

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

In the Matter of the Accusation Against:

Case No. 3330

**EMERSON PHARMACY INC., DBA
EMERSON PHARMACY, NIMA
RODEFSHALOM, President, Pharmacist-In-
Charge, MEHRAN KOHAN-BASH, Secretary,
JOSEPH KOHAN, TRESUREER, Chief
Financial Officer**
1529 Rexford Drive
Los Angeles, CA 90035
Original Pharmacy Permit NO. PHY 48754

and

NIMA RODEFSHALOM
1520 Rexford Drive
Los Angeles, CA 90035
Original Pharmacist License No. RPH 55990

Respondents.

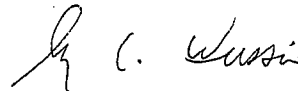
DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on July 28, 2010.

It is so ORDERED on June 28, 2010.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

1 EDMUND G. BROWN JR.
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 DESIREE TULLENERS
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Attorneys for Complainant
7

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

11 In the Matter of the Accusation Against:

12 **EMERSON PHARMACY INC.,**
13 **NIMA RODEFSHALOM**, President and
14 Pharmacist-in-Charge
15 1529 Rexford Drive
16 Los Angeles, CA 90035

15 Pharmacy Permit No. PHY48754,

17 and

18 **NIMA RODEFSHALOM**
19 1529 Rexford Dr.
20 Los Angeles, CA 90035

20 Pharmacist License No. RPH 55990

21 Respondents.
22

Case No. 3330
OAH No. L-2009101361

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

23 *IT IS HEREBY STIPULATED AND AGREED* by and between the parties to the above-
24 entitled proceedings that the following matters are true:

25 **PARTIES**

26 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
27 She brought this action solely in her official capacity and is represented in this matter by Edmund
28

1 G. Brown Jr., Attorney General of the State of California, by Desiree Tulleners, Deputy Attorney
2 General.

3 2. Respondent Emerson Pharmacy Inc., Nima Rodefshalom, President and Pharmacist-
4 In-Charge and Nima Rodefshalom are represented in this proceeding by attorney Herbert L.
5 Weinberg, Esq., McGuire Woods LLP, whose address is 1800 Century Park East, 8th Floor, Los
6 Angeles, CA 90067.

7 3. On or about November 14, 2007, the Board of Pharmacy (Board) issued Pharmacy
8 Permit No. PHY48754 to Emerson Pharmacy Inc., to do business as Emerson Pharmacy, with
9 Nima Rodefshalom as President and Pharmacist-In-Charge (Respondent Pharmacy). The
10 Pharmacy Permit was in full force and effect at all times relevant to the charges brought in
11 Accusation No. 3330, and will expire on November 1, 2010, unless renewed.

12 4. On or about August 6, 2004, the Board issued Original Pharmacist License Number
13 RPH 55990 to Nima Rodefshalom (Respondent Rodefshalom). The Pharmacist license was in
14 full force and effect at all times relevant to the charges brought herein and will expire on
15 December 31, 2011, unless renewed.

16 **JURISDICTION**

17 5. Accusation No. 3330 was filed before the Board of Pharmacy, Department of
18 Consumer Affairs, and is currently pending against Respondents. The Accusation and all other
19 statutorily required documents were properly served on Respondents on September 8, 2009.
20 Respondents timely filed their Notice of Defense contesting the Accusation. A copy of
21 Accusation No. 3330 is attached as Exhibit, A and incorporated herein by reference.

22 **ADVISEMENT AND WAIVERS**

23 6. Respondents have carefully read, fully discussed with counsel, and understand the
24 charges and allegations in Accusation No. 3330. Respondents have also carefully read, fully
25 discussed with counsel, and understand the effects of this Stipulated Settlement and Disciplinary
26 Order.

27 7. Respondents are fully aware of their legal rights in this matter, including the right to a
28 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at

1 their own expense; the right to confront and cross-examine the witnesses against them; the right
2 to present evidence and to testify on their own behalf; the right to the issuance of subpoenas to
3 compel the attendance of witnesses and the production of documents; the right to reconsideration
4 and court review of an adverse decision; and all other rights accorded by the California
5 Administrative Procedure Act and other applicable laws.

