

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

In the Matter of the Accusation Against:

**DANA DRUGS; ASHRAF ADEL ZAKY-  
Pharmacist-in-Charge, President  
317 N. Pass Avenue  
Burbank, CA 91505  
Permit No. PHY 47547**

**ASRAF ADEL ZAKY  
19551 Shadow Ridge Way  
Northridge, CA 91326  
Pharmacist License No. RPH 48538**

**LILIT POGOSYAN, AKA  
LILIT NOURANI  
501 W. Glenoaks Blvd., #551  
Glendale, CA 91202  
Pharmacist License No. 53686**

Respondents.

Case No. 4186

OAH NO. 2013051132

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

**AS TO:**

**DANA DRUGS**

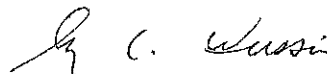
**DECISION AND ORDER**

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

This decision shall become effective on May 7, 2014.

It is so ORDERED on April 30, 2014.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
STAN C. WEISSER  
Board President

1 KAMALA D. HARRIS  
Attorney General of California  
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Supervising Deputy Attorney General  
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7

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

12 In the Matter of the Accusation Against:

Case No. 4186

13 **DANA DRUGS; ASHRAF ADEL ZAKY –**  
14 **Pharmacist-in-Charge, President**  
15 **317 N. Pass Avenue**  
16 **Burbank, CA 91505**  
17 **Permit No. PHY 47547**

OAH No. 2013051132

**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER**

**AS TO:**

18 **ASHRAF ADEL ZAKY**  
19 **19551 Shadow Ridge Way**  
20 **Northridge, CA 91326**  
21 **Pharmacist License No. RPH 48538**

**DANA DRUGS**

22 **LILIT POGOSYAN, AKA**  
23 **LILIT NOURANI**  
24 **501 W. Glenoaks Blvd., #551**  
25 **Glendale, CA 91202**  
26 **Pharmacist License No. RPH 53686**

27 Respondentss.

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

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1 **PARTIES**

2 1. Virginia Herold ("Complainant") is the Executive Officer of the Board of Pharmacy  
3 ("Board"). She brought this action solely in her official capacity and is represented in this matter  
4 by Kamala D. Harris, Attorney General of the State of California, by Linda L. Sun, Deputy  
5 Attorney General.

6 2. Dana Drugs and Ashraf Adel Zaky are represented in this proceeding by attorney  
7 Herbert L. Weinberg, Esq., whose address is: McGuireWoods LLP, 1800 Century Park East, 8th  
8 Floor, Los Angeles, CA 90067.

9 **Dana Drugs**

10 3. On or about June 23, 2006, the Board issued Permit Number PHY 47547 to Dana  
11 Drugs ("Respondent"), with Ashraf Adel Zaky ("Respondent Owner") as Pharmacist-in-Charge  
12 and President. The Permit was in full force and effect at all times relevant to the charges brought  
13 herein and will expire on June 1, 2015, unless renewed.

14 **Ashraf Adel Zaky**

15 4. On or about March 7, 1996, the Board issued Original Pharmacist License Number  
16 RPH 48538 to Ashraf Adel Zaky. The License was in full force and effect at all times relevant to  
17 the charges brought herein and will expire on February 29, 2016, unless renewed.

18 **JURISDICTION**

19 5. Accusation No. 4186 was filed before the Board and is currently pending against  
20 Respondent. The Accusation and all other statutorily required documents were properly served  
21 on Respondent on April 8, 2013. Respondent timely filed its Notice of Defense contesting the  
22 Accusation.

23 6. A copy of Accusation No. 4186 is attached as Exhibit A and incorporated herein by  
24 reference.

25 **ADVISEMENT AND WAIVERS**

26 7. Respondent has carefully read, fully discussed with counsel, and understands the  
27 charges and allegations in Accusation No. 4186. Respondent has also carefully read, fully  
28

1 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary  
2 Order.

3 8. Respondent is fully aware of its legal rights in this matter, including the right to a  
4 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at  
5 its own expense; the right to confront and cross-examine the witnesses against them; the right to  
6 present evidence and to testify on its own behalf; the right to the issuance of subpoenas to compel  
7 the attendance of witnesses and the production of documents; the right to reconsideration and  
8 court review of an adverse decision; and all other rights accorded by the California  
9 Administrative Procedure Act and other applicable laws.

10 9. Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
11 every right set forth above.

