

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

In the Matter of the First Amended Accusation
Against:

Case No. 5277

HAN.SAM CORP., dba TRU CARE PHARMACY,
HANY S. BENJAMIN, President; MERVAT
MECHEAL ABDELMALIK, Pharmacist-in-Charge,
Pharmacy Permit No. PHY 50663,

OAH No. 2015090174

MERVAT MECHEAL ABDELMALIK,
Pharmacist License No. RPH 56346

Respondents.

In the Matter of the First Amended Accusation
Against:

Case No. 5278

HAN.SAM CORP., dba RIVER'S EDGE
PHARMACY, HANY S. BENJAMIN, President
and Pharmacist-in-Charge,
Pharmacy Permit No. PHY 49157

OAH No. 2015090159

HANY BENJAMIN,
Pharmacist License No. RPH 58261

Respondents.

In the Matter of the Statement of Issues Against:

Case No. 5308

HAN.SAM CORP., dba RIVER'S EDGE
SPECIALTY PHARMACY, HANY S.
BENJAMIN, President

OAH No. 2015090165

License Applicant/Respondent.

ORDER RESCINDING ORDER GRANTING RECONSIDERATION

This matter was heard by an administrative law judge (ALJ) on March 22 and 23, 2016. The proposed decision of the ALJ was adopted by the board on May 18, 2016, and it was set to become effective at 5 p.m. on June 17, 2016. Complainant timely requested reconsideration; on June 13, 2016, pursuant to section 11521 of the Government Code, the effective date of the decision was stayed, until 5 p.m. on June 27, 2016, so the board could consider the petition for reconsideration.

The board issued an Order Granting Reconsideration dated June 27, 2016.

On August 2, 2016, a procedural question was posed to the board, specifically, asking whether the board's order was issued before or after 5 p.m. on June 27, 2016. In reviewing the response to that question, it appears that the order was issued after 5 p.m. on June 27, 2016.

Upon further review, the board finds that the Order Granting Reconsideration was not issued prior to the expiration of the stay and, as a result, the board lost jurisdiction to act. The board does, however, retain the power to rectify an action taken in excess of its jurisdiction. (See *Helene Curtis v. Los Angeles County Assessment Appeals Boards* (2004) 121 Cal.App.4th 29.)

Accordingly, the board hereby rescinds its June 27, 2016, Order Granting Reconsideration. The board's order adopting the proposed decision became effective at 5 p.m. on June 27, 2016, when the stay of the effective date expired.

IT IS SO ORDERED on this 16th day of August, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

**BEFORE THE
BOARD OF PHARMACY
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In the Matter of the First Amended
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License Applicant/Respondent.

Case No. 5308

OAH No. 2015090165

**ORDER GRANTING
PETITION FOR RECONSIDERATION AND STAY OF EXECUTION OF THE
EFFECTIVE DATE OF DECISION AND ORDER**

Complainant having requested reconsideration of the decision in the above-entitled matter, and good cause appearing, IT IS HEREBY ORDERED:

- (1) That reconsideration be, and is, hereby granted;
- (2) That the parties will be notified of the date for submission of any written argument they may wish to submit when the administrative record of the above-mentioned hearing becomes available; and
- (3) The Decision of the Board in this matter issued on May 18, 2016, is hereby stayed until the Board renders its decision on reconsideration.

The board itself will decide the case upon the record, including the exhibits and written argument of the parties, without taking additional evidence.

IT IS SO ORDERED on this 27th day of June 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____

Amy Gutierrez, Pharm.D.
Board President

**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
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In the Matter of the First Amended
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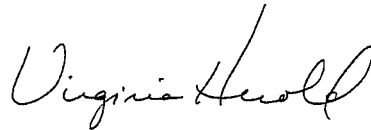
ORDER STAYING EFFECTIVE DATE

Complainant timely requested reconsideration of the decision in the above-entitled matter pursuant to section 11521 of the Government Code. In order to allow the board additional time to consider the petition, in accordance with the provisions of section 11521 of the Government Code,

IT IS HEREBY ORDERED that the effective date of the Decision and Order, in the above-entitled matter is further stayed until 5 p.m. on June 27, 2016.

