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

In the Matter of the Accusation Against: **ELOY RUBIO** **Pharmacy Technician Registration No. TCH 25981** Respondent.	Case No. 3625

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on August 16, 2013.

It is so ORDERED on July 17, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____
STANLEY C. WEISSER
Board President

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

In the Matter of the Accusation Against: ELOY RUBIO, Pharmacy Technician License No. TCH 25981, Respondent.	Case No. 3625 OAH No. 2011060812

PROPOSED DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on January 22, 23, 29, and 30, 2013, in Los Angeles.

Susan Melton Wilson, Deputy Attorney General, represented complainant Virginia Herold, Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

Victor Sherman, Attorney at Law, of Sherman & Sherman, represented respondent Eloy Rubio, who was present.[1]

Oral and documentary evidence was received. Patient-identifying information was redacted from all medical and pharmaceutical records introduced into evidence, and the court reporter was instructed that the transcript of this proceeding must refer to patients who were the subject of testimony by their initials only.

The record was held open to allow the parties to file closing briefs by February 12, 2013, and reply briefs by February 19, 2013. The parties timely filed closing briefs. The Board's closing brief was marked as Exhibit 27; respondent's closing brief was marked as Exhibit C. Neither party filed a reply brief.

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[1] The Accusation filed by the Board also named Westpark Pharmacy and Leon Avakian as respondents; they were dismissed from this case prior to the hearing after entering a stipulated settlement.

The record was closed and the matter was submitted on February 19, 2013.

FACTUAL FINDINGS

Jurisdiction

1. Complainant filed the Accusation in her official capacity. Respondent timely filed a notice of defense.

2. The Board issued Original Pharmacy Technician Registration Number TCH 24981 to respondent on June 9, 1998. The license is scheduled to expire on August 31, 2013, unless renewed.

The Board's Allegations

3. In its Accusation,[2] the Board alleges that:

a. Respondent is subject to disciplinary action under Business and Professions Code (Code) section 4301, subdivisions (j) and (o), for violating Code sections 4059 and 4039, which prohibit the furnishing of any dangerous drug except upon the prescription by a physician, by knowingly filling or causing to be filled 157 prescriptions written by Dr. Robert Zoltan Braun (120 prescriptions for controlled substances and 43 prescriptions for legend pharmaceuticals)[3] after Dr. Braun's license was revoked on March 10, 2005. (Fourth Cause for Discipline.)

b. Respondent is subject to disciplinary action under Code section 4301, subdivisions (j) and (o), for violating state and federal law, including 21 U.S.C. sections 846 and 842(a)(1) and Code sections 4059, subdivision (a), and 4060, "in conjunction with" Health and Safety Code section 11350, subdivision (a), which makes unlawful the possession of a controlled substance unless upon the written prescription of a licensed physician, by conspiring with or assisting Dr. Braun in the unlawful distribution and dispensing of controlled substances between May 2004 and October 19, 2005, which resulted in Dr. Braun's criminal convictions on March 7, 2007. (Sixth Cause for Discipline.)

c. Respondent is subject to disciplinary action under Code section 4301, subdivision (f), due to acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, in that between May 2004 and October 19, 2007, he conspired with Dr. Braun to unlawfully distribute and dispense controlled substances in violation of state and federal law, including

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[2] Only the fourth, sixth, and seventh causes for discipline set forth in the Accusation are stated against respondent Rubio.

[3] Although these numbers do not add up to 157, the number of prescriptions at issue in this case proved to be fewer than 100. (See Factual Finding 29, fn. 5.)

21 U.S.C. sections 846 and 842(a)(1) and Code sections 4059, subdivision (a), and 4060, "in conjunction with" Health and Safety Code section 11350, subdivision (a), which makes unlawful the possession of a controlled substance unless upon the written prescription of a licensed physician. (Seventh Cause for Discipline.)

4. The Board alleges, as the basis for its causes for discipline against respondent, that between May 2004 and October 19, 2005, Dr. Braun issued new prescriptions or renewed prescriptions without legitimate medical purpose, that he would send patients to Westpark Pharmacy, and that respondent, employed as a licensed pharmacy technician at Westpark Pharmacy, "would fill or cause to be filled Dr. Braun's prescriptions" both before and after Dr. Braun's license was revoked by the Medical Board. (Ex. 1.)

Respondent's Licensure and Employment at Westpark Pharmacy

5. Respondent obtained his pharmacy technician registration after completing a required nine-month course. He then worked as an intern at RiteAid. Since approximately 2000, respondent has been employed at Westpark Pharmacy. Respondent is 45 years old; he has been married for about 24 years and has three children.

6. During the time relevant to this matter, from late 2004 to August 2005, Leon Avakian was the pharmacist at Westpark Pharmacy. There were three pharmacy technicians working there in addition to respondent. Respondent testified that he really performed the duties of a clerk, not a pharmacy technician. He did not help to fill any prescriptions during the relevant time period; only the other technicians helped fill prescriptions.

7. Respondent's work station was at the prescription intake window, where he would receive prescriptions from walk-in customers or by fax or electronic script transmission from doctors' offices. Respondent also received, from Avakian, prescriptions that physicians had called in to the pharmacist.

8. Respondent would enter all the prescriptions he received into the computer system, generate a label, and then pass the label on to whoever was filling prescriptions. There were four computers in the pharmacy. One of the computers was in Avakian's office, accessible only to Avakian; the other three were in the front of the pharmacy, where respondent and two other technicians sat. No password was required to access any of the computers in the front of the pharmacy; they were accessible to and were used by all of the employees.

9. If a patient telephoned in a prescription refill, any one of the technicians or clerks might take the call. That technician or clerk would look up the prescription number on one of the computers, print out a call-doctor label, and call or fax the refill request to the prescribing physician. If the physician approved the refill, he or she would call or fax it back; usually the call back or fax would come, not from the doctor, but from the doctor's nurse or front office personnel. A clerk, not necessarily the same clerk who had contacted the physician, would then enter the refill as a new prescription and generate another label.

10. Until April 2005, prescription refill labels included the initials both of the pharmacist and of the pharmacy technician or clerk at whose computer the prescription label was generated. The three other technicians and respondent all used respondent's computer during the relevant time period. Whenever respondent's computer was used to generate a label, the label would automatically have respondent's initials on it, regardless of whether he was the person using the computer. During respondent's lunch breaks from noon to 2:00 p.m., or during bathroom breaks, for example, another clerk or technician would sit at respondent's station to attend to customers patronizing the pharmacy, or to enter fax prescriptions received from doctors' offices, or to enter prescriptions received over the telephone by Avakian. Unless that clerk or technician deliberately changed respondent's initials to his or her own, the computer would print respondent's initials on the label. In practice, none of the technicians would change the initials on whatever computer they were using; it was faster and easier not to do so. Whenever there was an error on a prescription bearing respondent's initials, Avakian would question respondent, and often respondent would have to ask the other employees to determine who had entered the information and generated the label from his computer.

