

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

In the Matter of the Accusation Against:

**FADI WASEF ATIYA
800 The Mark Lane #1907
San Diego, CA 92101**

Pharmacist License No. RPH 45978

Respondent.

Case No. 3487

OAH No. 2010090409

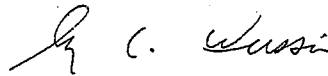
DECISION AND ORDER

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 June 7, 2012.

It is so ORDERED on May 8, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
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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:

Case No. 3487

12 **FADI WASEF ATIYA**
13 **800 The Mark Lane - #1907**
14 **San Diego, CA 92101**

OAH No. 2010090409

14 **Pharmacist License No. RPH 45978**

STIPULATED SETTLEMENT

15 Respondent.

AND DISCIPLINARY ORDER

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

19 PARTIES

20 1. Complainant Virginia Herold is the Executive Officer of the Board of Pharmacy
21 (Board). She brought this action solely in her official capacity and is represented in this matter by
22 Kamala D. Harris, Attorney General of the State of California, by G. Michael German, Deputy
23 Attorney General.

24 2. Respondent Fadi Wasef Atiya is represented in this proceeding by Duane Morris,
25 LLP, by Michael L. Lipman, Esq., 101 West Broadway, Suite 900, San Diego, CA 92101.

26 3. On March 10, 1993, the Board of Pharmacy issued Pharmacist License No. RPH
27 45978 to Respondent. The Pharmacist License was in full force and effect at all times relevant to
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1 the charges brought in Accusation No. 3487 and will expire on November 30, 2012, unless
2 renewed.

3 JURISDICTION

4 4. Accusation No. 3487 was filed before the Board, Department of Consumer Affairs,
5 and is currently pending against Respondent. The Accusation and all other statutorily required
6 documents were properly served on Respondent on June 14, 2010. Respondent timely filed his
7 Notice of Defense contesting the Accusation. A copy of Accusation No. 3487 is attached as
8 exhibit A.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, fully discussed with counsel, and understands the
11 charges and allegations in Accusation No. 3487. Respondent has also carefully read, fully
12 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
13 Order.

14 6. Respondent is fully aware of his legal rights in this matter, including the right to a
15 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
16 the witnesses against him; the right to present evidence and to testify on his own behalf; the right
17 to the issuance of subpoenas to compel the attendance of witnesses and the production of
18 documents; the right to reconsideration and court review of an adverse decision; and all other
19 rights accorded by the California Administrative Procedure Act and other applicable laws.

20 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
21 every right set forth above.

22 CULPABILITY

23 8. Respondent admits the truth of each and every charge and allegation in Accusation
24 No. 3487.

25 9. Respondent agrees that his Pharmacist License is subject to discipline and he agrees
26 to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.
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CONTINGENCY

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2 10. This stipulation shall be subject to approval by the Board. Respondent understands
3 and agrees that counsel for Complainant and the staff of the Board may communicate directly
4 with the Board regarding this stipulation and settlement, without notice to or participation by
5 Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he
6 may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board
7 considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order,
8 the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this
9 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not
10 be disqualified from further action by having considered this matter.

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

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

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

DISCIPLINARY ORDER

23
24 IT IS HEREBY ORDERED that Original Pharmacist License No. RPH 45978 issued to
25 Respondent Fadi Wasef Atiya is revoked. However, the revocation is stayed and Respondent is
26 placed on probation for five years on the following terms and conditions.
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1. Suspension

As part of probation, Respondent is suspended from the practice of pharmacy for one year beginning the effective date of this decision.

During suspension, Respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the Board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall Respondent manage, administer, or be a consultant to any licensee of the Board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances.

Respondent shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a designated representative for any entity licensed by the Board.

Subject to the above restrictions, Respondent may continue to own or hold an interest in any licensed premises in which he holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

2. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

Respondent 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

- 1 • a conviction of any crime
- 2 • discipline, citation, or other administrative action filed by any state or federal agency
- 3 which involves Respondent's pharmacist's license or which is related to the practice
- 4 of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or
- 5 charging for any drug, device or controlled substance.

