months) of the effective date of the order i.e., May 2, 2003.

FOURTH CAUSE FOR VIOLATION OF PROBATION

(Failure to Comply with Payment of Fines)

30. Respondent Ebrahim violated Condition 11 of his probation in that he failed to comply with payment of fines for Citation No. CI 1999 19010. Respondent Ebrahim failed to pay the Board the fines totaling $5000.00 by May 31, 2003.

FIFTH CAUSE FOR VIOLATION OF PROBATION

(Failure to Obtain a Consultant Pharmacist)

31. Respondents Ebrahim and Farmacia violated Condition 17 of their probation in that Respondent Ebrahim failed to obtain a consultant pharmacist as required.

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 36038, issued to Tarek M. Ebrahim.

2. Revoking or suspending Original Pharmacy Permit No. PHY 40631 issued to Tarek Pharmacy, Inc. to do business as Echo Park Pharmacy.

3. Revoking or suspending Original Pharmacy Permit No. PHY 34312 issued to Tarek Pharmacy, Inc to do business as Farmacia Pacifica.

4. Ordering Tarek M. Ebrahim and Tarek Pharmacy, Inc. 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; and

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

DATED: 9/23/05

P. F. Harris

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

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