6 8. Respondents voluntarily, knowingly, and intelligently waive and give up each and
7 every right set forth above.

8 CULPABILITY

9 9. Respondents, and each of them, understand the allegations and charges in Accusation
10 No. 3330 and agree that, at hearing, Complainant could establish a prima facie case for causes for
11 discipline against them. For the purpose of resolving the Accusation without the expense and
12 uncertainty of further proceedings, Respondents hereby give up their right to contest the causes
13 for discipline in the Accusation.

14 10. Respondents agree that their Pharmacy Permit and Pharmacist License are subject to
15 discipline, and they agree to be bound by the Board's imposition of discipline as set forth in the
16 Disciplinary Order below.

17 RESERVATION

18 11. The admissions made by Respondents herein are only for the purposes of this
19 proceeding, or any other proceedings in which the Board of other professional licensing agency is
20 involved, and shall not be admissible in another criminal or civil proceeding.

21 CONTINGENCY

22 12. This stipulation shall be subject to approval by the Board. Respondents understand
23 and agree that counsel for Complainant and the staff of the Board may communicate directly with
24 the Board regarding this stipulation and settlement, without notice to or participation by
25 Respondents or their counsel. By signing the stipulation, Respondents understand and agree that
26 they may not withdraw its agreement or seek to rescind the stipulation prior to the time the Board
27 considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order,
28 the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this

1 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not
2 be disqualified from further action by having considered this matter.

3 13. The parties understand and agree that facsimile copies of this Stipulated Settlement
4 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
5 effect as the originals.

6 14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
7 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
8 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
9 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
10 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
11 writing executed by an authorized representative of each of the parties.

12 15. In consideration of the foregoing admissions and stipulations, the parties agree that
13 the Board may, without further notice or formal proceeding, issue and enter the following
14 Disciplinary Order:

15 **DISCIPLINARY ORDER**

16 *IT IS HEREBY ORDERED* that Pharmacy Permit No. PHY48754 issued to Respondent
17 Emerson Pharmacy Inc., Nima Rodefshalom, President and Pharmacist-In-Charge (Respondent
18 Pharmacy), and Original Pharmacist License No. RPH 55990 issued to Nima Rodefshalom
19 (Respondent Rodefshalom), are revoked. However, the revocations are stayed, and Respondent
20 Pharmacy is placed on probation for a period of three (3) years, and Respondent Rodefshalom is
21 placed on probation for a period of two (2) years, on the following terms and conditions.

22 **1. Obey All Laws**

23 Respondent owner shall obey all state and federal laws and regulations.

24 Respondent owner shall report any of the following occurrences to the board, in writing,
25 within seventy-two (72) hours of such occurrence:

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

- 1 a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
2 criminal complaint, information or indictment
- 3 a conviction of any crime
- 4 discipline, citation, or other administrative action filed by any state or federal agency
5 which involves respondent's pharmacist license and/or pharmacy permit or which is
6 related to the practice of pharmacy or the manufacturing, obtaining, handling or
7 distributing, billing, or charging for any drug, device or controlled substance.

8 Failure to timely report any such occurrence shall be considered a violation of probation.

9 **2. Report to the Board**

10 Respondent owner shall report to the board quarterly, on a schedule as directed by the board
11 or its designee. The report shall be made either in person or in writing, as directed. Among other
12 requirements, respondent owner shall state in each report under penalty of perjury whether there
13 has been compliance with all the terms and conditions of probation. Failure to submit timely
14 reports in a form as directed shall be considered a violation of probation. Any period(s) of
15 delinquency in submission of reports as directed may be added to the total period of probation.
16 Moreover, if the final probation report is not made as directed, probation shall be automatically
17 extended until such time as the final report is made and accepted by the Board.