IT IS SO ORDERED this 13th day of June 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



VIRGINIA HEROLD
Executive Officer
Board of Pharmacy

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

In the Matter of the First Amended
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OAH No. 2015090165

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 at 5:00 p.m. on June 17, 2016.

It is so ORDERED on May 18, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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

In the Matter of the First Amended
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OAH No. 2015090165

PROPOSED DECISION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on March 22 and 23, 2016.

Rita M. Lane, Deputy Attorney General, Department of Justice, State of California, represented complainant, Virginia Herold, Executive Officer, Board of Pharmacy, Department of Consumer Affairs, State of California.

Herb L. Weinberg, Attorney at Law, and Joseph R. LaMagna, Attorney at Law, represented respondents Han.Sam Corp., Hany Benjamin, and Mervat Abdelmalik.

The matter was submitted on March 23, 2016.

SUMMARY

Complainant established that Tru Care Pharmacy used River's Edge Pharmacy's provider identification number to submit claims to CalOptima, a health insurer, before CalOptima approved Tru Care Pharmacy as a provider. Complainant seeks to discipline Tru Care Pharmacy's and River's Edge Pharmacy's permits and the licenses of their pharmacists-in-charge, Mervat Abdelmalik and Hani Benjamin for such conduct. Complainant alleged that respondents committed fraudulent, deceitful, or dishonest acts, and submitted documents containing false statements to CalOptima. Additionally, complainant seeks to deny an application filed by Han.Sam Corp., the owner of both pharmacies, for a pharmacy permit for an additional location in Irvine.

Respondents provided credible testimony that they believed it was permissible for Tru Care Pharmacy to submit claims to CalOptima using River's Edge Pharmacy's identification number while Tru Care Pharmacy had a pending application with CalOptima to become an approved provider. Clear and convincing evidence did not establish respondents' conduct was fraudulent, deceitful, or dishonest. Nor was it established that respondents knowingly submitted false information to CalOptima. While respondents' belief it was permissible for Tru Care Pharmacy to submit claims to CalOptima in this manner was mistaken, there was no actionable misconduct. As such, the accusation is dismissed and Han.Sam Corp.'s application for a pharmacy permit is granted.

FACTUAL FINDINGS

Background

1. On May 9, 2006, the board issued Original Pharmacist License Number RPH 58261 to Hany Benjamin.

On June 17, 2010, the board issued citation number CI 2009 44779 to Mr. Benjamin, in his capacity as pharmacist-in-charge (PIC) of River's Edge Pharmacy, for failure to report the theft of controlled substances and failure to maintain a current inventory. The board assessed a \$250 administrative fine.

On August 11, 2011, the board issued citation number CI 2011 49204 to Mr. Benjamin, as PIC of River's Edge Pharmacy, for dispensing prescriptions containing significant error and variation from a prescription. The board assessed a \$1,500 administrative fine.

2. On September 28, 2004, the board issued Original Pharmacist License Number RPH 56346 to Mervat Mecheal Abdelmalik.

On November 9, 2009, the board issued citation number CI 2009 41872 to Ms. Abdelmalik, in her capacity as PIC at ACD Pharmacy, for failing to properly label prescription containers; permitting unlicensed technician activity; and failing to maintain policies and procedures to prevent theft and diversion. The board assessed a \$1,250 administrative fine.

3. On September 15, 2008, the board issued Pharmacy Permit Number PHY 49157 to Han.Sam Corp., doing business as River's Edge Pharmacy (River's Edge), located in Palm Desert. Mr. Benjamin was the PIC from September 1, 2009, to June 13, 2013.

On June 17, 2010, the board issued citation number CI 2009 42563 to River's Edge Pharmacy for failure to report the theft of controlled substances and failure to maintain a current inventory. The board assessed a \$250 administrative fine.

On August 11, 2011, the board issued citation number CI 2010 45075 to River's Edge for dispensing prescriptions containing significant error and variation from a prescription. The board assessed a \$1,500 administrative fine.