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

7 **3. Report to the Board**

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

16 **4. Interview with the Board**

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

22 **5. Cooperate with the Board**

23 Respondent shall cooperate with the Board's inspection program and with the Board's
24 monitoring and investigation of Respondent's compliance with the terms and conditions of his
25 probation, including, but not limited to, authorizing the Board to confirm with any other agency
26 licensing and regulating the practice of pharmacy, wherever located, that Respondent is not
27 practicing as a pharmacist outside of California. Additionally, Respondent shall appear and
28 testify at any hearing or writ proceeding related to and arising out of Accusation Nos. 3487, 3488,

1 and 3489, including but not limited to the hearing in these matters presently set to commence on
2 October 22, 2012, without need for personal service of a subpoena upon him. Respondent shall
3 so appear and testify pursuant to subpoena(s) served upon Michael L. Lipman, his counsel of
4 record. Failure to cooperate in any respect with this term shall be considered a violation of
5 probation.

6 **6. Continuing Education**

7 Respondent shall provide evidence of efforts to maintain skill and knowledge as a
8 pharmacist as directed by the Board or its designee.

9 **7. Notice to Employers**

10 During the period of probation, Respondent shall notify all present and prospective
11 employers of the decision in case number 3487 and the terms, conditions and restrictions imposed
12 on Respondent by the decision, as follows:

13 Within 30 days of the effective date of this decision, and within 15 days of Respondent's
14 undertaking any new employment, Respondent shall cause his direct supervisor, pharmacist-in-
15 charge (including each new pharmacist-in-charge employed during Respondent's tenure of
16 employment) and owner to report to the Board in writing acknowledging that the listed
17 individual(s) has/have read the decision in case number 3487, and terms and conditions imposed
18 thereby. It shall be Respondent's responsibility to ensure that his employer(s) and/or
19 supervisor(s) submit timely acknowledgment(s) to the Board.

20 If Respondent works for or is employed by or through a pharmacy employment service,
21 Respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity
22 licensed by the Board of the terms and conditions of the decision in case number 3487 in advance
23 of the Respondent commencing work at each licensed entity. A record of this notification must
24 be provided to the Board upon request.

25 Furthermore, within 30 days of the effective date of this decision, and within 15 days of
26 Respondent's undertaking any new employment by or through a pharmacy employment service,
27 Respondent shall cause his direct supervisor with the pharmacy employment service to report to
28 the Board in writing acknowledging that he has read the decision in case number 3487 and the

1 terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure that his
2 employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

3 Failure to timely notify present or prospective employer(s) or to cause that/those
4 employer(s) to submit timely acknowledgments to the Board shall be considered a violation of
5 probation.

6 "Employment" within the meaning of this provision shall include any
7 full-time, part-time, temporary, relief or pharmacy management service as a
8 pharmacist or any position for which a pharmacist license is a requirement or
9 criterion for employment, whether the Respondent is an employee, independent
10 contractor or volunteer.

11 **8. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as
12 Designated Representative-in-Charge, or Serving as a Consultant**

13 During the period of probation, Respondent shall not supervise any intern pharmacist, be
14 the pharmacist-in-charge or designated representative-in-charge of any entity licensed by the
15 Board nor serve as a consultant unless otherwise specified in this order. Assumption of any such
16 unauthorized supervision responsibilities shall be considered a violation of probation.

17 **9. Reimbursement of Board Costs**

18 As a condition precedent to successful completion of probation, Respondent shall pay to the
19 Board its costs of investigation and prosecution in the amount of \$22,695.00. Within 30 days of
20 effective date, Respondent shall make payments on a payment plan as approved or directed by the
21 Board. There shall be no deviation from this schedule absent prior written approval by the Board
22 or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation
23 of probation.

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

26 **10. Probation Monitoring Costs**

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

1 **11. Status of License**

2 Respondent shall, at all times while on probation, maintain an active, current license with
3 the Board, including any period during which suspension or probation is tolled. Failure to
4 maintain an active, current license shall be considered a violation of probation.

5 If Respondent's license expires or is cancelled by operation of law or otherwise at any time
6 during the period of probation, including any extensions thereof due to tolling or otherwise, upon
7 renewal or reapplication Respondent's license shall be subject to all terms and conditions of this
8 probation not previously satisfied.

9 **12. License Surrender While on Probation/Suspension**

10 Following the effective date of this decision, should Respondent cease practice due to
11 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
12 Respondent may tender his license to the Board for surrender. The Board or its designee shall
13 have the discretion whether to grant the request for surrender or take any other action it deems
14 appropriate and reasonable. Upon formal acceptance of the surrender of the license, Respondent
15 will no longer be subject to the terms and conditions of probation. This surrender constitutes a
16 record of discipline and shall become a part of the Respondent's license history with the Board.