18 **3. Interview with the Board**

19 Upon receipt of reasonable prior notice, respondent owner shall appear in person for
20 interviews with the Board or its designee, at such intervals and locations as are determined by the
21 board or its designee. Failure to appear for any scheduled interview without prior notification to
22 Board staff, or failure to appear for two (2) or more scheduled interviews with the Board or its
23 designee during the period of probation, shall be considered a violation of probation.

24 **4. Cooperate with Board Staff**

25 Respondent owner shall cooperate with the Board's inspection program and with the board's
26 monitoring and investigation of respondent's compliance with the terms and conditions of their
27 probation. Failure to cooperate shall be considered a violation of probation.

28

1 **5. Reimbursement of Board Costs**

2 As a condition precedent to successful completion of probation, respondent owner shall pay
3 to the Board its costs of investigation and prosecution in the amount of \$6,000. Respondent
4 owner shall make said payments according to a schedule to be approved by the Board with the
5 last payment to be received by the Board on or before six (6) months prior to the completion of
6 the term of probation. There shall be no deviation from this schedule absent prior written
7 approval by the Board or its designee. Failure to pay costs by the deadline(s) as directed shall be
8 considered a violation of probation.

9 The filing of bankruptcy by respondent owner shall not relieve respondent of their
10 responsibility to reimburse the Board its costs of investigation and prosecution.

11 **6. Probation Monitoring Costs**

12 Respondent owner shall pay any costs associated with probation monitoring as determined
13 by the Board each and every year of probation. Such costs shall be payable to the Board on a
14 schedule as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as
15 directed shall be considered a violation of probation.

16 **7. Status of License**

17 Respondent owner shall, at all times while on probation, maintain current licensure with the
18 Board. If respondent owner submits an application to the Board, and the application is approved,
19 for a change of location, change of permit or change of ownership, the Board shall retain
20 continuing jurisdiction over the license, and the respondent shall remain on probation as
21 determined by the Board. Failure to maintain current licensure shall be considered a violation of
22 probation.

23 If respondent owner's license expires or is cancelled by operation of law or otherwise at any
24 time during the period of probation, including any extensions thereof or otherwise, upon renewal
25 or reapplication respondent owner's license shall be subject to all terms and conditions of this
26 probation not previously satisfied.

27 **8. License Surrender While on Probation/Suspension**

28 Following the effective date of this decision, should respondent owner discontinue

1 business, respondent owner may tender the premises license to the Board for surrender. The
2 Board or its designee shall have the discretion whether to grant the request for surrender or take
3 any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of
4 the license, respondent will no longer be subject to the terms and conditions of probation.

5 Upon acceptance of the surrender, respondent owner shall relinquish the premises wall and
6 renewal license to the Board within ten (10) days of notification by the board that the surrender is
7 accepted. Respondent owner shall further submit a completed Discontinuance of Business form
8 according to Board guidelines and shall notify the Board of the records inventory transfer.

9 Respondent owner shall also, by the effective date of this decision, arrange for the
10 continuation of care for ongoing patients of the pharmacy by, at minimum, providing a written
11 notice to ongoing patients that specifies the anticipated closing date of the pharmacy and that
12 identifies one or more area pharmacies capable of taking up the patients' care, and by cooperating
13 as may be necessary in the transfer of records or prescriptions for ongoing patients. Within five
14 days of its provision to the pharmacy's ongoing patients, Respondent owner shall provide a copy
15 of the written notice to the Board. For the purposes of this provision, "ongoing patients" means
16 those patients for whom the pharmacy has on file a prescription with one or more refills
17 outstanding, or for whom the pharmacy has filled a prescription within the preceding sixty (60)
18 days.

19 Respondent owner may not apply for any new licensure from the Board for three (3) years
20 from the effective date of the surrender. Respondent owner shall meet all requirements applicable
21 to the license sought as of the date the application for that license is submitted to the board.

22 Respondent owner further stipulates that he or she shall reimburse the Board for its costs of
23 investigation and prosecution prior to the acceptance of the surrender.