#### 12 CULPABILITY

13 10. Respondent understands and agrees that the charges and allegations in Accusation  
14 No. 4186, if proven at a hearing, constitute cause for imposing discipline upon its Permit.

15 11. For the purpose of resolving the Accusation without the expense and uncertainty of  
16 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual  
17 basis for the charges in the Accusation, and that Respondent hereby gives up its right to contest  
18 those charges.

19 12. Respondent agrees that its Permit is subject to discipline and they agree to be bound  
20 by the Board's probationary terms as set forth in the Disciplinary Order below.

#### 21 CONTINGENCY

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

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

3 14. The parties understand and agree that Portable Document Format (PDF) and facsimile  
4 copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format  
5 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

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

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

15 **DISCIPLINARY ORDER**

16 IT IS HEREBY ORDERED that Permit No. PHY 47547 issued to Respondent is revoked.  
17 However, the revocation is stayed and Respondent is placed on probation for four (4) years on the  
18 following terms and conditions.

19 1. **Obey All Laws**

20 Respondent Owner shall obey all state and federal laws and regulations.

21 Respondent Owner shall report any of the following occurrences to the Board, in writing,  
22 within seventy-two (72) hours of such occurrence:

- 23 • an arrest or issuance of a criminal complaint for violation of any provision of the  
24 Pharmacy Law, state and federal food and drug laws, or state and federal controlled  
25 substances laws
- 26 • a plea of guilty or *nolo contendere* in any state or federal criminal proceeding to any  
27 criminal complaint, information or indictment
- 28 • a conviction of any crime

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

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

6 **2. Report to the Board**

7 Respondent Owner shall report to the Board quarterly, on a schedule as directed by the  
8 Board or its designee. The report shall be made either in person or in writing, as directed.

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

15 **3. Interview with the Board**

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

21 **4. Cooperate with Board Staff**

22 Respondent Owner shall cooperate with the Board's inspection program and with the  
23 Board's monitoring and investigation of Respondent's compliance with the terms and conditions  
24 of their probation. Failure to cooperate shall be considered a violation of probation.

25 **5. Reimbursement of Board Costs**

26 As a condition precedent to successful completion of probation, Respondent Owner shall  
27 pay to the Board the costs of investigation and prosecution in the amount of \$4,042. Respondent  
28 Owner shall be allowed to make scheduled installments as determined by the Board.

1           There shall be no deviation from the schedule absent prior written approval by the Board or  
2 its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of  
3 probation.

4           The filing of bankruptcy by Respondent Owner shall not relieve Respondent of their  
5 responsibility to reimburse the Board its costs of investigation and prosecution.

6           **6. Probation Monitoring Costs**

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

11           **7. Status of License**

12           Respondent Owner shall, at all times while on probation, maintain current licensure with  
13 the board. If Respondent Owner submits an application to the Board, and the application is  
14 approved, for a change of location, change of permit or change of ownership, the Board shall  
15 retain continuing jurisdiction over the license, and Respondent shall remain on probation as  
16 determined by the Board. Failure to maintain current licensure shall be considered a violation of  
17 probation.

18           If Respondent Owner's license expires or is cancelled by operation of law or otherwise at  
19 any time during the period of probation, including any extensions thereof or otherwise, upon  
20 renewal or reapplication Respondent Owner's license shall be subject to all terms and conditions  
21 of this probation not previously satisfied.

22           **8. License Surrender While on Probation**

23           Following the effective date of this Decision, should Respondent Owner discontinue  
24 business, Respondent Owner may tender the premise license to the Board for surrender. The  
25 Board or its designee shall have the discretion whether to grant the request for surrender or take  
26 any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of  
27 the license, Respondent will no longer be subject to the terms and conditions of probation.

28           Upon acceptance of the surrender, Respondent Owner shall relinquish the premise's wall

1 and renewal license to the Board within ten (10) days of notification by the Board that the  
2 surrender is accepted. Respondent Owner shall further submit a completed Discontinuance of  
3 Business form according to Board guidelines and shall notify the Board of the records inventory  
4 transfer.

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

15       Respondent Owner may not apply for any new licensure from the Board for three (3) years  
16 from the effective date of the surrender. Respondent Owner shall meet all requirements  
17 applicable to the license sought as of the date the application for that license is submitted to the  
18 Board.

19       Respondent Owner further stipulates that he shall reimburse the Board for its costs of  
20 investigation and prosecution prior to the acceptance of the surrender.