11. Respondent, another technician, and the delivery clerk would sometimes deliver medications to doctors' offices or to patients who could not come to the pharmacy to pick them up.

Dr. Braun's License Revocation

12. In a decision dated February 8, 2005, the Medical Board of California revoked Dr. Braun's physician and surgeon's certificate effective at 5:00 p.m. on March 10, 2005, for violations of his license probation[4] and for unprofessional conduct not related to the matters at issue here. Among other things, Dr. Braun was convicted in October 2001 of disturbing the peace, a misdemeanor.

Respondent's Arrest

13. From summer 2004 to December 2008, the United States Drug Enforcement Administration (DEA) investigated several individuals, including Dr. Braun and respondent, in connection with a suspected conspiracy to divert controlled substances, including Oxycontin, Vicodin, Norco, and Dilaudid.

14. On October 19, 2005, a Simi Valley Police Department (SVPD) officer arrested respondent. Respondent, who was not represented by counsel at the time, was questioned by SVPD officers and by DEA agents for about one to two hours. One of the DEA agents, Michael

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[4] In January 1997, the Medical Board placed Dr. Braun's physician and surgeon's certificate on five years' probation for sexual misconduct with a female patient. In early 2000, the Medical Board revoked Dr. Braun's physician and surgeon's certificate, stayed the revocation, and again placed Dr. Braun on five years' probation because Dr. Braun had been found to have furnished drugs in an improperly labeled container, among other things.

Dalo, who was present for most but not all of the questioning, wrote a report dated October 26, 2005. At this hearing, Agent Dalo testified that he made every effort to accurately record what respondent said and that he took contemporaneous notes of the interviews. Those notes were not produced to respondent or introduced at this hearing.

15. Agent Dalo has worked for the DEA as an intelligence analyst for over 20 years. His job duties include investigating suspected narcotics and pharmaceuticals trafficking. In 2005, Agent Dalo was assigned to investigate Dr. Braun and four other individuals, including respondent. He worked on the case with DEA case agent Patrick Apel and other DEA investigators, with SVPD officers, and with IRS agents. He used federal court-ordered wiretaps, including wiretaps of Dr. Braun's cell phone; he listened to calls or recordings of calls between Dr. Braun and respondent.

16. Agent Dalo testified, and his report states, that respondent said he delivered medications from Westpark Pharmacy to Dr. Braun's office three or four times per month and brought Dr. Braun's cash payments back to Westpark Pharmacy, where he placed the money in the pharmacy safe. Agent Dalo reported respondent saying that the average amount he collected from Dr. Braun was $40,000. Agent Dalo testified that respondent told him that some deliveries included 20-bottle boxes of Oxycontin, the bottles in which did not have pharmacy labels on them, and that some deliveries included 10-bottle bags of Oxycontin, the bottles in which did have pharmacy labels. Agent Dalo testified that, when respondent was questioned by the SVPD and the DEA after his arrest, respondent said he had advised Avakian to order more Oxycontin, and that he sometimes advised customers to come back in a few days to have their prescriptions filled. Agent Dalo reported that respondent said he believed customers were willing to wait because Westpark Pharmacy would not question them about the prescriptions.

17. Although Agent Dalo testified that respondent's role in the conspiracy was to deliver prescription drugs to Dr. Braun's office, Agent Dalo knows of no Board proscription against delivering boxes of prescribed drugs to the prescribing doctor's office.

18. The Board introduced no evidence of any financial incentive for respondent to have conspired with Dr. Braun. It was uncontroverted on this record that respondent never received any payment from Dr. Braun, or from Avakian over and above his regular compensation as a pharmacy clerk, for delivering medications to Dr. Braun's office. Respondent's employment at Westpark Pharmacy was not conditioned on the alleged conspiracy; respondent continues to work at the pharmacy. On the evidence in this record, all of the money received from Dr. Braun for the prescription medications delivered to his office was given by respondent to Avakian.

19. Respondent told Agent Dalo that no medications left the pharmacy without Avakian's knowledge, and that respondent never transported medications without a legitimate prescription. Respondent had asked Avakian to explain why so much medication was being sent to Dr. Braun, and Avakian told him it was alright and not to question the doctor. Agent Dalo conceded that he does not know who filled the prescriptions at issue in this case, and that he understands that it was Avakian who filled prescriptions at Westpark Pharmacy. Agent Dalo

also testified that respondent said he had questioned both Dr. Braun and Avakian as to whether the prescriptions were for legitimate medical needs, and that Avakian instructed him that all prescriptions written by Dr. Braun were to be considered legitimate and were to be filled. Respondent also told investigators that Avakian said it was appropriate to fill Dr. Braun's prescriptions after March 10, 2005, if the dates on the prescriptions were prior to March 10. Agent Dalo wrote in his report that respondent told him that "Braun had some pre-dated prescriptions . . . that were filled at West Park Pharmacy. [Respondent] asked Avakian if it was okay to fill these prescriptions. Avakian checked and told [respondent] there was no problem because the dates on the prescriptions were from before Braun lost his license." (Ex. 20.)

20. At this hearing, respondent agreed that he had told the DEA investigators that he collected money from Dr. Braun about four times per month, but he denied saying that he collected an average of $40,000 per month; he collected that much on only one occasion. Respondent confirmed that he brought the money he collected from Dr. Braun back to Westpark Pharmacy, but denied that he put the money in the pharmacy safe, or that he told Agent Dalo he did so; respondent would give the money to Avakian, as he himself did not have the combination to the safe. Respondent denied concluding that some of the medications he delivered were not for legitimate medical needs; he testified that he is not qualified to draw such a conclusion.

21. A contemporaneous report of statements against interest that respondent made during his questioning by DEA agents would generally outweigh, in terms of credibility, conflicting statements respondent made at hearing. But there are other factors to be weighed in assessing the credibility of the DEA report's version of respondent's account of the events of 2005. The interview with respondent was not recorded. Although some of the investigators' conclusions were stated to have been based on wiretap recordings, no such recordings were produced to the Board during the Board's subsequent investigation of this matter or to respondent prior to or at this hearing. The Board produced no contemporaneous notes taken by Agent Dalo or any of the other DEA agents present at respondent's questioning. At various times, there were four or five DEA agents present; none of them testified to corroborate Agent Dalo's statements. The investigative report is a narrative summary; no statements allegedly made by respondent were quoted in the report. Nor are the report's findings corroborated by a criminal conviction—respondent was never tried and he never pled to the charges against him. Instead, respondent entered a Diversion Agreement after providing the court with an admission so limited that it calls into question the nature of any admissions respondent allegedly made to the DEA agents. (Factual Finding 24.) Avakian was never criminally charged and did not testify at this hearing. Taken together, these facts and respondent's testimony compromise the credibility of the Board's version of respondent's account of the events of 2005.

