

**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:

ASHRAF ADEL ZAKY

DECISION AND ORDER

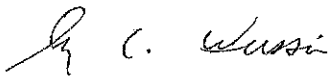
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on 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
2 ARMANDO ZAMBRANO
Supervising Deputy Attorney General
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Attorneys for Complainant
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8 **BEFORE THE**
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9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 4186

11 **DANA DRUGS; ASHRAF ADEL ZAKY –**
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14 **Permit No. PHY 47547**

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STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

AS TO:

15 **ASHRAF ADEL ZAKY**
16 **19551 Shadow Ridge Way**
Northridge, CA 91326
17 **Pharmacist License No. RPH 48538**

ASHRAF ADEL ZAKY

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

Respondent Zakys.

22 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
23 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 with Ashraf Adel Zaky ("Respondent Zaky") as Pharmacist-in-Charge and President. The
12 Permit was in full force and effect at all times relevant to the charges brought herein and will
13 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 Respondent 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 Zaky. The Accusation and all other statutorily required documents were properly
21 served on Respondent Zaky on April 8, 2013. Respondent Zaky timely filed his Notice of
22 Defense contesting the 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 Zaky has carefully read, fully discussed with counsel, and understands
27 the charges and allegations in Accusation No. 4186. Respondent Zaky has also carefully read,
28

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

3 8. Respondent Zaky is fully aware of his legal rights in this matter, including the right to
4 a hearing on the charges and allegations in the Accusation; the right to be represented by counsel
5 at his own expense; the right to confront and cross-examine the witnesses against him; the right to
6 present evidence and to testify on his 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 Zaky voluntarily, knowingly, and intelligently waives and gives up each
11 and every right set forth above.

12 CULPABILITY

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

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

20 12. Respondent Zaky agrees that his Pharmacist License is subject to discipline and he
21 agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

22 CONTINGENCY

23 13. This Stipulation shall be subject to approval by the Board of Pharmacy. Respondent
24 Zaky understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy
25 may communicate directly with the Board regarding this stipulation and settlement, without
26 notice to or participation by Respondent Zaky or his counsel. By signing the stipulation,
27 Respondent Zaky understands and agrees that he may not withdraw his agreement or seek to
28 rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to

1 adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order
2 shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action
3 between the parties, and the Board shall not be disqualified from further action by having
4 considered this matter.

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

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

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

17 **DISCIPLINARY ORDER**

18 IT IS HEREBY ORDERED that Pharmacist License No. RPH 48538 issued to Respondent
19 Zaky is revoked. However, the revocation is stayed and Respondent Zaky is placed on probation
20 for four (4) years on the following terms and conditions.

21 1. **Obey All Laws**

22 Respondent Zaky shall obey all state and federal laws and regulations.

23 Respondent Zaky shall report any of the following occurrences to the Board, in writing,

24 within seventy-two (72) hours of such occurrence:

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

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

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

9 **2. Report to the Board**

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

18 **3. Interview with the Board**

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

24 **4. Cooperate with Board Staff**

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

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5. Continuing Education

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

6. Notice to Employers

During the period of probation, Respondent Zaky shall notify all present and prospective employers of the Decision in Case Number 4186 and the terms, conditions and restrictions imposed on Respondent Zaky by the Decision, as follows:

Within thirty (30) days of the effective date of this Decision, and within fifteen (15) days of Respondent Zaky undertaking any new employment, Respondent Zaky shall cause his direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent Zaky's tenure of employment) and owner to report to the Board in writing acknowledging that the listed individual(s) has/have read the Decision in Case Number 4186, and terms and conditions imposed thereby. It shall be Respondent Zaky's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

If Respondent Zaky works for or is employed by or through a pharmacy employment service, Respondent Zaky must notify his direct supervisor, pharmacist-in-charge, and owner at every entity licensed by the Board of the terms and conditions of the Decision in Case Number 4186 in advance of the Respondent Zaky's commencing work at each licensed entity. A record of this notification must be provided to the Board upon request.

Furthermore, within thirty (30) days of the effective date of this Decision, and within fifteen (15) days of Respondent Zaky's undertaking any new employment by or through a pharmacy employment service, Respondent Zaky shall cause his direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that s/he has read the Decision in Case Number 4186 and the terms and conditions imposed thereby. It shall be Respondent Zaky's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

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

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

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

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

14 **8. Reimbursement of Board Costs**

15 As a condition precedent to successful completion of probation, Respondent Zaky shall pay
16 to the Board its costs of investigation and prosecution in the amount of \$4,042. Respondent Zaky
17 shall be allowed to make scheduled installments as determined by the Board.