17 Upon acceptance of the surrender, Respondent shall relinquish his pocket and wall license
18 to the Board within ten days of notification by the Board that the surrender is accepted.
19 Respondent may not reapply for any license from the Board for three years from the effective
20 date of the surrender. Respondent shall meet all requirements applicable to the license sought as
21 of the date the application for that license is submitted to the Board, including any outstanding
22 costs.

23 **13. Notification of a Change in Name, Residence Address, Mailing Address or**
24 **Employment**

25 Respondent shall notify the Board in writing within ten days of any change of employment.
26 Said notification shall include the reasons for leaving, the address of the new employer, the name
27 of the supervisor and owner, and the work schedule if known. Respondent shall further notify the
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1 Board in writing within ten days of a change in name, residence address, mailing address, or
2 phone number.

3 Failure to timely notify the Board of any change in employer(s), name(s), address(es), or
4 phone number(s) shall be considered a violation of probation.

5 **14. Tolling of Probation**

6 Except during periods of suspension, Respondent shall, at all times while on probation, be
7 employed as a pharmacist in California for a minimum of 40 hours per calendar month. Except
8 during periods of suspension, Respondent may satisfy this minimum employment requirement by
9 sequencing his absences from California for up to six weeks by working, for example, the last 40
10 hour week of one month followed by the next 40 hour week of the next month. Respondent may
11 not otherwise aggregate his employment schedule. Any month during which this minimum is not
12 met shall toll the period of probation, i.e., the period of probation shall be extended by one month
13 for each month during which this minimum is not met. During any such period of tolling of
14 probation, Respondent must nonetheless comply with all terms and conditions of probation.

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

20 It is a violation of probation for Respondent's probation to remain tolled pursuant to the
21 provisions of this condition for a total period, counting consecutive and non-consecutive months,
22 exceeding 36 months.

23 "Cessation of practice" means any calendar month during which Respondent is
24 not practicing as a pharmacist for at least 40 hours, as defined by Business and
25 Professions Code section 4000 et seq. "Resumption of practice" means any calendar
26 month during which Respondent is practicing as a pharmacist for at least 40 hours as
27 a pharmacist as defined by Business and Professions Code section 4000 et seq.
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1 **15. Violation of Probation**

2 If a Respondent has not complied with any term or condition of probation, the Board shall
3 have continuing jurisdiction over Respondent, and probation shall automatically be extended,
4 until all terms and conditions have been satisfied or the Board has taken other action as deemed
5 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and
6 to impose the penalty that was stayed.

7 If Respondent violates probation in any respect, the Board, after giving Respondent notice
8 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
9 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a
10 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If
11 a petition to revoke probation or an accusation is filed against Respondent during probation, the
12 Board shall have continuing jurisdiction and the period of probation shall be automatically
13 extended until the petition to revoke probation or accusation is heard and decided.

14 **16. Completion of Probation**

15 Upon written notice by the Board or its designee indicating successful completion of
16 probation, Respondent's license will be fully restored.

17 **17. Pharmacist Examination**

18 Respondent shall take and pass the California Pharmacist Jurisprudence Examination
19 (CPJE) within six months of the effective date of this decision. If Respondent fails to take and
20 pass the examination(s) within six months after the effective of this decision, Respondent shall be
21 automatically suspended from practice. Respondent shall not resume the practice of pharmacy
22 until he takes and passes the CPJE and is notified, in writing, that he has passed the examination
23 and may resume practice. Respondent shall bear all costs of the examination required by the
24 Board.

25 During suspension, Respondent shall not enter any pharmacy area or any portion of the
26 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
27 drugs which is licensed by the Board, or any manufacturer, or where dangerous drugs and devices
28 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act

1 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
2 consultation; nor shall Respondent manage, administer, or be a consultant to any licensee of the
3 Board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
4 and controlled substances. Respondent shall not resume practice until notified by the Board.

5 During suspension, Respondent shall not engage in any activity that requires the
6 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
7 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
8 designated representative for any entity licensed by the Board.

9 Subject to the above restrictions, Respondent may continue to own or hold an interest in
10 any licensed premises in which he holds an interest at the time this decision becomes effective
11 unless otherwise specified in this order.