24 9. Notice to Employees

25 Respondent owner shall, upon or before the effective date of this decision, ensure that all
26 employees involved in permit operations are made aware of all the terms and conditions of
27 probation, either by posting a notice of the terms and conditions, circulating such notice, or both.
28 If the notice required by this provision is posted, it shall be posted in a prominent place and shall

1 remain posted throughout the probation period. Respondent owner shall ensure that any
2 employees hired or used after the effective date of this decision are made aware of the terms and
3 conditions of probation by posting a notice, circulating a notice, or both. Additionally,
4 respondent owner shall submit written notification to the Board, within fifteen (15) days of the
5 effective date of this decision, that this term has been satisfied. Failure to submit such
6 notification to the board shall be considered a violation of probation.

7 "Employees" as used in this provision includes all full-time, part-time,
8 volunteer, temporary and relief employees and independent contractors employed or
9 hired at any time during probation.

10 **10. Owners and Officers: Knowledge of the Law**

11 Respondent shall provide, within thirty (30) days after the effective date of this decision,
12 signed and dated statements from its owners, including any owner or holder of ten percent (10%)
13 or more of the interest in respondent or respondent's stock, and any officer, stating under penalty
14 of perjury that said individuals have read and are familiar with state and federal laws and
15 regulations governing the practice of pharmacy. The failure to timely provide said statements
16 under penalty of perjury shall be considered a violation of probation.

17 **11. Posted Notice of Probation**

18 Respondent owner shall prominently post a probation notice provided by the board in a
19 place conspicuous and readable to the public. The probation notice shall remain posted during
20 the entire period of probation.

21 Respondent owner shall not, directly or indirectly, engage in any conduct or make any
22 statement which is intended to mislead or is likely to have the effect of misleading any patient,
23 customer, member of the public, or other person(s) as to the nature of and reason for the probation
24 of the licensed entity.

25 Failure to post such notice shall be considered a violation of probation.

26 **12. Consultant for Owner or Pharmacist-In-Charge**

27 During the period of probation, respondent shall not supervise any intern pharmacist or
28 serve as a consultant to any entity licensed by the Board. Respondent may be a pharmacist-in-

1 charge. However, if during the period of probation respondent serves as a pharmacist-in-charge,
2 respondent shall retain an independent consultant at his or her own expense who shall be
3 responsible for reviewing pharmacy operations on a quarterly basis for compliance by respondent
4 with state and federal laws and regulations governing the practice of pharmacy and for
5 compliance by respondent with the obligations of a pharmacist-in-charge. The consultant shall be
6 a pharmacist licensed by and not on probation with the board and whose name shall be submitted
7 to the Board or its designee, for prior approval, within thirty (30) days of the effective date of this
8 decision. Respondent shall not be a pharmacist-in-charge at more than one pharmacy or at any
9 pharmacy of which he or she is not an owner. Failure to timely retain, seek approval of, or ensure
10 timely reporting by the consultant shall be considered a violation of probation.

11 **13. No New Ownership of Licensed Premises**

12 Respondent shall not acquire any new ownership, legal or beneficial interest nor serve as a
13 manager, administrator, member, officer, director, trustee, associate, or partner of any additional
14 business, firm, partnership, or corporation licensed by the Board. If respondent currently owns or
15 has any legal or beneficial interest in, or serves as a manager, administrator, member, officer,
16 director, trustee, associate, or partner of any business, firm, partnership, or corporation currently
17 or hereinafter licensed by the Board, respondent may continue to serve in such capacity or hold
18 that interest, but only to the extent of that position or interest as of the effective date of this
19 decision. Violation of this restriction shall be considered a violation of probation.

20 **14. Tolling of Probation**

21 Except during periods of suspension, respondent shall, at all times while on probation, be
22 employed as a pharmacist in California for a minimum of 40 hours per calendar month. Any
23 month during which this minimum is not met shall toll the period of probation, i.e., the period of
24 probation shall be extended by one month for each month during which this minimum is not met.
25 During any such period of tolling of probation, respondent must nonetheless comply with all
26 terms and conditions of probation.