4. On October 3, 2011, the board issued Pharmacy Permit Number PHY 50663 to Han.Sam Corp., doing business as Tru Care Pharmacy (Tru Care), located in Buena Park.¹ Ms. Abdelmalik has been the PIC since October 3, 2011. There is no history of discipline against Tru Care's permit.

5. On May 21, 2014, Han.Sam Corp., doing business as River's Edge Specialty Pharmacy, submitted to the board an application for a pharmacy permit for a location in Irvine. On July 17, 2014, the board denied the application.

¹ On May 14, 2015, Tru Care Pharmacy changed its name to River's Edge Specialty Pharmacy. To avoid confusion, the pharmacy will be referred to as Tru Care in this decision.

Jurisdictional Issues

6. On March 10, 2016, complainant signed the first amended accusation and statement of issues. The first amended accusation alleged that Tru Care submitted prescription claims to CalOptima using River's Edge's National Provider Identifier (NPI)² number when CalOptima had not approved Tru Care to submit prescription claims. The first amended accusation alleged that Tru Care and Ms. Abdelmalik were subject to discipline for unprofessional conduct based on dishonesty, fraud, or deceit; knowingly submitting a false document; and general unprofessional conduct. Complainant alleged that River's Edge and Mr. Benjamin, by providing River's Edge's NPI number to Tru Care, were subject to discipline for the same grounds. The statement of issues against River's Edge Specialty Pharmacy alleged that the above conduct constituted grounds to deny the application.

At the hearing, complainant amended the first amended accusation by changing the reference to "Palm Springs" on page 7, line 12, to "Palm Desert."

CalOptima's Complaint

7. CalOptima is a county organized health system that administers health insurance programs for low-income individuals in Orange County. CalOptima has contracted with California Department of Health Care Services (DHCS) to provide health coverage for Orange County residents eligible for Medi-Cal. Kristin Gericke, Pharm.D. has been a licensed pharmacist for the past 26 years, and is CalOptima's pharmacy director.

On January 2, 2014, Dr. Gericke submitted a consumer complaint to the board after CalOptima called River's Edge regarding the processing of a claim submitted under River's Edge NPI number. River's Edge told CalOptima that Tru Care submitted the claim. When CalOptima called Tru Care, Tru Care said it had been submitting claims to CalOptima using River's Edge NPI number. At this time, CalOptima had not approved Tru Care as a provider.

8. Sejal Desai, Pharm.D., is a board inspector who investigated the complaint. Inspector Desai has been a licensed pharmacist since 2001 and a board inspector since 2011. Inspector Desai spoke to Dr. Gericke about her complaint. Dr. Gericke stated that Tru Care had a pending application with CalOptima to become an approved provider. However, CalOptima had never given Tru Care permission to use River's Edge NPI number during the pendency of the application. Dr. Gericke provided Inspector Desai a list of claims CalOptima believed Tru Care had submitted using River's Edge NPI number.

9. On March 13, 2014, Inspector Desai conducted an inspection of Tru Care. Ms. Abdelmalik was on duty and readily admitted that Tru Care used River's Edge NPI number to submit claims to CalOptima. Ms. Abdelmalik believed that Tru Care had a letter from CalOptima authorizing this practice. Inspector Desai requested the profiles for the

² The NPI number is a unique identifying number assigned to health care providers.

prescriptions CalOptima identified as having been submitted from River's Edge. Inspector Desai also observed Tru Care's software program where River's Edge NPI number was programmed to bill CalOptima. Ms. Abdelmalik informed Inspector Desai that Tru Care and River's Edge were owned by the same corporation. Based on the information collected, Inspector Desai concluded that Tru Care submitted hundreds of claims to CalOptima from January 2012 to March 2014.³

10. On March 24, 2014, Inspector Desai received a letter from Mr. Benjamin's legal counsel. The letter explained that Tru Care received a Medi-Cal number in August 2012. Prior to that time, Tru Care was a provisional provider under California Code of Regulations, title 22, section 5100.51, which permits a Medi-Cal provider, with a pending application for enrollment at an additional location, to begin billing for services provided at the additional location using the existing provider number. The letter stated that Mr. Benjamin spoke with Susan Vigil, Pharm.D., CalOptima's pharmacy liaison, who said that Tru Care could submit Medi-Cal claims to CalOptima.