Respondent's Indictment

22. An indictment against respondent, Dr. Braun, and others was filed on November 3, 2005, in the United States District Court, Central District of California. Respondent was charged with conspiracy to distribute controlled substances; specifically, respondent was

alleged to have caused to be filled prescriptions written by Dr. Braun without any legitimate medical purpose, before and after March 10, 2005, the effective date of the Medical Board's revocation of Dr. Braun's license.

23. On March 5, 2007, Dr. Braun pled guilty and was convicted of conspiracy to unlawfully distribute controlled substances, in violation of 21 USC sections 846 and 841(a)(1); he was sentenced to 70 months in prison followed by three years' supervised release. Agent Dalo testified at this hearing that Dr. Braun admitted to writing false prescriptions for large quantities of controlled substances and selling them at a profit to a third party; he wrote more prescriptions for his patients than they received or were aware of.

24. Respondent was neither tried for nor convicted of the crimes alleged in the indictment. On December 19, 2007, respondent entered into a pre-trial diversion agreement (Diversion Agreement) under which he was to enter and complete a six-month diversion program on terms and conditions including that he not violate any law and that he complete 40 hours of community service. In a letter dated November 19, 2007, in the process of negotiating the Diversion Agreement, respondent admitted the following:

> I delivered prescriptions to the Doctor's office and accepted cash on behalf of the pharmacy. In retrospect that is not the way to handle prescriptions, but to provide the prescriptions to individual patients. Although delivering medication was part of my job, it will never happen again. I regret the incident occurred.

(Ex. B.) Respondent entered and completed the diversion program.

25. By order dated July 8, 2008, in United States District Court, Central District of California, Case Number CR 05-1075 ABC, the court dismissed the indictment against respondent, with prejudice.

The Board's Investigation

26. In 2009, more than a year after the DEA investigation was completed, the Board asked Pharmacy Inspector Robert Venegas to investigate this matter. Inspector Venegas has been licensed as a pharmacist since 1962 and has worked for the Board as a pharmacy inspector for over 19 years.

27. Inspector Venegas obtained records from the DEA investigation, comprising the DEA agents' investigative reports, computer logs, and original prescriptions originating from or approved by Dr. Braun's office that are at issue in this matter. Due to the passage of time since the DEA investigation, Inspector Venegas did not contact any of the DEA agents who participated in the investigation, nor did he contact Dr. Braun, Avakian or any of the Westpark pharmacy staff, or any of the patients for whom prescriptions were written or who purportedly received prescription medications. Inspector Venegas's investigation consisted entirely of his review of the records provided by the DEA.

28. Based on his review of the DEA documents, including the prescriptions filled by Westpark Pharmacy, Inspector Venegas prepared three reports summarizing the records he had received from the DEA. In the report dated December 31, 2009, Inspector Venegas described acts which, if respondent committed them, he would consider violations of pharmacy law. Inspector Venegas testified, however, that he had concluded only that respondent may have violated pharmacy law.

29. The prescriptions investigated by Inspector Venegas can be divided into three distinguishable categories—those dated on or before March 10, 2005, those dated from March 11 to April 24, 2005, and those dated on or after April 25, 2005.[5]

30. Of the 101 prescriptions investigated by Inspector Venegas, 19 are dated on or before March 10, 2005, and have labels bearing the initials of both Avakian and respondent. Dr. Braun's license was not revoked until 5:00 p.m., on March 10, 2005. Inspector Venegas concedes that he is not able to determine whether prescriptions written by Dr. Braun on March 10, 2005, were written before or after 5:00 p.m., when Dr. Braun's license revocation became effective, and that he cannot, therefore, establish that any prescription written on that date was improper.[6] Inspector Venegas testified that prescriptions written before 5:00 p.m. on March 10, 2005, were facially valid and could be legally filled any time over the subsequent six months, even after Dr. Braun's license was revoked. There is no evidence on the record that any prescription written on March 10, 2005, or earlier, was filled more than six months after it was written.

31. Of the prescriptions investigated by Inspector Venegas, 27 are dated between March 11 and April 24, 2010, inclusive, and have labels bearing the initials of both Avakian and respondent. These prescriptions post-date the revocation of Dr. Braun's license, and on their face appear to implicate respondent in the processing of the prescriptions. Inspector Venegas testified, however, that Dr. Braun brought physicians into his practice to take over the care of his patients, and that Dr. Braun would have been permitted, after his license revocation, to call and instruct the pharmacy to fill prescriptions as an agent for those new physicians, since even

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[5] The Board relied on Inspector Venegas's investigation and did not introduce evidence of more than 101 prescriptions, 15 of which the Board withdrew from evidence because they bear the initials of another technician, not of respondent. Those 15 prescriptions pre-date April 25, 2005; six of them are dated on or before March 10, 2005, and nine of them are dated between March 11 and April 24, 2010, inclusive. The Board did not establish that respondent was involved in the processing of those prescriptions.

[6] Inspector Venegas also conceded that he cannot establish that Dr. Braun backdated any prescriptions written after March 10. The only evidence presented to support the proposition that backdating occurred is respondent's alleged statement to Agent Dalo about "pre-dated" prescriptions (Factual Finding 19), but, in context, that appears to refer only to the fact that some prescriptions written before March 10, 2005, were still being filled after March 10, 2005.

an unlicensed receptionist could do the same. And although respondent's initials appear on the labels, his initials would appear on any prescription processed on the computer at his station, even when other pharmacy personnel processed prescriptions on that computer. Inspector Venegas conceded that he does not know whether respondent participated in processing these prescriptions, and that he did not interview Westpark Pharmacy personnel to enable him to determine who processed the prescriptions. Respondent denies filling prescriptions called in by Dr. Braun after March 10, 2005, testifying that he transferred to Avakian all prescription calls he received from Dr. Braun after that date.

32. Of the prescriptions investigated by Inspector Venegas, 41 are dated on or after April 25, 2005. Beginning on April 25, 2005, the labels for all the prescriptions in evidence bear the initials only of the pharmacist, Avakian. They do not include the initials of any of the pharmacy technicians, as they would have done if the prescriptions were entered on any of the three computers in the front of the pharmacy, based on the evidence in this record. Inspector Venegas conceded that he does not know whether any technician participated in processing these prescriptions. The Board did not establish that respondent had access to the computer in Avakian's office or was in any way involved in processing prescriptions authorized by Dr. Braun's office on or after April 25, 2005, all of which respondent denies.