21       **9. Notice to Employees**

22       Respondent Owner shall, upon or before the effective date of this Decision, ensure that all  
23 employees involved in permit operations are made aware of all the terms and conditions of  
24 probation, either by posting a notice of the terms and conditions, circulating such notice, or both.  
25 If the notice required by this provision is posted, it shall be posted in a prominent place and shall  
26 remain posted throughout the probation period. Respondent Owner shall ensure that any  
27 employees hired or used after the effective date of this Decision are made aware of the terms and  
28 conditions of probation by posting a notice, circulating a notice, or both. Additionally,



1 Respondent Owner shall submit written notification to the Board, within fifteen (15) days of the  
2 effective date of this Decision, that this term has been satisfied. Failure to submit such  
3 notification to the Board shall be considered a violation of probation.

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

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

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

14 **11. Posted Notice of Probation**

15 Respondent Owner shall prominently post a probation notice provided by the Board in a  
16 place conspicuous and readable to the public. The probation notice shall remain posted during  
17 the entire period of probation.

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

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

23 **12. Violation of Probation**

24 If Respondent Owner has not complied with any term or condition of probation, the Board  
25 shall have continuing jurisdiction over Respondent's Permit, and probation shall be automatically  
26 extended until all terms and conditions have been satisfied or the Board has taken other action as  
27 deemed appropriate to treat the failure to comply as a violation of probation, to terminate  
28 probation, and to impose the penalty that was stayed.

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

8 **13. Completion of Probation**

9 Upon written notice by the Board or its designee indicating successful completion of  
10 probation, Respondent's permit will be fully restored.

11 **14. Separate File of Records**

12 Respondent Owner shall maintain and make available for inspection a separate file of all  
13 records pertaining to the acquisition or disposition of all controlled substances. Failure to  
14 maintain such file or make it available for inspection shall be considered a violation of probation.


15 **15. Review of CURES Report for New Patients**

16 Prior to dispensing a prescription for a controlled substance to a new patient or a  
17 prescription for a controlled substance to an existing patient which the dispensing pharmacist  
18 knows or has objective reason to know may not be issued for a legitimate medical purpose,  
19 Respondent Owner must ensure that the dispensing pharmacist review the information regarding  
20 the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled  
21 substances to such patient, which is contained within the Controlled Substance Utilization Review  
22 and Evaluation System (CURES) maintained by the Department of Justice pursuant to Health &  
23 Safety Code section 11165. Respondent Owner shall ensure that the dispensing pharmacist  
24 document this review in the patient's drug therapy and medication record before the controlled  
25 substance is delivered to the patient. Respondent Owner shall ensure that this policy is included  
26 in Respondent's written policies and procedures and that this policy is understood, enforced, and  
27 followed by all employees of Respondent.

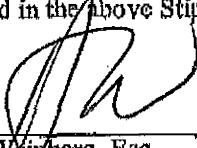
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ACCEPTANCE

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

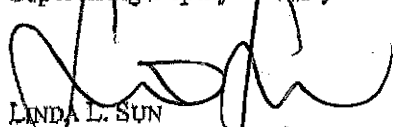
DATED: 02/24/14   
ASHRAF ADEL ZAKY  
Respondent Owner for DANA DRUGS

I have read and fully discussed with Respondent Owner Ashraf Adel Zaky of Dana Drugs the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 2/24/14   
Herbert L. Weinberg, Esq.  
Attorney for Respondent Dana Drugs and Respondent Owner

ENDORSEMENT

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

Dated: 2-24-14  
Respectfully submitted,  
KAMALA D. HARRIS  
Attorney General of California  
ARMANDO ZAMBRANO  
Supervising Deputy Attorney General  
  
LINDA L. SUN  
Deputy Attorney General  
Attorneys for Complainant

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**Exhibit A**

**Accusation No. 4186**

1 KAMALA D. HARRIS  
Attorney General of California  
2 GLORIA A. BARRIOS  
Supervising Deputy Attorney General  
3 LINDA L. SUN  
Deputy Attorney General  
4 State Bar No. 207108  
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13 <b>317 N. Pass Avenue</b>	<b>ACCUSATION</b>
14 <b>Burbank, CA 91505</b>	
15 <b>Permit No. PHY 47547</b>	
16 <b>ASHRAF ADEL ZAKY</b>	
17 <b>19551 Shadow Ridge Way</b>	
18 <b>Northridge, CA 91326</b>	
19 <b>Pharmacist License No. RPH 48538</b>	
20 <b>LILIT POGOSYAN</b>	
21 <b>501 W. Glenoaks Blvd., #551</b>	
22 <b>Glendale, CA 91202</b>	
23 <b>Pharmacist License No. RPH 53686</b>	
24 Respondents.	

