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

In the Matter of the Accusation Against: NADIA AHMED ABDELGAWAD KASSEM 20648 Seton Hill Street Walnut, CA 91789 Pharmacy License No. RPH 39197 And GENE'S PHARMACY 1240 N. Hacienda, #105 La Puente, CA 91744 Nadia Ahmed Abdelgawad Kassem Pharmacist-In-Charge Pharmacy Permit No. PHY 41308 Respondent.	Case No. 2950 OAH Nos. L2006080786

PROPOSED DECISION

This matter was heard by Humberto Flores, Administrative Law Judge, Office of Administrative Hearings, on September 21, 2006, in Los Angeles, California.

Deputy Attorney General Kevin W. Bush represented complainant.

Noah E. Jussim, Attorney at Law, represented respondent.

Oral and documentary evidence was received and the matter was submitted. The Administrative Law Judge finds as follows:

FACTUAL FINDINGS

1. Patricia F. Harris made and filed the Accusation in her official capacity as Executive Director of the Board of Pharmacy (Board), Department of Consumer Affairs, State of California.

2. On March 12, 1985, the Board of Pharmacy issued Pharmacist's Number RPH 39197 to Nadia Ahmed Abdelgawad Kassem (respondent). Respondent's pharmacist's license is in full force and effect and has an expiration date of December 31, 2006.

3. On January 30, 1996, the Board issued Pharmacy Permit No. PHY 41308 to Gene's Pharmacy located at 1240 N. Hacienda Blvd., # 105, La Puente, California, with respondent as the Pharmacist-In-Charge.

4. On March 27, 2006, in the Superior Court of California, County of Los Angeles, (Case No. B255277), respondent was convicted on her plea of guilty to one count charging a violation of Penal Code section 487, subdivision (a), grand theft, a felony; and to one count charging a violation of Welfare and Institutions Code section 14107, subdivision (b)(1), presenting false and fraudulent claims for payment to Medi-Cal, a felony. Both crimes involve moral turpitude and are substantially related to the duties, functions and qualifications of a pharmacist.

5. Imposition of sentence was suspended and respondent was placed on formal probation for a period of five years on certain terms and conditions including conditions ordering respondent to pay restitution to the victim (Department of Health Services) in the amount of $372,632. Respondent was also ordered to pay $108,645 to the California Attorney General's Office for costs of investigation.

6. The facts and circumstances of the offense were that respondent allowed her husband to manage Gene's Pharmacy from 2002 to approximately October 2004. In that time, respondent allowed and/or facilitated her husband to present false and fraudulent claims to Medi-Cal for payment for drugs that had not been dispensed.

7. Respondent testified that she allowed her husband, who is not a pharmacist, to run the business due to her strong cultural beliefs. Respondent further asserts that she had no knowledge that her husband was issuing fraudulent requests for payment. Respondent's testimony regarding her lack of knowledge is not persuasive and is an impermissible collateral attack of her conviction. Further, respondent was the pharmacist-in-charge and is therefore responsible for the acts of her agents and employees, including her husband.

8. Complainant submitted certification of costs of investigation totaling $16,246. It seems that much of this case was investigated and prosecuted in the criminal matter by a separate division of the Attorney General's Office (Bureau of Medi-Cal Fraud & Elder Abuse). As set forth in Factual Finding 5, respondent was ordered by the criminal court to pay costs of investigation and prosecution totaling 108,645 to the Office of the Attorney General. It is unkown whether the Deputy Attorney General in this matter was able to reduce his preparation time based on investigative material prepared and maintained by the Bureau of Medi-Cal Fraud for the prosecution of the criminal matter. However, once respondent pled guilty and was convicted in the criminal case, the preparation time by the Deputy Attorney General in this matter should have been significantly reduced. Therefore, the costs of prosecution of this matter are reduced to $8,000. This amount is deemed reasonable under Business and Professions Code section 125.3.

DISCUSSION

Respondent accepted responsibility for the submission of false claims to Medi-Cal; however, she also asserted that her husband submitted the false claims without her knowledge. Respondent's assertion is not persuasive. By entering a plea of guilty, respondent admitted the elements of the alleged crimes and the underlying allegations of the criminal complaint (*Arenstein v. California State Board of Pharmacy* (1968) 265 Cal.App.2d 179, 190.). In this case, respondent admitted that she committed grand theft and that she submitted fraudulent claims for payment to Medi-Cal for drugs that were never dispensed. Even if respondent's assertion that she lacked actual knowledge were true, discipline would nevertheless be appropriate because as the owner and pharmacist-in-charge, respondent is responsible for the conduct of her employees or agents in the exercise of her license. As the licensee/owner of Gene's Pharmacy, respondent must insure that the license is not used in violation of the law (*Banks v. Board of Pharmacy* (1984) 161 Cal.App.3d 708, 713.).

The Board has the responsibility to protect the public. In discharging this responsibility, consideration is also given to the recent date of respondent's conviction and the seriousness of the offenses. In this case, revocation is the appropriate discipline.

LEGAL CONCLUSIONS

1. Grounds exist to suspend or revoke respondent's pharmacist's license under Business and Professions Code sections 490, 4300 and 4301, subdivisions (f) (g) and (l), based on the conviction as set forth in Factual Findings 4 and 6.

2. Grounds exist to suspend or revoke respondent's pharmacist's license for unprofessional conduct under Business and Professions Code sections 810, 4300, and 4301, subdivision (f), for committing acts of dishonesty as set forth in Factual Findings 4 and 6.

3. Grounds exist to order respondent to pay the Board $8,000, under Business and Professions Code section 125.3, for reasonable costs of investigation and prosecution of this matter, based on Factual Finding 7.