27 Should respondent, regardless of residency, for any reason (including vacation) cease
28 practicing as a pharmacist for a minimum of 40 hours per calendar month in California,
respondent must notify the Board in writing within ten (10) days of the cessation of practice, and
must further notify the Board in writing within ten (10) days of the resumption of practice. Any
failure to provide such notification(s) shall be considered a violation of probation.

1 It is a violation of probation for respondent's probation to remain tolled pursuant to the
2 provisions of this condition for a total period, counting consecutive and non-consecutive months,
3 exceeding thirty-six (36) months.

4 "Cessation of practice" means any calendar month during which respondent is not
5 practicing as a pharmacist for at least 40 hours, as defined by Business and Professions
6 Code section 4000 et seq. "Resumption of practice" means any calendar month during
7 which respondent is practicing as a pharmacist for at least 40 hours as a pharmacist as
8 defined by Business and Professions Code section 4000 et seq.

9 15. Report of Controlled Substances

10 Respondents shall submit quarterly reports to the Board detailing the total acquisition and
11 disposition of such controlled substances as the Board may direct. Respondent Rodefshalom shall
12 specify the manner of disposition (e.g., by prescription, due to burglary, etc.) or acquisition (e.g.,
13 from a manufacturer, from another retailer, etc.) of such controlled substances. Respondent
14 Rodefshalom shall report on a quarterly basis or as directed by the Board. The report shall be
15 delivered or mailed to the Board no later than ten (10) days following the end of the reporting
16 period. Failure to timely prepare or submit such reports shall be considered a violation of
17 probation for both respondents.

18 16. Remedial Education

19 Within sixty (60) days of the effective date of this decision, Respondent Rodefshalom shall
20 submit to the Board or its designee, for prior approval, an appropriate program of remedial
21 education related to the subject of maintaining drug security and inventory monitoring to prevent
22 losses. The program of remedial education shall consist of at least ten (10) hours, which shall be
23 completed within three (3) years at respondent's own expense. All remedial education shall be in
24 addition to, and shall not be credited toward, continuing education (CE) courses used for license
25 renewal purposes.

26 Failure to timely submit or complete the approved remedial education shall be
27 considered a violation of probation. The period of probation will be automatically extended
28 until such remedial education is successfully completed and written proof, in a form
acceptable to the Board, is provided to the Board or its designee.

Following the completion of each course, the Board or its designee may require the
respondent, at her own expense, to take an approved examination to test the respondent's
knowledge of the course. If the respondent does not achieve a passing score on the examination,

this failure shall be considered a violation of probation. Any such examination failure shall require respondent to take another course approved by the board in the same subject area.

17. Violation of Probation

If respondent owner has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over respondent license, and probation shall be automatically extended until all terms and conditions have been satisfied 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 that was stayed.

If respondent owner violates probation in any respect, the Board, after giving respondent owner notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. 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 automatically extended until the petition to revoke probation or accusation is heard and decided.

18. Completion of Probation

Upon written notice by the Board or its designee indicating successful completion of probation, respondent license will be fully restored.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Herbert L. Weinberg, Esq. I understand the stipulation and the effect it will have on my Pharmacy Permit. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 3/24/10

[Handwritten signature: Nimx Rodetschalom]

EMERSON PHARMACY, INC.
by, Nimx Rodetschalom, President and
Pharmacist-in-Charge
Respondent Pharmacy

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DATED:

3/24/10

~~NIMA RODETSHALOM~~
Respondent Rodetsshalom

I have read and fully discussed with Respondent Emerson Pharmacy Inc., Nima Rodetsshalom, President and Pharmacist-in-Charge the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED:

3/24/10

~~HERBERT L. WEIMBERG, Esq.~~
Attorney for Respondents

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated:

Respectfully Submitted,

EDMUND C. BROWN JR.
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General

DEBBIE TULLENERS
Deputy Attorney General
Attorneys for Complainant

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DATED: _____
NIMA RODEFSHALOM
Respondent Rodefshalom

I have read and fully discussed with Respondent Emerson Pharmacy Inc., Nima Rodefshalom, President and Pharmacist-In-Charge the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: _____
HERBERT L. WEINBERG, Esq.
Attorney for Respondents