22 Complainant alleges:

23 **PARTIES**

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

26 ///  
27 ///

1 Dana Drugs

2 2. On or about June 23, 2006, the Board of Pharmacy (Board) issued Permit Number  
3 PHY 47547 to Dana Drugs ("Respondent Dana Drugs"), with Ashraf Adel Zaky ("Respondent  
4 Zaky") as Pharmacist-in-Charge and President (collectively "Respondents"). The Permit was in  
5 full force and effect at all times relevant to the charges brought herein and will expire on June 1,  
6 2013, unless renewed.

7 Ashraf Adel Zaky

8 3. On or about March 7, 1996, the Board issued Original Pharmacist License Number  
9 RPH 48538 to Respondent Zaky. The License was in full force and effect at all times relevant to  
10 the charges brought herein and will expire on February 29, 2014, unless renewed.

11 Lilit Pogosyan

12 4. On or about August 22, 2002, the Board issued Original Pharmacist License Number  
13 RPH 53686 to Lilit Pogosyan ("Respondent Pogosyan"). The License was in full force and effect  
14 at all times relevant to the charges brought herein and will expire on November 30, 2013, unless  
15 renewed.

16 **JURISDICTION**

17 5. This Accusation is brought before the Board under the authority of the following  
18 laws. All section references are to the Business and Professions Code ("Code") unless otherwise  
19 indicated.

20 **STATUTORY PROVISIONS**

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

25 7. Section 4300 of the Code states:

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

27 ///

28 ///

1           8.    Section 4301 of the Code states:

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

5           . . . .

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

10          9.    Section 4059 of the Code states:

11          "(a) A person may not furnish any dangerous drug, except upon the prescription of a  
12 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section  
13 3640.7. A person may not furnish any dangerous device, except upon the prescription of a  
14 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section  
15 3640.7."

16          10.   Section 4081 of the Code states:

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

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

1 REGULATORY PROVISIONS

2 11. California Code of Regulations, title 16, section 1714, states:

3 . . . .

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

8 . . . .

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

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

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

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

19 COST RECOVERY PROVISION

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

24 DRUG DEFINITION

25 14. Hydrocodone is a Schedule III controlled substance pursuant to Health and Safety  
26 Code section 11056(e)(4) and a dangerous drug pursuant to Business and Professions Code  
27 section 4022.

28 ///



**SUMMARY OF FACTS**

15. On or about December 27, 2010, the Board received a copy of *Report of Theft or Loss of Controlled Substances* DEA Form 106 (Report) from Respondents. The Report documented a loss of 49877 dosage units of controlled substance (hydrocodone/apap 10 mg/325mg) from Respondent Dana Drugs. Respondents discovered the loss on or about December 20, 2010 due to suspected employee pilferage.

16. Subsequent audit of Respondents' acquisition and disposition records of hydrocodone/apap for the time period 06/19/08 to 11/23/10 reveals the following:

Drug	Count @ Last Inventory 6/19/08 (Close of Business)	Purchases 6/20/08 to 11/22/10	Transfers In (Brent-Air Pharmacy)	Dispensed Rxs 6/20/08 to 11/22/10	Expected On Hand Inventory	Actual Inventory 11/23/10 (Open of Business)	Variance
HC/APAP 10/325	130	183800	36000	165041	54889	380	-54509
HC/APAP 10/660	130	800	0	578	352	85	-267
HC/APAP 10/500	180	900	0	960	120	140	20
HC/APAP 10/650	40	700	0	0	740	0	-740
HC/APAP 5/500	600	41600	0	41278	922	725	-197
HC/APAP 5/325	30	1800	0	1676	154	176	22
HC/APAP 7.5/325	230	2100	0	2293	37	60	23
HC/APAP 7.5/500	200	600	0	842	-42	120	162
HC/APAP 7.5/750	700	45000	0	43705	1995	435	-1560

17. Subsequent audit of hydrocodone/apap 10mg/325mg transferred from Brent-Air Pharmacy<sup>1</sup> to Dana Drugs from the time period 1/2010 to 10/2010, focusing at the acquisitions and dispositions made at Dana Drugs, reveals the following:

<sup>1</sup> Respondent Zaky is also Pharmacist-in-Charge/Owner of Brent-Air Pharmacy, Permit Number PHY 48616.