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

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

23 **9. Probation Monitoring Costs**

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

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1 **10. Status of License**

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

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

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

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

18 Upon acceptance of the surrender, Respondent Zaky shall relinquish his pocket and wall
19 license to the Board within ten (10) days of notification by the Board that the surrender is
20 accepted. Respondent Zaky may not reapply for any license from the Board for three (3) years
21 from the effective date of the surrender. Respondent Zaky shall meet all requirements applicable
22 to the license sought as of the date the application for that license is submitted to the Board,
23 including any outstanding costs.

24 **12. Notification of a Change in Name, Residence Address, Mailing Address or**
25 **Employment**

26 Respondent Zaky shall notify the Board in writing within ten (10) days of any change of
27 employment. Said notification shall include the reasons for leaving, the address of the new
28 employer, the name of the supervisor and owner, and the work schedule if known. Respondent

1 Zaky shall further notify the Board in writing within ten (10) days of a change in name, residence
2 address, mailing address, or phone number.

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

5 **13. Tolling of Probation**

6 Except during periods of suspension, Respondent Zaky shall, at all times while on
7 probation, be employed as a pharmacist in California for a minimum of forty (40) hours per
8 calendar month. Any month during which this minimum is not met shall toll the period of
9 probation, i.e., the period of probation shall be extended by one month for each month during
10 which this minimum is not met. During any such period of tolling of probation, Respondent Zaky
11 must nonetheless comply with all terms and conditions of probation.

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

17 It is a violation of probation for Respondent Zaky's probation to remain tolled pursuant to
18 the provisions of this condition for a total period, counting consecutive and non-consecutive
19 months, exceeding thirty-six (36) months.

20 "Cessation of practice" means any calendar month during which Respondent
21 Zaky is not practicing as a pharmacist for at least forty (40) hours, as defined by
22 Business and Professions Code section 4000 et seq. "Resumption of practice" means
23 any calendar month during which Respondent Zaky is practicing as a pharmacist for
24 at least forty (40) hours as a pharmacist as defined by Business and Professions Code
25 section 4000 et seq.

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1 **14. Violation of Probation**

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

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

15 **15. Completion of Probation**

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

18 **16. Community Services Program**

19 Within sixty (60) days of the effective date of this Decision, Respondent Zaky shall submit
20 to the Board or its designee, for prior approval, a community service program in which he shall
21 provide free health-care related services on a regular basis to a community or charitable facility or
22 agency for at least seventy-two (72) hours during the first three (3) years of probation. Within
23 thirty (30) days of Board approval thereof, Respondent Zaky shall submit documentation to the
24 Board demonstrating commencement of the community service program. A record of this
25 notification must be provided to the Board upon request. Respondent Zaky shall report on
26 progress with the community service program in the quarterly reports.

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1 In addition, Respondent Zaky shall donate twenty thousand dollars (\$20,000) to a Board-
2 approved community organization within the first two (2) years of his probation. Failure to
3 timely submit, commence, or comply with the program shall be considered a violation of
4 probation.

5 **17. No New Ownership of Licensed Premises**

6 Respondent Zaky shall not acquire any new ownership, legal or beneficial interest nor serve
7 as a manager, administrator, member, officer, director, trustee, associate, or partner of any
8 additional business, firm, partnership, or corporation licensed by the Board. If Respondent Zaky
9 currently owns or has any legal or beneficial interest in, or serves as a manager, administrator,
10 member, officer, director, trustee, associate, or partner of any business, firm, partnership, or
11 corporation currently or hereinafter licensed by the Board, he may continue to serve in such
12 capacity or hold that interest, but only to the extent of that position or interest as of the effective
13 date of this Decision. Violation of this restriction shall be considered a violation of probation.

14 **18. Consultant for Owner or Pharmacist-In-Charge**

15 During the period of probation, Respondent Zaky shall not supervise any intern pharmacist
16 or serve as a consultant to any entity licensed by the Board. Respondent Zaky may be a
17 pharmacist-in-charge. However, if during the period of probation Respondent Zaky serves as a
18 pharmacist-in-charge at Dana Drugs, Respondent Zaky shall retain an independent consultant at
19 his own expense who shall be responsible for reviewing pharmacy operations on a quarterly basis
20 for compliance by Respondent Zaky with state and federal laws and regulations governing the
21 practice of pharmacy and for compliance by Respondent Zaky with the obligations of a
22 pharmacist-in-charge. The consultant shall be a pharmacist licensed by and not on probation with
23 the Board and whose name shall be submitted to the Board or its designee, for prior approval,
24 within thirty (30) days of the effective date of this Decision. Respondent Zaky shall not be a
25 pharmacist-in-charge at more than one pharmacy or at any pharmacy of which he is not the sole
26 owner. Failure to timely retain, seek approval of, or ensure timely reporting by the consultant
27 shall be considered a violation of probation.