11. On April 6, 2014, Inspector Desai spoke with Mr. Benjamin, who provided the same information contained in his attorney's letter. Inspector Desai requested that Mr. Benjamin provide written documentation showing that Dr. Vigil had authorized Tru Care to use River's Edge NPI number. Mr. Benjamin informed Inspector Desai that CalOptima had since approved Tru Care as a provider.

Testimony of Susan Vigil

12. Dr. Vigil is CalOptima's public relations pharmacist. In that role she acts as a liaison between CalOptima and the pharmacies in the network. CalOptima requires pharmacies to be credentialed by CalOptima prior to submitting claims. The credentialing process is handled by CalOptima's pharmacy benefit manager, PerformRx. In order to be credentialed, a pharmacy must have a Medi-Cal and Medicare number. Once PerformRx verifies a pharmacy's credentials, PerformRx and the pharmacy execute a contract, with an addendum through CalOptima. Only after the contracts have been executed may a pharmacy submit claims to CalOptima. CalOptima does not allow a pharmacy to use another pharmacy's NPI number to bill CalOptima.

13. Mr. Benjamin called Dr. Vigil to inquire about the process of credentialing Tru Care. River's Edge was already an approved CalOptima provider, and Mr. Benjamin said he was opening a new location (Tru Care). Dr. Vigil testified that she told Mr. Benjamin the requirements for joining the network. She explained that the pharmacy had to have valid

³ Tru Care's patient records and CalOptima's list of adjudicated claims were received as evidence. The records indicate that Tru Care began billing CalOptima in May 2012, with the exception of a single claim on January 6, 2012, for patient MC. However, CalOptima's spreadsheet did not contain this claim, indicating it was never adjudicated or processed by CalOptima. Therefore, it was determined that Tru Care began billing CalOptima in May 2012, rather than January 2012 as alleged in the accusation.

Medi-Cal and Medicare numbers, and he needed to contact PerformRx for an application. Because Dr. Vigil was aware that Mr. Benjamin had another pharmacy, she advised him he could contact Medi-Cal to see if Medi-Cal would permit Tru Care to use River's Edge's Medi-Cal number for purposes of credentialing with PerformRx. However, Dr. Vigil explained that this only pertained to credentialing, not billing. She denied ever telling Mr. Benjamin that Tru Care could bill CalOptima using River's Edge NPI number. She said the issue of billing never came up during the conversation.

On June 19, 2014, Dr. Vigil submitted a declaration to Inspector Desai. The declaration stated the following:

Hani Benjamin from River's Edge Pharmacy contacted me inquiring about a contract with CalOptima for Tru-Care Pharmacy. I stated that if Medi-Cal approved, Tru-Care may be able to use River's Edge NPI for credentialing purposes to become contracted with CalOptima. I believe he may have interpreted this to mean that Tru-Care could use River's Edge NPI to bill claims which is incorrect. CalOptima requires each pharmacy to bill with their own NPI.

14. On August 28, 2013, Dr. Vigil emailed Mr. Benjamin with the subject "CalOptima contract for pharmacy in Anaheim."⁴ Dr. Vigil wrote:

In order to obtain a contract for your new pharmacy in Anaheim you need to contact Perform Rx [sic] at . . . and ask them for a credentialing application for CalOptima. You also need to check with DHCS to see if you can use your current Medi-Cal provider number to bill at the Anaheim location (see info below). The easiest way to get an answer from DHCS is to email them at

In this email, Dr. Vigil included a screenshot of a Medi-Cal provider application. On the application a box was circled stating "I intend to use my current provider number to bill for services delivered at this location while this application request is pending. I understand that I will be on provisional provider status during this time, pursuant to CCR, Title 22, Section 5100.51."