33. The Board did not establish on this record that respondent knew that drugs were being diverted illegally or that medication was being prescribed without a legitimate medical purpose. The Board did not establish respondent's role in the processing of Dr. Braun's prescriptions; the evidence does not establish that prescription labels with respondent's initials were generated as a result of respondent's acts. The Board did not establish that respondent has expertise sufficient to determine what drugs are medically necessary for particular patients. Respondent asked Avakian about Dr. Braun's prescriptions and Avakian instructed respondent that they were medically necessary and should be filled. There is no evidence on this record that respondent knew of any conspiracy between Avakian and Dr. Braun. Avakian was not criminally charged, and respondent was following Avakian's directives, as Avakian's employee. The Board concedes that the medications at issue here were dispensed by Avakian, and that the physician and the pharmacist are responsible for complying with the legal requirements governing the prescription of controlled substances. But the Board alleges that respondent was not entitled to rely on the instructions and assurances he received from Dr. Braun and Avakian, particularly after he knew that Dr. Braun's license had been revoked. Respondent testified, and told Agent Dalo, however, that he questioned Avakian about Dr. Braun's prescriptions and was instructed to process them; Inspector Venegas testified that a pharmacy technician must accept a pharmacist's instructions or get fired, and that a pharmacy technician performs only non-discretionary tasks. The Board did not establish on this record that respondent conspired with and assisted Dr. Braun, knowingly filling Dr. Braun's illegal prescriptions or causing them to be filled. Nor did the Board establish that respondent had any financial incentive to participate in such a conspiracy. Aside from his regular salary as a clerk, respondent was not compensated for delivering medications to Dr. Braun.

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LEGAL CONCLUSIONS

Burden of Proof

1. The Board bears the burden of proof by a preponderance of the evidence. (Evid. Code, § 115.) In view of the Board's Disciplinary Guidelines (Guidelines),[7] pharmacy technicians do not hold a professional license, they hold an occupational license.

2. The Guidelines provide:

> Pharmacy technicians are issued a license based on minimal education, training requirements or certification. No examination is required for issuance of the registration. Pharmacy technicians are not independent practitioners and must work under the supervision of a pharmacist.

(Guidelines, p. 43.) To obtain a license, an applicant must simply complete 240 hours of instruction covering, among other things, "the duties and responsibilities of a pharmacy technician in relationship to other pharmacy personnel and knowledge of standards and ethics, laws and regulations governing the practice of pharmacy." (Cal. Code Regs., tit. 16, § 1793.6.) This is not analogous to the rigorous educational, training, and testing requirements for obtaining a professional license that justify imposition of a burden of proof of clear and convincing evidence. (See *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856; *Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911.)

3. Moreover, the pertinent law makes plain that a pharmacy technician performs nondiscretionary tasks that do not require a pharmacist's professional judgment. "A pharmacy technician may perform packaging, manipulative, repetitive, or other nondiscretionary tasks, only while assisting, and while under the direct supervision and control of, a pharmacist." (Code, § 4115, subd. (a); Cal. Code Regs., tit. 16, § 1793.) A pharmacy technician's nondiscretionary tasks may include "removing the drug or drugs from stock; (b) counting, pouring, or mixing pharmaceuticals; (c) placing the product into a container; (d) affixing the label or labels to the container; (e) packaging and repackaging." (Cal. Code Regs., tit. 16, § 1793.2.) A pharmacy technician is not authorized "to perform any act requiring the exercise of professional judgment by a pharmacist." (Code, § 4115, subd. (c); Cal. Code Regs., tit. 16, § 1793.) Only a pharmacist may perform such tasks as receiving new oral prescriptions, evaluating and interpreting prescriptions, interpreting a patient's medication records, and consulting with prescribing physicians. (Cal. Code Regs., tit. 16, § 1793.1.)

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[7] "In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code section 11400 et seq.) the board shall consider the disciplinary guidelines entitled "Disciplinary Guidelines" (Rev. 10/2007), which are hereby incorporated by reference." (Cal. Code Regs., tit. 16, § 1760.)

Applicable Authority

4. The Board may take action against a licensee for unprofessional conduct, which includes committing acts of moral turpitude, dishonesty, fraud, deceit, or corruption; violating federal or state law regulating controlled substances and dangerous drugs; and violating or conspiring to violate any federal and state law governing pharmacy. (Code, § 4031, subds. (f), (j), & (o).) A person may not furnish any dangerous drug, or possess any controlled substance, except on the prescription of a physician holding a valid and unrevoked license. (Code, §§ 4039, 4059, subd. (a), 4060; Health & Saf. Code, § 11350, subd. (a) (possession absent a physician's prescription is a criminal offense.) It is unlawful to distribute or dispense, or conspire to distribute or dispense, a controlled substance without a practitioner's written prescription. (21 U.S.C. §§ 846, 842(a)(1), 829.) Prescriptions for controlled substances must meet certain specified requirements. (Health & Saf. Code, § 11158.) Such prescriptions:

> shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription.

(Health & Saf. Code, § 11153, subd. (a).) Except where otherwise authorized by statute, prescriptions not issued in the course of professional treatment, or issued to an addict or habitual user of controlled substances not in the course of professional treatment or as part of an narcotic treatment program, are not legal prescriptions. (*Id.*)

5. A pharmacist is prohibited from dispensing a controlled substance where the pharmacist knows that the prescription is not for a legitimate medical purpose. (Cal. Code Regs., tit. 16, § 1761, subd. (b).) It is the pharmacist, however, not the pharmacy technician, who is licensed to evaluate what constitutes a legitimate medical purpose. (Code, § 4115, subd. (c); Cal. Code Regs., tit. 16, §§ 1793, 1793.1.) Based on his duties, which were quite circumscribed (see Factual Findings 6 through 11), respondent did not even act as a pharmacy technician, but as a non-licensed clerk. A pharmacist may employ non-licensed personnel "to type a prescription label or otherwise enter prescription information into a computer record system, but the responsibility for the accuracy of the prescription information and the prescription as dispensed lies with the registered pharmacist who initials the prescription or prescription record. At the direction of the registered pharmacist, a non-licensed person may also request and receive refill authorization." (Cal. Code Regs., tit. 16, § 1793.3.)

Cause for Discipline

6. The Board did not meet its burden of proof in this case.

7. Cause does not exist to suspend or revoke respondent's pharmacy technician license under Code section 4301, subdivisions (j) and (0), for violating Code sections 4059 and 4039 by knowingly filling or causing to be filled 157 prescriptions written by Dr. Robert Zoltan Braun after Dr. Braun's license was revoked on March 10, 2005, based on Factual Findings 5 through 33.

8. Cause does not exist to suspend or revoke respondent's pharmacy technician license under Code section 4301, subdivisions (j) and (o), for violating state and federal law, including 21 U.S.C. sections 846 and 842(a)(1) and Code sections 4059, subdivision (a), and 4060, in conjunction with Health and Safety Code section 11350, subdivision (a), by conspiring with or assisting Dr. Braun's unlawful distribution and dispensing of controlled substances between May 2004 and October 19, 2005, which resulted in Dr. Braun's criminal convictions on March 7, 2007, based on Factual Findings 5 through 33.