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19. Ethics Course

Within sixty (60) calendar days of the effective date of this Decision, Respondent Zaky shall enroll in a course in *Ethics*, at Respondent Zaky's expense, approved in advance by the Board or its designee. Failure to initiate the course during the first year of probation, and complete it within the second year of probation, is a violation of probation.

Respondent Zaky shall submit a certificate of completion to the Board or its designee within five (5) days after completing the course.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Herbert L. Weinberg, Esq.. I understand the stipulation and the effect it will have on my Pharmacist License. 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

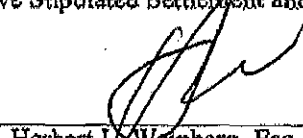


ASHRAF ADEL ZAKY
Respondent

I have read and fully discussed with Respondent Ashraf Adel Zaky 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 Zaky

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ENDORSEMENT

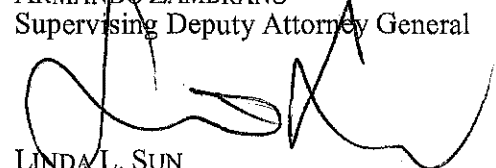
The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy.

Dated:

2-28-14

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
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Attorneys for Complainant

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14 **Permit No. PHY 47547**

A C C U S A T I O N

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16 **19551 Shadow Ridge Way**
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17 **Pharmacist License No. RPH 48538**

18 **LILIT POGOSYAN**
19 **501 W. Glenoaks Blvd., #551**
Glendale, CA 91202
20 **Pharmacist License No. RPH 53686**

Respondents.

21
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.

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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 ///

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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.

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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 Pharmacy¹ 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:

¹ 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 **RESPONDENT DANA DRUGS**

2 **FIRST CAUSE FOR DISCIPLINE**

3 **(Unsecured Pharmacy)**

4 19. Respondent Dana Drugs is subject to disciplinary action under Code section 4301,
5 subdivision (o) for violating California Code of Regulations, title 16, section 1714, subdivision
6 (b), in that it failed to maintain effective control of the security of the prescription department
7 against theft or loss of controlled substances/dangerous drugs. A Board audit of a 30-month
8 period from 6/19/08 to 11/23/10 reveals that Respondent Dana Drugs could not account for the
9 loss of approximately 54509 dosage units of hydrocodone/apap 10mg/325mg, 267 dosage units of
10 hydrocodone/apap 10mg/660mg, 740 dosage units of hydrocodone/apap 10mg/650mg, 197
11 dosage units of hydrocodone/apap 5mg/500mg, and 1560 dosage units of hydrocodone/apap
12 7.5mg/750mg. Complainant refers to and incorporates all the allegations contained in paragraphs
13 15 – 18 above, as though set forth fully.

14 **SECOND CAUSE FOR DISCIPLINE**

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

16 20. Respondent Dana Drugs is subject to disciplinary action under Code sections
17 4081, subdivision (a), and 4301, subdivision (o) for violating California Code of Regulations, title
18 16, section 1718, in that it failed to maintain complete accountability of all controlled
19 substances/dangerous drugs. A Board audit of a 30-month period from 6/19/08 to 11/23/10
20 reveals that Respondent Dana Drugs could not account for the loss of approximately 54509
21 dosage units of hydrocodone/apap 10mg/325mg, 267 dosage units of hydrocodone/apap
22 10mg/660mg, 740 dosage units of hydrocodone/apap 10mg/650mg, 197 dosage units of
23 hydrocodone/apap 5mg/500mg, and 1560 dosage units of hydrocodone/apap 7.5mg/750mg.
24 There was an overage of 20 dosage units of hydrocodone/apap 10mg/500mg, 22 dosage units of
25 hydrocodone/apap 5mg/325mg, 23 dosage units of hydrocodone/apap 7.5mg/325mg and 162
26 dosage units of hydrocodone/apap 7.5mg/500mg. Complainant refers to and incorporates all the
27 allegations contained in paragraphs 15 – 18 above, as though set forth fully.

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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;

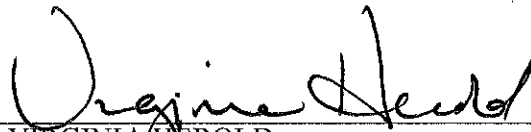
3. Revoking or suspending Original Pharmacist License Number RPH 53686 issued to Lilit Pogosyan;

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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