Testimony of Kristin Gericke

15. Dr. Gericke oversees CalOptima's pharmacy benefit program. Once she learned that Tru Care was submitting claims using River's Edge NPI number, she filed a complaint with the board. Dr. Gericke explained that CalOptima does not permit a provider

⁴ It appears that this email was in reference to another pharmacy Han.Sam Corp. opened in Anaheim, which was not a subject of these proceedings.

to use another provider's NPI number. She believed that this conduct was unethical and dishonest. However, Tru Care eventually met CalOptima's credentialing requirements and joined CalOptima's network.

Dr. Gericke testified that she has never received a request for a pharmacy to use another pharmacy's NPI number. She said CalOptima requires each provider to have a contract with CalOptima prior to submitting claims, and each individual location is considered a provider. CalOptima publishes its policies on its website. However, Dr. Gericke did not know if either of these requirements were explicitly outlined in CalOptima's policies. Dr. Gericke said that CalOptima could have terminated the contract with River's Edge for fraud, yet it did not do so.

Testimony of Lee Worth

16. Lee Worth, Pharm.D., is a senior pharmacist for DHCS, Audits and Investigations Division. In that capacity, he provides professional oversight of DHCS pharmacy services; plans and conducts complex audits and investigations; develops pharmacy and pharmaceutical related policies and procedures; consults with outside agencies; and conducts training and staff development. He has been a licensed pharmacist since 1989. He worked in the private sector before joining DCHS in 2004.

17. Dr. Worth reviewed the complaint from CalOptima that Tru Care was submitting claims using River's Edge NPI number. CalOptima is a contracted managed care provider for Medi-Cal. Dr. Worth believed that it was dishonest for Tru Care to use River's Edge NPI number to bill CalOptima. Dr. Worth believed that submitting another pharmacy's NPI number involved the submission of a false document.

Dr. Worth testified that DHCS audited Tru Care in July 2012 when it was requesting to become a Medi-Cal provider. Dr. Worth stated that following the audit, Tru Care was approved as a Medi-Cal provider. Dr. Worth testified that under the regulations, a Medi-Cal provider who has submitted an application package for an additional location may begin billing for services provided at the additional location using its existing provider number. Thus, once Tru Care submitted an application with Medi-Cal, it would have been permissible for Tru Care to bill Medi-Cal using River's Edge Medi-Cal number.

Testimony of Mervat Abdelmalik

18. Mervat Abdelmalik, R.Ph. was licensed as a pharmacist in 2004 and is employed by Han.Sam Corp. She is the PIC at River's Edge Specialty Pharmacy in Buena Park (formerly Tru Care) and Tru Care Pharmacy in Anaheim. In December 2011, Tru Care requested information from CalOptima on becoming a provider. CalOptima sent an email to Tru Care providing the contract information for PerformRx. Ms. Abdelmalik completed a "Participating Pharmacy Agreement," various addendums, a "PBM/CalOptima Pharmacy Provider Credentialing Sheet," and faxed these documents to PerformRx on December 5, 2011. Ms. Abdelmalik testified that in April or May 2012, Tru Care began submitting claims

to CalOptima using River's Edge provider number. Ms. Abdelmalik explained that Mr. Benjamin called Fadi Ebeid, an intern pharmacist at Tru Care, and told Mr. Ebeid that Tru Care could now submit claims to CalOptima using River's Edge provider number. Ms. Abdelmalik later confirmed this with Mr. Benjamin directly. Prior to this point, Tru Care would transfer prescriptions for CalOptima patients to River's Edge for fulfillment.

Ms. Abdelmalik testified that she never received written approval from CalOptima to bill using River's Edge provider number. However, based on the statement from Mr. Benjamin, she reasonably believed CalOptima was authorized to submit claims. Ms. Abdelmalik first learned that this was not permissible when Inspector Desai inspected Tru Care Pharmacy. Ms. Abdelmalik reasonably believed that when Tru Care submitted a claim to CalOptima using River's Edge NPI, CalOptima was also receiving other information, such as Tru Care's address and DEA number, to indicate that the prescription was being filled at Tru Care.