ORDER

1. Pharmacist's License No RPH 39197, issued to respondent Nadia Ahmed Abdelgawad Kassem, is revoked.

2. Pharmacy Permit No. PHY 41308, issued to respondent Nadia Ahmed Abdelgawad Kassem dba Gene's Pharmacy, is revoked.

3. Respondent is hereby ordered to pay $8,000 to the Board of Pharmacy for costs of enforcement and prosecution of this matter under Business and Professions Code section 125.3.

DATED: October 19, 2006

Humberto Flores

HUMBERTO FLORES
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 Against: NADIA AHMED ABDELGAWAD KASSEM 20648 Seton Hill Street Walnut, CA 91789 Pharmacy License No. RPH 39197 and GENE'S PHARMACY 1240 N. Hacienda, #105 La Puente, CA 91744 Nadia Ahmed Abdelgawad Kasem Pharmacist-In-Charge Pharmacy Permit No. PHY 41308, Respondent.	Case No.: 2950 OAH No.: L2006080786

DECISION

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

This Decision shall become effective on December 15, 2006

IT IS SO ORDERED November 15, 2006.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

rfm

By William Powers
WILLIAM POWERS
Board President

BILL LOCKYER, Attorney General
of the State of California
KEVIN W. BUSH, State Bar No. 210322
Deputy Attorney General
California Department of Justice
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2544
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 Against: **NADIA AHMED ABDELGAWAD KASSEM** 20648 Seton Hill Street Walnut, CA 91789 Pharmacist License No. RPH 39197 and **GENE'S PHARMACY** 1240 N. Hacienda #105 La Puente, CA 91744 **Nadia Ahmed Abdelgawad Kassem, Pharmacist-In-Charge** Pharmacy Permit No. PHY 41308 Respondent.	Case No. 2950 ACCUSATION

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 (Board).

2. On or about March 12, 1985, the Board issued Pharmacist License No. RPH 39197 to Nadia Ahmed Abdelgawad Kassesm ("Respondent Abdelgawad"). The

Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2006, unless renewed. On or about May 8, 2006, the Board notified Respondent that her Pharmacist License was summarily suspended pursuant to Business and Professions Code section 4311, subdivision (b), and shall remain suspended until further order of the Board. Respondent has requested a hearing pursuant to Business and Professions Code section 4311, subdivision (b)(4).

3. On or about January 30, 1996, the Board issued Pharmacy Permit No. PHY 41308 to Gene's Pharmacy at 1240 N. Hacienda Blvd. #105, La Puente, California, with Respondent Nadia Ahmed Abdelgawad Kassesm as Pharmacist-in-Charge. On or about May 4, 2005, Gene's Pharmacy filed a discontinuance of business notification, and Pharmacy Permit No. PHY 41308 was canceled.

JURISDICTION

4 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.

5. Section 118, subdivision (b), provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

6. Section 4300, subdivision (a), states that "[e]very license issued may be suspended or revoked."

7. Section 490 states:

"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. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition

of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

8. Section 810 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.

. . . .

"(d) As used in this section, health care professional means any person licensed or certified pursuant to this division, or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act."

9. 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.

. . . .

"(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13

(commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, 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 under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. . . ."

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

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

11. 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.

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FIRST CAUSE FOR DISCIPLINE

(Convictions of Substantially Related Crimes)

12. Respondent Nadia Ahmed Abdelgawad Kassem is subject to disciplinary action under sections 4300, 490, and 4301, subdivisions (f), (g) and (l), as defined in California Code of Regulations, title 16, section 1770, in that on March 27, 2006, in the criminal proceeding entitled *The People of the State of California v. Nadia Ahmed Abdelgawad*, in the Superior Court of California, County of Los Angeles, Case No. B255277, Respondent was convicted on a plea of guilty to one count of violating Penal Code section 487(a)[grand theft], a felony, and one count of violating Welfare and Institutions Code section 14107(b)(1)[Medi-Cal fraud], a felony. These crimes are substantially related to the qualifications, functions, or duties of a pharmacist and pharmacy. The circumstances regarding the convictions are as follows:

a. From on or about January 3, 2002, and January 14, 2005, in the County of Los Angeles, State of California, Respondent Abdelgawad unlawfully took from the State of California property of a value in excess of Four Hundred Dollars ($400.00), in violation of Penal Code section 487(a), a felony.

b. From on or about or between January 3, 2002, and January 14, 2005, in the County of Los Angeles, State of California, Respondent Abdelgawad, with intent to defraud, presented and caused to be presented for allowance and payment under the Medi-Cal Act false and fraudulent claims for drugs never dispensed, in violation of Welfare and Institutions Code § 14107(b)(1), a felony.

SECOND CAUSE FOR DISCIPLINE

(Presentation of False or Fraudulent Claims)

13. Respondent is subject to disciplinary action under sections 4300, 810 and 4301, subdivision (f) and (g), on the grounds of unprofessional conduct in that Respondent, acting in the capacity of licensed pharmacist, knowingly presented, or caused to be presented, false or fraudulent Medi-Cal claims to a state health care benefit program, as more fully described above in paragraph 12.

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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 Pharmacist License Number RPH 39197, issued to Nadia Ahmed Abdelgawad Kassem;

2. Revoking or suspending Pharmacy Permit Number PHY 41308, issued to Nadia Ahmed Abdelgawad Kassem dba Gene's Pharmacy;

3. Ordering Nadia Ahmed Abdelgawad Kassem dba Gene's Pharmacy and Nadia Ahmed Abdelgawad Kassem 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;

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

DATED: 6/29/06

P. F. Harris

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

Complainant

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