12 Failure to comply with this suspension shall be considered a violation of probation.

13 If Respondent fails to take and pass the CPJE after four attempts, Respondent shall
14 successfully complete, at a minimum, 16 additional semester units of pharmacy education as
15 approved by the Board. Failure to complete coursework as required shall be considered a
16 violation of probation. Failure to take the CPJE within 1 year of the effective date of this decision
17 shall be considered a violation of probation.

18 **18. Community Services Program**

19 Within 60 days of the effective date of this decision, Respondent shall submit to the Board
20 or its designee, for prior approval, a community service program in which Respondent shall
21 provide free health-care related services on a regular basis to a community or charitable facility or
22 agency for at least 100 hours per year for the first three years of probation. Within 30 days of
23 Board approval thereof, Respondent shall submit documentation to the Board demonstrating
24 commencement of the community service program. A record of this notification must be
25 provided to the Board upon request. Respondent shall report on progress with the community
26 service program in the quarterly reports. Failure to timely submit, commence, or comply with the
27 program shall be considered a violation of probation.

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1 **19. Supervised Practice**

2 During the period of probation, Respondent shall practice only under the supervision of a
3 licensed pharmacist not on probation with the Board. Upon and after the effective date of this
4 decision, Respondent shall not practice pharmacy and his license shall be automatically
5 suspended until a supervisor is approved by the Board or its designee. The supervision shall be,
6 as required by the Board or its designee, either:

7 Continuous – At least 75% of a work week

8 Substantial - At least 50% of a work week

9 Partial - At least 25% of a work week

10 Daily Review - Supervisor's review of probationer's daily activities within 24 hours

11 Within 30 days of the effective date of this decision, Respondent shall have his supervisor
12 submit notification to the Board in writing stating that the supervisor has read the decision in case
13 number 3487 and is familiar with the required level of supervision as determined by the Board or
14 its designee. It shall be the Respondent's responsibility to ensure that his employer(s),
15 pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the Board.
16 Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
17 acknowledgements to the Board shall be considered a violation of probation.

18 If Respondent changes employment, it shall be the Respondent's responsibility to ensure
19 that his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely
20 acknowledgement(s) to the Board. Respondent shall have his new supervisor, within 15 days
21 after employment commences, submit notification to the Board in writing stating the direct
22 supervisor and pharmacist-in-charge have read the decision in case number 3487 and is familiar
23 with the level of supervision as determined by the Board. Respondent shall not practice
24 pharmacy and his license shall be automatically suspended until the Board or its designee
25 approves a new supervisor. Failure to cause the direct supervisor and the pharmacist-in-charge to
26 submit timely acknowledgements to the Board shall be considered a violation of probation.

27 Within ten days of leaving employment, Respondent shall notify the Board in writing.

28 During suspension, Respondent shall not enter any pharmacy area or any portion of the

1 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
2 drugs which is licensed by the Board, or any manufacturer, or where dangerous drugs and devices
3 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
4 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
5 consultation; nor shall Respondent manage, administer, or be a consultant to any licensee of the
6 Board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
7 and controlled substances. Respondent shall not resume practice until notified by the Board.

8 During suspension, Respondent shall not engage in any activity that requires the
9 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
10 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
11 designated representative for any entity licensed by the Board.

12 Subject to the above restrictions, Respondent may continue to own or hold an interest in
13 any licensed premises in which he holds an interest at the time this decision becomes effective
14 unless otherwise specified in this order.

15 Failure to comply with this suspension shall be considered a violation of probation.

16 **20. No Ownership of Licensed Premises**

17 Respondent shall not own, have any legal or beneficial interest in, or serve as a manager,
18 administrator, member, officer, director, trustee, associate, or partner of any business, firm,
19 partnership, or corporation currently or hereinafter licensed by the Board. Respondent shall sell
20 or transfer any legal or beneficial interest in any entity licensed by the Board within 90 days
21 following the effective date of this decision and shall immediately thereafter provide written
22 proof thereof to the Board. Failure to timely divest any legal or beneficial interest(s) or provide
23 documentation thereof shall be considered a violation of probation.

24 **21. Tolling of Suspension**

25 During the period of suspension, any absence from California by Respondent exceeding ten
26 days shall toll the suspension, i.e., the suspension shall be extended by one day for each day
27 Respondent is absent from California. During any such period of tolling, Respondent must
28 nonetheless comply with all terms and conditions of probation.

1 Respondent must notify the Board in writing within ten days of departure from California.
2 and must further notify the Board in writing within ten days of return to California. The failure to
3 provide such notification(s) shall constitute a violation of probation. Upon such departure and
4 return, Respondent shall not resume the practice of pharmacy until notified by the Board that the
5 period of suspension has been satisfactorily completed.