19. In July 2012, Ms. Abdelmalik corresponded with Michael Chu, a Health Program Auditor with DHCS, Audits and Investigations, Medical Review Branch. Mr. Chu was conducting an audit in association with Tru Care's application to become a Medi-Cal provider. In a July 20, 2012, email, Mr. Chu requested additional information from Ms. Abdelmalik. Included in the email, Mr. Chu wrote, "NPI used to bill for River's Edge and Tru Care have been the same. Please explain and provide records on how you distinguish billings for the two pharmacies."

On July 23, 2012, Ms. Abdelmalik emailed Mr. Chu a response. She wrote, "Both pharmacies are owned by the same corporation, therefore, as you are aware we are permitted to bill claims from both pharmacies under the River's Edge NPI number while Tru-care's [sic] provider application is pending." Ms. Abdelmalik further explained that they were able to distinguish billing through the prescription numbers – prescriptions filled at Tru Care began with a three or a seven, prescriptions filled at River's Edge began with a four or a six. Ms. Abdelmalik concluded, "Please find a couple of pages for the claims paid by CalOptima Medi-Cal and how we distinguish between them."

Ms. Abdelmalik said she never received any further response from Mr. Chu or DHCS. Ms. Abdelmalik testified that she did not think she was submitting false claims to Cal-Optima when she used River's Edge NPI number.

Testimony of Fadi Ebeid

20. Fadi Ebeid, R.Ph. has been a licensed pharmacist since 2013. He is employed by Han.Sam Corp. and is currently the PIC at River's Edge in Palm Desert. In 2012, Mr. Ebeid was a pharmacist intern at Tru Care in Buena Park. Mr. Ebeid said he assisted Tru Care with the credentialing process with PerformRx by making phone calls and sending follow-up emails. In approximately May 2012, Mr. Ebeid received a phone call from Mr. Benjamin. Mr. Benjamin said that Tru Care could now bill Cal-Optima the same way it

billed Medi-Cal, by using River's Edge NPI number. Mr. Benjamin told Mr. Ebeid to communicate this to the rest of the staff and inform the software vendor.

Testimony of Hany Benjamin

21. Hany Benjamin, R.Ph. has been a licensed pharmacist since 2005. He is the owner of Han.Sam Corp., which owns three pharmacies. River's Edge, his first pharmacy, opened in 2008. River's Edge was credentialed as a Medi-Cal and CalOptima provider. In 2011, Mr. Benjamin opened Tru Care in Buena Park. After Ms. Abdelmalik submitted Tru Care's application to PerformRx in December 2011, PerformRx told Mr. Benjamin that he had to submit the application under River's Edge name, since River's Edge was already credentialed. Consequently, in late December 2011, Mr. Benjamin submitted a new application package to PerformRx, listing Tru Care as an additional pharmacy. Mr. Benjamin believed that since CalOptima was a Medi-Cal provider, he could bill CalOptima as he would Medi-Cal, using River's Edge NPI number while Tru Care's application was pending. However, Mr. Benjamin said he did not immediately start processing CalOptima claims at Tru Care because he was awaiting some form of acknowledgement from PerformRx or CalOptima that Tru Care's application had been received. For example, on January 4, 2012, Tru Care received a letter from DHCS stating that Tru Care's application for participation in Medi-Cal had been received.

Mr. Benjamin said that Tru Care was a "closed-door" pharmacy, meaning it was not seeking patients from the outside. Instead, the pharmacy serviced assisted living facilities. Up until May 2012, Tru Care would send prescriptions for CalOptima patients to River's Edge for fulfillment. Mr. Benjamin never received acknowledgement from PerformRx that Tru Care's application had been received. Mr. Benjamin said he spoke to Dr. Vigil in late April or early May 2012 in order to follow-up on the status of Tru Care's application. Mr. Benjamin testified that he understood from the conversation with Dr. Vigil that Tru Care could submit claims to CalOptima while the application was pending, in the same manner as permitted by Medi-Cal. Mr. Benjamin was excited by this news and called Tru Care to advise them to start submitting CalOptima claims using River's Edge NPI number. Mr. Benjamin said Han.Sam Corp. never made more money by having Tru Care bill CalOptima directly, because River's Edge in Palm Desert was already servicing Tru Care's CalOptima patients. Thus, the transfer to Tru Care did not increase earnings, but allowed Tru Care to fill prescriptions closer to its location than River's Edge in Palm Desert.