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated: *March 24, 2010*

Respectfully Submitted,
EDMUND G. BROWN JR.
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General

Desiree Tulleners
DESIREE TULLENERS
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 3330

1 EDMUND G. BROWN JR.
Attorney General of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 KRISTI GUDOSKI COOK
Deputy Attorney General
4 State Bar No. 185257
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 620-6343
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:
12 **EMERSON PHARMACY INC., dba**
13 **EMERSON PHARMACY, NIMA**
14 **RODEFSHALOM, President, Pharmacist-**
15 **In-Charge, MEHRAN KOHAN-BASH,**
16 **Secretary, JOSEPH KOHAN, Treasurer,**
17 **Chief Financial Officer**
18 **1529 Rexford Drive**
19 **Los Angeles, CA 90035**
20 **Original Pharmacy Permit No. PHY48754,**

17 and

18 **NIMA RODEFSHALOM**
19 **1529 Rexford Dr.**
20 **Los Angeles, CA 90035**
21 **Original Pharmacist License No. RPH 55990**

21 Respondents.

Case No. 3330

A C C U S A T I O N

23 Complainant alleges:

24 PARTIES

- 25 1. Virginia K. Herold (Complainant) brings this Accusation solely in her official
26 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
27 2. On or about November 14, 2007, the Board of Pharmacy (Board) issued Original
28 Pharmacy Permit Number PHY48754 to Emerson Pharmacy Inc., to do business as Emerson

1 Pharmacy, with Nima Rodefshalom as President and Pharmacist-In-Charge, Mehran Kohan-Bash
2 as Secretary, and Joseph Kohan as Treasurer/Chief Financial Officer (Respondent Emerson). The
3 Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein
4 and will expire on November 1, 2009, unless renewed.

5 3. On or about August 6, 2004, the Board issued Original Pharmacist License Number
6 RPH 55990 to Nima Rodefshalom (Respondent Rodefshalom). The Pharmacist License was in
7 full force and effect at all times relevant to the charges brought herein and will expire on
8 December 31, 2009, unless renewed.

9 JURISDICTION

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

12 STATUTORY PROVISIONS

13 5. Section 4300, subdivision (a), states: "Every license issued may be suspended or
14 revoked."

15 6. Section 4301 states, in pertinent part:

16 "The board shall take action against any holder of a license who is guilty of unprofessional
17 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

18 Unprofessional conduct shall include, but is not limited to, any of the following:

19

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

22

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

27 ///

28 ///

1 7. Section 4302 states:

2 “The board may deny, suspend, or revoke any license of a corporation where conditions
3 exist in relation to any person holding 10 percent or more of the corporate stock of the
4 corporation, or where conditions exist in relation to any officer or director of the corporation that
5 would constitute grounds for disciplinary action against a licensee.”

6 8. Section 4113 states:

7 “(a) Every pharmacy shall designate a pharmacist-in-charge and within 30 days thereof,
8 shall notify the board in writing of the identity and license number of the pharmacist and the date
9 he or she was designated.

10 “(b) The pharmacist-in-charge shall be responsible for a pharmacy’s compliance with all
11 state and federal laws and regulations pertaining to the practice of pharmacy.”

12 9. Section 4081 states, in pertinent part:

13 “(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs
14 or dangerous devices shall be at all times during business hours open to inspection by authorized
15 officers of the law, and shall be preserved for at least three years from the date of making. A
16 current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary
17 food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital,
18 institution, or establishment holding a currently valid and unrevoked certificate, license, permit,
19 registration, or exemption under Division 2 (commencing with Section 1200) of the Health and
20 Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and
21 Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

22 “(b) The owner, officer, and partner of any pharmacy, wholesaler, or veterinary food-animal
23 drug retailer shall be jointly responsible, with the pharmacist-in-charge or representative-in-
24 charge, for maintaining the records and inventory described in this section.”