Date	Purchases	Transfers In	Dispenses	Variance	Variance w/o Transfer
January	5000	0	4490	+510	
February	12500	0	12685	-185	
March	12000	0	10280	+1720	
April	8000	0	8385	-385	
May	9000	0	10718	-1718	
June	8000	9500	3485	-14015	+4515
July	9000	9500	3890	-14610	+5110
August	2500	11000	3480	-10020	-980
September	6000	6000	3905	-8095	+2095
October	5000	0	5452	-452	

18. Subsequent audit of the prescription profile of four patients with respect to suspected unauthorized furnishings reveals the following:

Pt	RX #	Date Dispensed	Drug	QTY	Comments
WA	6302991	7/15/10	HC/APAP 10/325	180	Falsified RX (refill authorization) via suspected direct entry into pharmacy system (no RX document)
		7/22/10	HC/APAP 10/325	180	
		8/14/10	HC/APAP 10/325	180	
		8/25/10	HC/APAP 10/325	180	
		9/20/10	HC/APAP 10/325	180	
		10/8/10	HC/APAP 10/325	180	
		11/18/10	HC/APAP 10/325	180	
MM	6306762	10/6/10	HC/APAP 7.5/750	30	Unauthorized refill
JK	6303428	7/23/10	HC/APAP 10/325	120	Forged RX (telephone order); RPH Pogosyan
MJ	6303762	7/30/10	HC/APAP 10/325	120	Forged RX (telephone order); RPH Pogosyan
		10/13/10	HC/APAP 10/325	120	

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unauthorized Prescription)**

3 21. Respondent Dana Drugs is subject to disciplinary action under Code section 4301,  
4 subdivision (o) for violating Code section 4059, subdivision (a), in that it furnished controlled  
5 substances/dangerous drugs without valid prescriptions. A Board audit of a 30-month period  
6 from 6/19/08 to 11/23/10 reveals that Respondent Dana Drugs could not account for the loss of  
7 approximately 54509 dosage units of hydrocodone/apap 10mg/325mg, 267 dosage units of \_ \_  
8 hydrocodone/apap 10mg/660mg, 740 dosage units of hydrocodone/apap 10mg/650mg, 197  
9 dosage units of hydrocodone/apap 5mg/500mg, and 1560 dosage units of hydrocodone/apap  
10 7.5mg/750mg. Further, 1260 dosage units of hydrocodone/apap 10mg/325mg for Patient WA  
11 (RX 6302991), 120 dosage units of hydrocodone/apap 10mg/325mg for Patient JK (RX  
12 6303428), and 240 dosage units of hydrocodone/apap 10mg/325mg for Patient MJ (RX 6303762)  
13 were furnished based on forged or falsified prescription orders. Complainant refers to and  
14 incorporates all the allegations contained in paragraphs 15 – 18 above, as though set forth fully.

15 **RESPONDENT ASHRAF ADEL ZAKY**

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Unsecured Pharmacy)**

18 22. Respondent Zaky is subject to disciplinary action under Code section 4301,  
19 subdivision (o) for violating California Code of Regulations, title 16, section 1714, subdivision  
20 (d), in that he failed to maintain effective control of the security of the prescription department  
21 against theft or loss of controlled substances/dangerous drugs. A Board audit of a 30-month  
22 period from 6/19/08 to 11/23/10 reveals that Respondent Zaky could not account for the loss of  
23 approximately 54509 dosage units of hydrocodone/apap 10mg/325mg, 267 dosage units of  
24 hydrocodone/apap 10mg/660mg, 740 dosage units of hydrocodone/apap 10mg/650mg, 197  
25 dosage units of hydrocodone/apap 5mg/500mg, and 1560 dosage units of hydrocodone/apap  
26 7.5mg/750mg. Complainant refers to and incorporates all the allegations contained in paragraphs  
27 15 – 18 above, as though set forth fully.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Failure to Maintain Current Inventory)**