6 **22. Ethics Course**

7 Within 60 calendar days of the effective date of this decision, Respondent shall enroll in a
8 course in ethics, at Respondent's expense, approved in advance by the Board or its designee.
9 Failure to initiate the course during the first year of probation, and complete it within the second
10 year of probation, is a violation of probation.

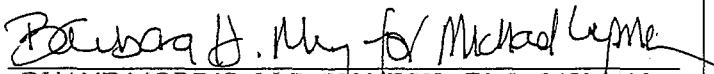
11 Respondent shall submit a certificate of completion to the Board or its designee within five
12 days after completing the course.

13 ACCEPTANCE

14 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
15 discussed it with my attorney Michael L. Lipman. I understand the stipulation and the effect it
16 will have on my Original Pharmacist License. I enter into this Stipulated Settlement and
17 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
18 Decision and Order of the Board of Pharmacy.

19
20 DATED: March - 9th - 2012 
21 FADI WASEF ATIYA
22 Respondent

23 I have read and fully discussed with Respondent Fadi Wasef Atiya the terms and conditions
24 and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve
25 its form and content.

26 DATED: March 9, 2012 
27 DUANE MORRIS, LLP. BY MICHAEL L. LIPMAN
28 Attorney for Respondent

1 Respondent must notify the Board in writing within ten days of departure from California,
2 and must further notify the Board in writing within ten days of return to California. The failure to
3 provide such notification(s) shall constitute a violation of probation. Upon such departure and
4 return, Respondent shall not resume the practice of pharmacy until notified by the Board that the
5 period of suspension has been satisfactorily completed.

6 **22. Ethics Course**

7 Within 60 calendar days of the effective date of this decision, Respondent shall enroll in a
8 course in ethics, at Respondent's expense, approved in advance by the Board or its designee.
9 Failure to initiate the course during the first year of probation, and complete it within the second
10 year of probation, is a violation of probation.

11 Respondent shall submit a certificate of completion to the Board or its designee within five
12 days after completing the course.

13 ACCEPTANCE

14 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
15 discussed it with my attorney Michael L. Lipman. I understand the stipulation and the effect it
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18 Decision and Order of the Board of Pharmacy.

19
20 DATED: March - 9th - 2012 Fadi Wasef Atiya
21 FADI WASEF ATIYA
Respondent

22 I have read and fully discussed with Respondent Fadi Wasef Atiya the terms and conditions
23 and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve
24 its form and content.

25
26 DATED: _____
27 DUANE MORRIS, LLP, BY MICHAEL L. LIPMAN
28 Attorney for Respondent

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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 15, 2012*

KAMALA D. HARRIS
Attorney General of California



G. MICHAEL GERMAN
Deputy Attorney General
Attorneys for Complainant

SD2009804872
80585875.doc

Exhibit A

Accusation No. 3487

1 EDMUND G. BROWN JR.
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 G. MICHAEL GERMAN
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4 State Bar No. 103312
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Attorneys for Complainant

9 **BEFORE THE**
BOARD OF PHARMACY
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11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 3487

13 **FADI WASEF ATIYA**
14 **6643 Duck Pond Trail**
San Diego, CA 92130

A C C U S A T I O N

15 **Pharmacist License No. RPH 45978**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On March 10, 1993, the Board issued Pharmacist License Number RPH 45978 to
23 Respondent Fadi Wasef Atiya. The License was in full force and effect at all times relevant to the
24 charges brought herein and will expire on November 30, 2010, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board, Department of Consumer Affairs, under
27 the authority of the following laws. All section references are to the Business and Professions
28 Code unless otherwise indicated.

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11. Section 4110 of the Code states, in pertinent part:

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

....

12. Section 4301 of the Code 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:

....

(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 or by any other state or federal regulatory agency.

....

REGULATORY PROVISIONS

13. California Code of Regulations, title 16 (Regulations), section 1714 states in pertinent part:

....

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

....

(d) Each pharmacist while on duty shall be responsible for the security of the prescription department, including provisions for effective control against theft or diversion of dangerous drugs and devices, and records for such drugs and devices. Possession of a key to the pharmacy where dangerous drugs and controlled substances are stored shall be restricted to a pharmacist.