25 10. Section 4332 states:

26 “Any person who fails, neglects, or refuses to maintain the records required by Section
27 4081 or who, when called upon by an authorized officer or a member of the board fails, neglects,

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1 or refuses to produce or provide the records within a reasonable time, or who willfully produces
2 or furnishes records that are false, is guilty of a misdemeanor.”

3 REGULATORY PROVISIONS

4 11. California Code of Regulations, title 16, section 1714, subdivision (b), states:

5 “Each pharmacy licensed by the board shall maintain its facilities, space, fixtures, and
6 equipment so that drugs are safely and properly prepared, maintained, secured and distributed.
7 The pharmacy shall be of sufficient size and unobstructed area to accommodate the safe practice
8 of pharmacy.”

9 12. California Code of Regulations, title 16, section 1718, states:

10 “‘Current Inventory’ as used in Sections 4081 and 4332 of the Business and Professions
11 Code shall be considered to include complete accountability for all dangerous drugs handled by
12 every licensee enumerated in Sections 4081 and 4332. The controlled substances inventories
13 required by Title 21, CFR, Section 1304 shall be available for inspection upon request for at least
14 3 years after the date of the inventory.”

15 CONTROLLED SUBSTANCES/DANGEROUS DRUGS

16 13. Hydrocodone/APAP (generic for Vicodin ES) is a Schedule III controlled substance
17 as designated by Health and Safety Code section 11056, subdivisions (a) and (e), and is a
18 dangerous drug as defined in section 4022.

19 14. Valium (brand name for Diazepam) is a Schedule IV controlled substance as
20 designated by Health and Safety Code section 11057, subdivisions (a) and (d)(9), and is a
21 dangerous drug as defined in section 4022.

22 15. Alprazolam (generic for Xanax) is a Schedule IV controlled substance as designated
23 by Health and Safety Code section 11057, subdivisions (a) and (d)(1), and is a dangerous drug as
24 defined in section 4022.

25 16. Section 4022 states, in pertinent part:

26 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self-use in
27 humans or animals, and includes the following:

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1 c. After the May 28, 2008 theft, Respondent Emerson and Respondent Rodefshalom
2 conducted an audit of controlled substances purchased, dispensed and on hand in the pharmacy as
3 current inventory, during the period November 19, 2007 to May 29, 2008, and determined that
4 they could not account for 35,065 tablets of Hydrocodone/APAP, 14,119 tablets of Alprazolam 2
5 mg., 2,804 tablets of Valium 10 mg., and 916 tablets of Valium 5 mg.

6 SECOND CAUSE FOR DISCIPLINE

7 (Failure to Maintain Complete Records)

8 19. Respondent Emerson and Respondent Rodefshalom are subject to disciplinary action
9 under sections 4301, subdivisions (j) and (o), 4081 and 4332, in conjunction with California Code
10 of Regulations, title 16, section 1718, for failure to maintain complete and accurate records of
11 dangerous drugs purchased, dispensed and on hand in the pharmacy as current inventory.
12 Complainant refers to and incorporates all the allegations set forth in paragraphs 18.a through
13 18.c, inclusive, as though set forth fully.

14 PRAYER

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

17 1. Revoking or suspending Pharmacy Permit Number PHY48754, issued to Emerson
18 Pharmacy Inc., to do business as Emerson Pharmacy, with Nima Rodefshalom as President and
19 Pharmacist-In-Charge, Mehran Kohan-Bash as Secretary, and Joseph Kohan as Treasurer/Chief
20 Financial Officer.

21 2. Revoking or suspending Original Pharmacist License Number RPH 55990, issued to
22 Respondent Rodefshalom.

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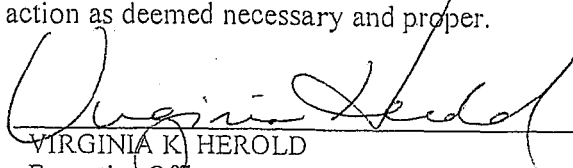
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1 3. Ordering Respondent Emerson Pharmacy and Respondent Rodefshalom to pay the
2 Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business
3 and Professions Code section 125.3;

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

5 DATED: 9/2/09



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

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