3 23. Respondent Zaky is subject to disciplinary action under Code sections 4081,  
4 subdivision (a), and 4301, subdivision (o) for violating California Code of Regulations, title 16,  
5 section 1718, in that he failed to maintain complete accountability of all controlled  
6 substances/dangerous drugs. A Board audit of a 30-month period from 6/19/08 to 11/23/10  
7 reveals that Respondent Dana Drugs could not account for the loss of approximately 54509  
8 dosage units of hydrocodone/apap 10mg/325mg, 267 dosage units of hydrocodone/apap  
9 10mg/660mg, 740 dosage units of hydrocodone/apap 10mg/650mg, 197 dosage units of  
10 hydrocodone/apap 5mg/500mg, and 1560 dosage units of hydrocodone/apap 7.5mg/750mg.  
11 There was an overage of 20 dosage units of hydrocodone/apap 10mg/500mg, 22 dosage units of  
12 hydrocodone/apap 5mg/325mg, 23 dosage units of hydrocodone/apap 7.5mg/325mg and 162  
13 dosage units of hydrocodone/apap 7.5mg/500mg. Complainant refers to and incorporates all the  
14 allegations contained in paragraphs 15 – 18 above, as though set forth fully.

15 **RESPONDENT LILIT POGOSYAN**

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Unsecured Pharmacy)**

18 24. Respondent Pogosyan is subject to disciplinary action under Code section 4301,  
19 subdivision (o) for violating California Code of Regulations, title 16, section 1714, subdivision  
20 (d), in that she failed to maintain effective control of the security of the prescription department  
21 against theft or loss of controlled substances/dangerous drugs. A Board audit of a 30-month  
22 period from 6/19/08 to 11/23/10 reveals that Respondent Zaky could not account for the loss of  
23 approximately 54509 dosage units of hydrocodone/apap 10mg/325mg, 267 dosage units of  
24 hydrocodone/apap 10mg/660mg, 740 dosage units of hydrocodone/apap 10mg/650mg, 197  
25 dosage units of hydrocodone/apap 5mg/500mg, and 1560 dosage units of hydrocodone/apap  
26 7.5mg/750mg. Complainant refers to and incorporates all the allegations contained in paragraphs  
27 15 – 18 above, as though set forth fully.

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Unauthorized Prescription)**

3 25. Respondent Pogosyan is subject to disciplinary action under Code section 4301,  
4 subdivision (o) for violating Code section 4059, subdivision (a), in that she furnished controlled  
5 substances/dangerous drugs without valid prescriptions. A Board audit of a 30-month period  
6 from 6/19/08 to 11/23/10 reveals that she could not account for the loss of approximately 54509  
7 dosage units of hydrocodone/apap 10mg/325mg, 267 dosage units of hydrocodone/apap  
8 10mg/660mg, 740 dosage units of hydrocodone/apap 10mg/650mg, 197 dosage units of  
9 hydrocodone/apap 5mg/500mg, and 1560 dosage units of hydrocodone/apap 7.5mg/750mg.  
10 Further, 120 dosage units of hydrocodone/apap 10mg/325mg for Patient JK (RX 6303428), and  
11 240 dosage units of hydrocodone/apap 10mg/325mg for Patient MJ (RX 6303762) were furnished  
12 based on forged or falsified prescription orders. Complainant refers to and incorporates all the  
13 allegations contained in paragraphs 15 – 18 above, as though set forth fully.

14 **PRIOR CITATIONS**

15 26. To determine the degree of discipline, if any, Complainant further alleges the  
16 following:

17 a. On or about December 9, 2009, the Board issued Citation Number CI 2007 35848 to  
18 Respondent Dana Drugs for violations of California Code of Regulations, title 16, sections 1716  
19 [variation from prescription] and 1707.3 [duty to review drug therapy].

20 b. On or about July 29, 2011, the Board issued Citation Number CI 2010 47755 to  
21 Respondent Zaky for violation of California Code of Regulations, title 16, section 1714,  
22 subdivision (d) [operational standards and security; pharmacist responsible for pharmacy  
23 security].

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PRAYER

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

1. Revoking or suspending Permit Number PHY 47547, issued to Dana Drugs, with Ashraf Adel Zaky as Pharmacist-in-Charge and President;
2. Revoking or suspending Original Pharmacist License Number RPH 48538 issued to Ashraf Adel Zaky;
3. Revoking or suspending Original Pharmacist License Number RPH 53686 issued to Lilit Pogosyan;
4. Ordering Dana Drugs, Ashraf Adel Zaky and Lilit Pogosyan, jointly and severally, 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: 3/26/13 

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

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