9. Cause does not exist to suspend or revoke respondent's pharmacy technician license under Code section 4301, subdivision (f), due to acts involving moral turpitude, dishonesty, fraud, deceit, or corruption in conspiring with Dr. Braun between May 2004 and October 19, 2007, to unlawfully distribute and dispense controlled substances in violation of state and federal law, including 21 U.S.C. sections 846 and 842(a)(1) and Code sections 4059, subdivision (a), and 4060, "in conjunction with" Health and Safety Code section 11350, subdivision (a), based on Factual Findings 5 through 33.

ORDER

The Accusation against respondent Eloy Rubio, Pharmacy Technician License Number TCH 25981, is dismissed.

DATED: March 28, 2013

HOWARD W. COHEN
Administrative Law Judge
Office of Administrative Hearings

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

In the Matter of the Accusation Against: **WESTPARK PHARMACY** AVAKIAN INC., OWNER 22110 Roscoe Blvd., #105 Canoga Park, CA 91304 Pharmacy Permit No. PHY 45155 **LEON AVAKIAN** 1026 Bramford Drive Glendale, CA 91207 Pharmacist License No. RPH 48020 **ELOY RUBIO** 16352 Devonshire Street Granada Hills, CA 91344 Pharmacy Technician License No. TCH 25981 Respondents.	Case No. 3625 **A C C U S A T I O N**

Complainant alleges:

PARTIES

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

2. On or about March 2, 2001, the Board of Pharmacy issued Pharmacy Permit Number PHY 45155 to Avakian Inc., a corporation, to do business as Westpark Pharmacy (Respondent Westpark). At all times since issuance of the license, Respondent Leon Avakian is listed in Board records as both president of Avakian Inc. as well as the pharmacist-in-charge of Westpark Pharmacy. The Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein and will expire on March 1, 2011, unless renewed.

3. On or about August 8, 1955, the Board of Pharmacy issued Original Pharmacist License Number RPH 48020 to Leon Avakian (Respondent Avakian).The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2012, unless renewed.

4. On or about June 9, 1998, the Board of Pharmacy issued Pharmacy Technician License Number TCH 25981 to Eloy Rubio (Respondent Rubio). The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2011, unless renewed.

JURISDICTION

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

6. Section 4300 of the Code states:

"(a) Every license issued may be suspended or revoked.

"(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

"(1) Suspending judgment.

"(2) Placing him or her upon probation.

"(3) Suspending his or her right to practice for a period not exceeding one year.

"(4) Revoking his or her license.

///

"(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

"(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy, including, but not limited to, the following:

"(1) Medical or psychiatric evaluation.

"(2) Continuing medical or psychiatric treatment.

"(3) Restriction of type or circumstances of practice.

"(4) Continuing participation in a board-approved rehabilitation program.

"(5) Abstention from the use of alcohol or drugs.

"(6) Random fluid testing for alcohol or drugs.

"(7) Compliance with laws and regulations governing the practice of pharmacy.

"(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary certificate of licensure for any violation of the terms and conditions of probation. Upon satisfactory completion of probation, the board shall convert the probationary certificate to a regular certificate, free of conditions.

"(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure."

7. Section 4301 of the Code states:

"The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

. . .

"(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

. . .

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

. . .

"(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.

. . .

8. Section 4039 of the Code states in pertinent part:

"Physicians," . . . are persons authorized by a currently valid and unrevoked license to practice their respective professions in this state. "Physician" means and includes any person holding a valid and unrevoked physician's and surgeon's certificate or certificate to practice medicine and surgery, issued by the Medical Board of California or the Osteopathic Medical Board of California . . ."

9. Section 4059 of the Code, at subdivision (a) states:

"(a) A person may not furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor.

10. Section 4060 of the Code states in pertinent part:

"No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician (or other authorized prescriber) . . ."

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

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

13. Health and Safety Code section 11150 provides that no person other than a physician, dentist, podiatrist, or veterinarian, or authorized prescriber shall write or issue a prescription."

14. Health and Safety Code section 11158 provides as subsection "a" that:

"(a) Except as provided in this section, no controlled substance classified in Schedule II shall be dispensed without a prescription meeting the requirements of this chapter. Except as provided in Section 11159 or when dispensed directly to an ultimate user by a practitioner, other than a pharmacist or pharmacy, no controlled substance classified in Schedule III, IV, or V may be dispensed without a prescription meeting the requirements of this chapter."

15. Health and Safety Code section 11153, at subdivision (a) states:

"(a) A prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. Except as authorized by this division, the following are not legal prescriptions: (1) an order purporting to be a prescription which is issued not in the usual course of professional treatment or in legitimate and authorized research; or (2) an order for an addict or habitual user of controlled substances, which is issued not in the course of professional treatment or as part of an authorized narcotic treatment program, for the purpose of providing the user with controlled substances, sufficient to keep him or her comfortable by maintaining customary use."

16. Title 16 of the California Code of Regulations, at section 1761 states:

"(a) No pharmacist shall compound or dispense any prescription which contains any significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon receipt of any such prescription, the pharmacist shall contact the prescriber to obtain the information needed to validate the prescription.

(b) Even after conferring with the prescriber, a pharmacist shall not compound or dispense a controlled substance prescription where the pharmacist knows or has objective reason to know that said prescription was not issued for a legitimate medical purpose."

DRUG CLASSIFICATIONS

17. Drug Classifications

BRAND NAME	GENERIC NAME	DANGEROUS DRUG PER B&P 4022	CONTROLLED SUBSTANCE PER H&S	INDICATIONS FOR USE
Oxycontin	Oxycodone	Yes	Schedule II per HSC 11055(b)(1)(N)	Moderate to severe pain
Vicodin, Norco	Hydrocodone/Apap	Yes	Schedule III per HSC 11056(e)(4)	Moderate to severe pain
Dilaudid	Hydromorphone	Yes	Schedule II per HSC 11055(b)(l)(K)	Moderate to severe pain

SUMMARY OF FACTS

18. The following facts are common to all of the causes for discipline which follow:

a. At all times relevant herein Respondent Leon Avakian was pharmacist-in-charge of Respondent Westpark Pharmacy.

b. Between approximately May 2004 and October 19, 2005 Respondent Eloy "Jose" Rubio was employed as a licensed pharmacy technician at Respondent Westpark Pharmacy.

c. Between approximately May 2004 and March 10, 2005, Dr. Robert Zoltan Braun owned and operated a medical practice located at 23101 Sherman Place, Suite 201 in West Hills, CA.

d. Between approximately May 2004 and October 19, 2005, Dr. Braun and Respondent Rubio conspired to unlawfully distribute and dispense scheduled controlled substances, including Oxycontin, Methadone, Morphine, Hydromorphone, Hydrocodone, Lorazepam, Vicodin and Norco by the following methodology:

(1) Dr. Braun would issue prescriptions or renew prescriptions without legitimate medical purpose to consumers wishing to acquire a controlled substance.

(2) Dr. Braun would suggest that the prescription be filled at Respondent

Westlake Pharmacy, where Respondent Rubio worked.