14. Regulations, section 1718 states:

“Current Inventory” as used in Sections 4081 and 4332 of the Business and Professions Code shall be considered to include complete accountability for all dangerous drugs handled by every licensee enumerated in Sections 4081 and 4332.

1 The controlled substances inventories required by Title 21, CFR, Section 1304 shall
2 be available for inspection upon request for at least 3 years after the date of the
3 inventory.

4 COST RECOVERY

5 15. Section 125.3 of the Code states, in pertinent part, that the Board may request the
6 administrative law judge to direct a licentiate found to have committed a violation or violations of
7 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
8 enforcement of the case.

9 FACTS

10 16. On March 6, 2008, Drug Enforcement Administration (DEA) and Federal Bureau of
11 Investigation (FBI) agents simultaneously served federal search warrants at White Cross
12 Pharmacy, Park Blvd. Pharmacy, and Galloway Pharmacy in San Diego after a two-year
13 investigation into controlled substance diversion from the three pharmacies. From July 1, 2005,
14 through March 6, 2008, Respondent was Pharmacist-in-Charge (PIC) at Galloway Pharmacy.

15 17. The search and warrants produced the following information:

16 a. Galloway was using the building located at 2984 Newton Avenue, San Diego, in
17 back of the pharmacy, as part of the pharmacy for storing prescription records, prescriptions filled
18 with controlled substances and being packaged for delivery, and computer terminals containing
19 confidential patient information, but the building was not licensed with the Board as a pharmacy.

20 b. From July 21, 2005, to March 6, 2008, Galloway purchased 467,400 tablets of
21 Hydrocodone 5/500; 2,111,400 tablets of Hydrocodone 10/325; and 154,900 tablets of
22 Oxycodone 80mg.

23 c. The DEA Biennial Inventory of July 21, 2005 shows 730 tablets of Oxycodone 80;
24 31,200 tablets of Hydrocodone 5/500; and 22,5000 tablets of Hydrocodone 10/325; and a closing
25 inventory (stock on hand) on March 6, 2008, of 956 tablets of Oxycodone 80; 5,396 tablets of
26 Hydrocodone 5/500; and 2,378 tablets of Hydrocodone 10/325.

27 d. The DEA computation chart shows that from July 21, 2005, to March 6, 2008,
28 Galloway dispensed 74,846 tablets of Oxycodone 80mg; 370,767 tablets of Hydrocodone 5/500;
and 103,623 tablets of Hydrocodone 10/325.

1 Together, this information revealed that Galloway was short 79,828 (51%) tablets of
2 Oxycodone 80mg; short 122,437 (25%) tablets of Hydrocodone 5/500 and short 2,028,899 (95%)
3 of Hydrocodone 10/325.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Failure to Maintain Accurate Inventory)**

6 18. Respondent is subject to disciplinary action under section 4301, subdivision (o) of
7 the Code for violation of the Pharmacy Act and Regulations, in that while PIC of Galloway he
8 failed to maintain an accurate inventory in violation of Code section 4081, subdivision (a), and
9 Regulations, section 1718, as detailed in paragraphs 16 and 17, above.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Failure to Maintain Secure Premises and Prevent Theft Inventory)**

12 19. Respondent is subject to disciplinary action under section 4301, subdivision (o) of
13 the Code for violation of the Pharmacy Act and Regulations, in that while PIC of Galloway he
14 failed to maintain his facilities so that dangerous drugs were properly secured and distributed, and
15 failed to make effective provisions for effective control against theft or diversion of dangerous
16 drugs, with resulting shortages, in violation of Regulations, section 1714, subdivisions (b) and
17 (d), as detailed in paragraphs 16 and 17, above.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Operating an Unlicensed Pharmacy)**

20 20. Respondent is subject to disciplinary action under section 4301, subdivision (o) of
21 the Code for violation of the Pharmacy Act and Regulations, in that while PIC of Galloway he
22 operated the building located at 2984 Newton Avenue, San Diego, behind Galloway, as a
23 pharmacy while the building was not licensed with the Board as a pharmacy, in violation of
24 section 4110, subdivision (a) of the Code, as detailed in paragraphs 16 and 17, above.

25 **PRAYER**

26 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
27 and that following the hearing, the Board of Pharmacy issue a decision:
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1. Revoking or suspending Original Pharmacist License Number RPH 45978, issued to Fadi Wasef Atiya, RPH;
2. Ordering Fadi Wasef Atiya 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
3. Taking such other and further action as deemed necessary and proper.

DATED: 6/9/10 

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