(3) Respondent Rubio would then fill or cause to be filled Dr. Braun's prescriptions.

e. Effective on or about March 10, 2005, Dr. Braun's license to practice medicine and legitimately prescribe controlled substances in the state of California was revoked by the Medical Board of California due to sexual misconduct with a patient.

f. Dr. Braun nevertheless continued to write and renew prescriptions for controlled substances, backdating the prescriptions to dates before the effective date of his revocation.

g. Between March 10, 2005 (the effective date of Dr. Braun's license revocation) and August 18, 2005, Respondent Westpark filled or caused to be filled a total of 157 prescriptions for controlled substances issued by Dr. Braun (120 prescriptions for controlled substances; and 43 prescriptions for legend pharmaceuticals). All 101 prescriptions were dispensed by Respondent Leon Avakian.

Undercover Officer Obtained and Filled Prescriptions

h. On June 10, 2005 and July 6, 2005 – months after revocation of his license - Dr. Braun wrote prescriptions for controlled substances for an undercover law enforcement officer. Dr. Braun also referred the officer to Westpark Pharmacy.

i. The undercover officer had both prescriptions filled at Westpark as follows:

(1) On June 10, 2005, Rubio dispensed a prescription written by Dr. Braun for 90 tablets of Lorazepam to the undercover officer. Prior to having the prescription filled, the officer had confirmed that Rubio knew Dr. Braun was no longer licensed. The undercover officer then traveled to Respondent Westpark Pharmacy and presented the prescription (written by Braun) to Respondent Rubio, who accepted $40.00 cash, and dispensed or had dispensed 90 tablets of Loarazepam to the undercover officer.

(2) On July 6, 2005, Respondent Avakian filled 2 prescriptions (Rx# 25990 and Rx#259995), written by Dr. Braun, for the undercover officer, dispensing a total of 240 tablets of Hydrocodone, at the cost of $200.00. The prescriptions were in two different names (Patrick C. and Patrick N.), and were for 120 tablets of Hydrocodone each. Upon

review of the label affixed to the two containers provided by Westpark, and his receipt for the purchase, the officer noted that the prescribing doctor was shown as a "Dr. Shaet."

Statement of Respondent Rubio

j. In a statement made on or about October 19, 2005, Respondent Rubio stated that, in addition to the prescriptions being picked up by Dr. Braun's patients at Westlake, he made numerous deliveries to Dr. Braun's office. Rubio delivered drugs to Braun approximately 4 times per month. Approximately twice per month, Rubio delivered a box of 20 bottles (100 "80 mg" tablets per bottle) of Oxycontin. The bottles did not have pharmacy labels. Approximately twice per month he delivered bags containing ten bottles of Oxycontin to Dr. Braun as well. The ten bottle deliveries usually had pharmacy labels on them. Braun was the only doctor he made deliveries to.

k. According to the October 2005 statement, Rubio collected money from Dr. Braun approximately 4 times a month, twice a month he collected 7 – 8 thousand dollars and twice a month he collected more than ten thousand dollars. He only collected cash from Dr. Braun. On one occasion Rubio collected more than $40,000.00.

l. Rubio stated no drugs could leave the pharmacy without Avakian's knowledge.

m. Rubio stated that Respondent Avakian knew that Dr. Braun lost his license in March 2005.

n. Rubio stated that Respondent Avakian said it was "no problem" to fill pre-dated prescriptions of Dr. Braun for controlled substances because the dates of the prescriptions were from before Dr. Braun lost his license.

o. Rubio questioned Respondent Avakian about the legitimacy of some of Dr. Braun's prescriptions. Avakian told Rubio if Braun wrote a prescription, it was to be filled. As long as a prescription came from a doctor it was to be considered legitimate.

p. On or about March 7, 2007, in United States District Court (Central), Dr. Braun pled guilty to conspiracy to unlawfully distribute controlled substances, a violation of 21 United States Code section 846, 841(a)(1) and was sentenced to seventy (70) months in prison, and to pay fines of approximately $17,600.

q. An indictment for involvement of Respondent Rubio in the scheme was filed on March 3, 2008 United States District Court (Central) criminal case no. CR 05-1075-ABC. However, pursuant to a plea agreement, prosecution of the matter was delayed for 6 months, and Respondent Rubio was permitted to enter a drug treatment program. On proof of his successful completion of the program, the indictment was dismissed on July 8, 2008.

FIRST CAUSE FOR DISCIPLINE

(Filling of Erroneous Prescriptions)

19. Respondents WESTPARK PHARMACY and LEON AVAKIAN are subject to disciplinary action under Code section 4301, subdivisions (j) and (o) in conjunction with Title 16, California Code of Regulations section 1761, subdivisions (a) and (b), in that Respondents dispensed a total of 157 prescriptions written by Dr. Braun (120 prescriptions for controlled substances; and 43 prescriptions for legend pharmaceuticals) after Dr. Braun's license was revoked on March 10, 2005, despite significant irregularities, and despite knowing or having objective reason to know that said prescription(s) were not issued for a legitimate medical purpose, for patients as follows:

DATE	RX NO.	PATIENT	DRUG
1. 3/22/2005	247692		HC 10/500
2. 3/22/2005	247687		Dextro
3. 3/22/2005	247723		Duragesic
4. 3/25/2005	245892		HC 10/500
5. 3/25/2005	245892		Soma
6. 3/30/2005	248742		Lorazepam
7. 4/7/2005	226998		Ambien
8. 4/7/2005	249707		Alprazolam
9. 4/11/2005	250127		Ambien
10. 4/11/2005	250128		HC10/325
11. 4/22/2005	250129		Diazepam
12. 4/22/2005	226200		HC 10/325
13. 4/11/2005	229270		HC 10/325
14. 4/13/2005	250519		HC 10/325
15. 4/14/2005	231123		HC 10/325
16. 4/15/2005	245892		HC 10/325
17. 4/18/2005	246339		HC 10/650
18. 4/22/2005	228836		Diethylprop
19. 4/22/2005	231201		Ambien
20. 4/26/2005	248324		Alprazolam
21. 4/28/2005	227838		HC 10/325
22. 4/28/2005	249322		HC 10/325
23. 5/3/2005	228851		Lorazepam
24. 5/4/2005	253360		HC 10/325

25. 5/4/2005	232798		Diazepam
26. 5/5/2005	233768		HC 10/325
27. 5/52005	253581		HC 10/325
28. 5/6/2005	253758		Vic ES
29. 5/9/2005	253792		Lorazepam
30. 5/11/2005	229186		Alprasolam
31. 5/16/2005	233406		HC 10/325
32. 5/17/2005	254736		Prometh C
33. 5/18/2005	235167		HC/ibu
34. 5/20/2005	230520		Alprazolam
35. 5/24/2005	233796		HC 10/325
36. 5/24/2005	249322		HC 10/325
37. 5/26/2005	255814		HC 10/325
38. 5/31/2005	256240		HC 10/325
39. 5/31/2005	248794		HC 10/325
40. 6/2/2005	231773		HC 10/325
41. 6/2/2005	233192		Diazepam
42. 6/2/2005	233193		Ambien
43. 6/2/2005	233197		HC 10/325
44. 6/2/2005	233465		HC 10/325
45. 6/2/2005	233993		HC 10/325
46. 6/2/2005	249707		Alprazolam
47. 6/2/2005	235429		Triazolam
48. 6/3/2005	232809		Clonazepam
49. 6/3/2005	233406		HC 10/325
50. 6/3/2005	234080		HC 10/325
51. 6/3/2005	249908		Viagra
52. 6/9/2005	246152		Hydro/lbu
53. 6/13/2005	246339		HC 10/659
54. 6/13/2005	257570		Alprazolam
55. 6/13/2005	233981		HC 10/325
56. 6/15/2005	233768		HC 10/325
57. 6/20/2005	258298		HC 10/325
58. 6/30/2005	256589		HC 10/325
59. 7/7/2005	260099		HC 10/660
60. 7/8/2005	250180		Alprazolam
61. 8/12/2005	264361		Diazepam
62. 8/12/2005	264363		HC/ibu
63. 03/09/05	248365		Wellbutrin
64. 03/10/05	246173		Alprazolam 2
65. 03/10/05	246256		Butalbital/cod
66. 03/10/05	246319		Hydrocodone
67. 03/10/05	246317		Hydrocodone
68. 03/10/05	246337		Hydrocodone
69. 03/10/05	246339		Hydrocodone
70. 03/10/05	246340		Ambien 10
71. 03/10/05	246365		Hydrocodone
72. 03/10/05	246371		Avinza
73. 03/10/05	246373		Tenuate
74. 03/10/05	246375		Oxandrin
75. 03/10/05	246378		Dilaudid
76. 03/10/05	246380		Dilaudid
77. 03/10/05	246382		Dilaudid
78. 03/10/05	246384		Dilaudid
79. 03/10/05	246385		Dilaudid
80. 03/10/05	246386		Dilaudid

81. 03/10/05	246387		Dilaudid
82. 03/10/05	246388		Dilaudid
83. 03/10/05	246389		Dilaudid
84. 03/10/05	246391		Hydrocodone
85. 03/10/05	246403		Oxycodone
86. 03/10/05	249322		Hydrocodone
87. 03/14/05	246676		Oxycodone
88. 03/15/05	246839		Oxycodone
89. 03/15/05	246848		Oxycodone
90. 03/17/05	247216		Oxycodone
91. 03/17/05	247217		Oxycodone
92. 03/22/05	247636		Oxycodone
93. 03/22/05	247643		Hydocodone
94. 03/22/05	247680		Astelin
95. 03/22/05	247681		Aciphex
96. 03/22/05	247687		Dexedine
97. 03/22/05	247722		Duragesic
98. 03/22/05	247723		Duragesic
99. 03/28/05	248259		Warfarin
100.03/28/05	248324		Alprazolam 2
101.03/28/05	248451		Propecia
102.03/30/05	248701		Oxycodone
103.03/31/05	248794		Hydrocodone
104.03/31/05	248935		Oxycodone
105.04/01/05	249155		Astelin
106.04/04/05	249188		Oxycodone
107.04/04/05	249246		Toprol xl
108.04/04/05	249297		Amoxicillin
109.04/05/05	249189		Actiq
110.04/05/05	249225		Actiq
111.04/05/05	249389		Cialis
112.04/06/05	249575		Dilaudid
113.04/07/05	249707		Alprazolam 2
114.04/07/05	249720		Astelin
115.04/07/05	249721		Optivar
116.04/08/05	249908		Viagra
117.04/11/05	250127		Ambien 10
118.04/11/05	250128		Hydrocodone
119.04/11/05	250129		Valium
120.04/13/05	250519		Hydrocodone
121.04/21/05	251720		Oxycodone
122.04/21/05	251794		Percocet
123.04/25/05	252623		Astelin
124.04/25/05	252624		Optivar
125.04/26/05	252262		Valtrex 500
126.04/28/05	252548		Dexedrine
127.04/28/05	252659		Adderall
128.04/28/05	252666		Oxycodone
129.04/28/05	252667		Oxycodone
130.04/28/05	252668		Oxycodone
131.04/28/05	252683		Dexedrine
132.04/28/05	252687		Oxycodone
133.04/28/05	252688		Oxycodone
134.04/28/05	252689		Oxycodone
135.04/28/05	252713		Oxycodone
136.04/29/05	252726		Actiq

137.04/29/05	252727		Oxycodone
138.04/29/05	252728		Actiq
139.04/29/05	252745		Oxycodone
140.04/29/05	252746		Oxycodone
141.04/29/05	252758		Actiq
142.04/29/05	252759		Oxycodone
143.04/29/05	252760		Oxycodone
144.04/29/05	252768		Oxycodone
145.04/29/05	252769		Oxycodone
146.04/29/05	252770		Oxycodone
147.04/29/05	252774		Oxycodone
148.04/29/05	252775		Oxycodone
149.04/29/05	252776		Actiq
150.04/29/05	252777		Oxycodone
151.04/29/05	252778		Oxycodone
152.05/02/05	253023		Adderall
153.05/26/05	255814		Hydrocodone
154.06/03/05	256588		Alprazolam 2
155.06/03/05	256589		Hydrocodone
156.06/12/05	264385		Oxycodone
157.06/13/05	257570		Alprazolam 2
158.06/20/05	258372		Alprazolam 2
159.06/20/05	258373		Hydrocodone
160.06/24/05	246767		Oxycodone
161.06/30/05	259549		Carisprodol
162.07/08/05	260180		Alprazolam 2
163.08/18/05	264831		Alprazolam 2

SECOND CAUSE FOR DISCIPLINE

(Failure to Validate and/or Determine Legitimacy of a Prescription)

20. Respondents WESTPARK PHARMACY and LEON AVAKIAN subject to disciplinary action under Code section 4301, subdivisions (j) and (o) in conjunction with Health and Safety Code section 11153, subdivision (a) due to Respondents' failure of the statutory duty of corresponding responsibility to assure that prescriptions be issued for a legitimate medical purpose, due to Respondents' filling at least 157 prescriptions written by Dr. Braun (120 prescriptions for controlled substances; and 43 prescriptions for legend pharmaceuticals) after Dr. Braun's license was revoked on March 10, 2005, despite significant irregularities, and despite knowing or having objective reason to know that said prescription(s) were not issued for a legitimate medical purpose, for patients as referenced in paragraphs 18 and 19 above.

THIRD CAUSE FOR DISCIPLINE

(Illegal Refilling of a Controlled Substance Prescription)

21. Respondents WESTPARK PHARMACY and LEON AVAKIAN subject to

disciplinary action under Code section 4301, subdivisions (j) and (o) in conjunction with Health and Safety Code section 11200, subdivision (a) (which prohibits dispensing or refilling controlled substance prescriptions more than six months after date of issuance), in that on dates between April 7, 2005 and August 12, 2005, Respondents dispensed/ refilled at least 28 prescriptions for controlled substances more than 6 months after the date the prescription was written, to patients as follows:

DATE	ORIGINAL DATE	RX NO.	PATIENT	DRUG	QTY.	DOCTOR	PAST 6 MO.
1. 4/7/2005	10/26/2004	226998		Ambien	30	Braun	1
2. 4/11/2005	10/19/2004	226200		HC 10/325	120	Braun	1
3. 4/11/2005	11/11/2004	229270		HC 10/325	120	Braun	1
4. 4/14/2005	11/29/2004	231123		HC 10/325	120	Braun	1
5. 4/22/2005	11/9/2004	228836		Diethylprop	30	Braun	1
6. 4/22/2005	11/29/2004	231201		Ambien	60	Braun	1
7. 4/28/2005	11/2/2004	227838		HC 10/325	100	Braun	1
8. 5/3/2005	11/9/2004	228851		Lorazepam	100	Braun	1
9. 5/4/2005	12/9/2004	232798		Diazepam	60	Braun	1
10. 5/52005	12/16/2004	233768		HC 10/325	100	Braun	1
11. 5/11/2005	11/11/2004	229186		Alprazolam	100	Braun	1
12. 5/16/2005	12/14/2004	233406		HC 10/325	120	Braun	1
13. 5/18/2005	12/27/2004	235167		HC/ibu	100	Braun	1
14. 5/20/2005	11/22/2004	230520		Alprazolam	100	Braun	1
15. 5/24/2005	12/16/2004	233796		HC10/325	150	Braun	1
16. 6/2/2005	12/2/2004	231773		HC 10/325	100	Braun	1
17. 6/2/2005	12/13/2004	233192		Diazepam	100	Braun	1
18. 6/2/2005	12/13/2004	233193		Ambien	30	Braun	1
19. 6/2/2005	12/13/2004	233197		HC 10/325	100	Braun	1
20. 6/2/2005	12/14/2004	233465		Hc 10/325	100	Braun	1
21. 6/2/2005	12/17/2004	233993		Didrex	100	Braun	1
22. 6/2/2005	12/28/2004	235429		Triazolam	10	Braun	1
23. 6/3/2005	12/9/2004	232809		Clonazepam	120	Braun	1
24. 6/3/2005	12/14/2004	233406		HC 10/325	120	Braun	1
25. 6/3/2005	12/30/2004	234080		HC 10/325	100	Braun	1
26. 6/13/2005	12/17/2004	233981		HC 10/325	100	Braun	1
27. 6/15/2005	12/16/2004	233768		HC 10/325	100	Braun	1
28. 8/12/2005	8/12/2005	264363		HC/ibu	100	Braun	1

FOURTH CAUSE FOR DISCIPLINE

(Furnishing Dangerous Drugs Without a Prescription)

22. Respondents WESTPARK PHARMACY and LEON AVAKIAN and ELOY RUBIO are subject to disciplinary action under Code section 4301, subdivisions (j) and (o) in conjunction with Code sections 4059 and 4039 prohibiting the furnishing of any dangerous drug, except upon the prescription of a physician, in that Respondents knowingly filled or caused to be filled a total

of 157 prescriptions written by Dr. Braun (120 prescriptions for controlled substances; and 43 prescriptions for legend pharmaceuticals) after Dr. Braun's license was revoked on March 10, 2005, to patients as referenced in paragraphs 18 and 19 above.

FIFTH CAUSE FOR DISCIPLINE

(Noncompliance with Prescription Container Label Requirements)

23. Respondents WESTPARK PHARMACY and LEON AVAKIAN subject to disciplinary action under Code section 4301, subdivisions (j) and (o) in conjunction with Code section 4076 subdivision (a) (4) (which requires a prescription container to be correctly labeled with the prescriber's name) on 5 instances in May of 2005, Respondents dispensed drugs in containers which did not comply with labeling requirements as follows:

1. Rx # 253023, dated 5/2/205, Adderall 30mg for C.D., written by Dr. Steven Y., prescription label indicates dispensed under Dr. Braun.

2. Rx # 253360, dated 5/4/2005, Norco 10/325 for J.B., written Dr. Steven Y., prescription label indicates dispensed under Dr. Braun.

3. Rx # 253792, dated 5/9/2005, Lorazepam 2mg for D.L., written by Dr. Vik S., prescription label indicated dispensed under Dr. Braun.

4. Rx # 253791, dated 5/9/2005, Soma 350, for D.L., written by Dr. Vik S., prescription label indicated dispensed under Dr. Braun.

5. Rx # 255814, dated 5/26/2005, Norco 10/325 written by Dr. Steven Y., prescription label indicates dispensed under Dr. Braun.

SIXTH CAUSE FOR DISCIPLINE

(Violating, Conspiring to Violate or Abetting Violation of Pharmacy Law)

24. Respondent ELOY RUBIO is subject to disciplinary action under Code section 4301, subdivisions (j) and (o) in that between approximately May 2004 and October 19, 2005, Respondent Rubio conspired with or assisted/abetted Dr. Robert Braun to unlawfully distribute and dispense scheduled controlled substances, including Oxycontin, Methadone, Morphine, Hydromorphone, Hydrocodone,Lorazepam, Vicodin and Norco, in violation of state and federal laws, including but not limited to Title 21 of the United States Code sections 846 and 842

subdivisions (a)(1), and Code sections 4059, subdivision (a) and 4060 in conjunction with Health and Safety Code section 11350, subdivision (a), as a more fully described in paragraphs 18-23 above, said acts resulting in Dr. Braun's criminal convictions on March 7, 2007.

SEVENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Acts Involving Dishonesty, Fraud, Deceit or Corruption)

10. Respondent ELOY RUBIO is subject to disciplinary action under Code section 4301, subdivision (f) due to his commission of acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, in that between approximately May 2004 and October 19, 2005 Respondent Rubio conspired with Dr. Robert Braun to unlawfully distribute and dispense Scheduled controlled substances, including Oxycontin, Methadone, Morphine, Hydromorphone, Hydrocodone,Lorazepam, Vicodin and Norco, in violation of state and federal law, including but not limited to Title 21 of the United States Code sections 846,842 subdivisions (a)(1), and Code sections 4059, subdivision "a" and 4060 in conjunction with Health and Safety Code section 11350, subdivision (a), as more fully described in paragraphs 18-23 above.

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 Pharmacy Permit Number PHY 45155, issued to Westpark Pharmacy;

2. Revoking or suspending Pharmacist License Number RPH 48020, issued to Leon Avakian;

3. Revoking or suspending Pharmacy Technician License Number TCH 25981, issued to Elroy Rubio;

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4. Ordering Respondents, and each of them, 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;

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

DATED: 2/23/11

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

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