Mr. Benjamin testified there was no intent to deceive CalOptima by submitting claims from Tru Care using River's Edge NPI number. Mr. Benjamin explained that the software program used to submit claims contained Tru Care's name, address, DEA number, and NPI number. Mr. Benjamin believed that this information was submitted electronically to CalOptima in addition to River's Edge NPI number, which was contained in the insurance processing section. Thus, Mr. Benjamin believed that when Tru Care submitted a claim to CalOptima using River's Edge NPI number, CalOptima was also aware that it was Tru Care filling the prescription, not River's Edge. Mr. Benjamin submitted screenshots from his software program showing where Tru Care's information was contained.

Rebuttal Testimony by Kristin Gericke

22. Dr. Gericke reviewed the screenshot Dr. Benjamin submitted. Complainant submitted a screen shot from PerformRx, showing the information it received when Tru Care submitted a claim using River's Edge NPI number. Dr. Gericke explained that the pharmacy information populated in the claim is based on the NPI number submitted. Thus, when Tru Care used River's Edge NPI number, the only information CalOptima received was that River's Edge was filling the claim. CalOptima had no way of knowing that the prescription was in fact being filled by Tru Care.

Cost Recovery

23. Complainant submitted certifications of costs and requested cost recovery pursuant to Business and Professions Code section 125.3. Complainant and Inspector Desai submitted certifications of investigative costs in the amount of \$2,149.75. The certification by the deputy attorney general contained information related to services provided by the Office of the Attorney General and included costs of prosecution in Case No. 5277 that totaled \$10,642.50. A certification by the deputy attorney general contained information related to services provided by the Office of the Attorney General and included costs of prosecution in Case No. 5278 that totaled \$7,582.50. The evidence established that those costs were reasonably incurred. The certifications complied with the requirements of California Code of Regulations, title 1, section 1042, subdivision (b).

LEGAL CONCLUSIONS

Purpose of License Discipline

1. The main purpose of license discipline is protection of the public through the prevention of future harm and the improvement and rehabilitation of the licensee. It is far more desirable to impose discipline before a licensee harms any patient than after harm has occurred. (*Griffiths v. Sup. Ct.* (2002) 96 Cal.App.4th 757, 772.)

Burden and Standard of Proof - Accusation

2. The standard of proof in an administrative action seeking to suspend or revoke a professional license is "clear and convincing evidence." (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt; it requires sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Katie V. v. Sup. Ct.* (2005) 130 Cal.App.4th 586, 594.)

Burden and Standard of Proof – Statement of Issues

3. Except as otherwise provided by law, a party asserting at an administrative hearing that he or she should be granted a certain benefit, such as a license or permit, has the burden to establish by a preponderance of the evidence that he or she should be granted that benefit. (Evid. Code, §§ 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051-52.) “Preponderance of the evidence” means evidence that has more convincing force than that opposed to it. If the evidence is so evenly balanced that one is unable to say that the evidence on either side of an issue preponderates, the finding on that issue must be against the party who had the burden of proving it. (*People v. Mabini* (2000) 92 Cal.App.4th 654, 663.)

Relevant Statutory and Regulatory Authority

4. Business and Professions Code section 4301 authorizes the board to take action against any holder of a license for unprofessional conduct. Unprofessional conduct includes, but is not limited to, 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.

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

[¶] . . . [¶]

(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. . . .

5. Under Business and Professions Code section 480, subdivision (a), a board may deny a license on the grounds that the applicant has done one of the following:

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made. . . .

6. Under Business and Professions Code section 4300, subdivision (c), the board may refuse a license to any applicant who commits unprofessional conduct.

7. Under Business and Professions Code section 4113, subdivision (c), the pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy.

Unprofessional Conduct – Dishonesty, Fraud, or Deceit

8. Complainant alleged that Tru Care and its PIC, Ms. Abdelmalik, committed unprofessional conduct under Business and Professions Code section 4301, subdivision (f), when they submitted prescription claims to CalOptima using River's Edge NPI number when Tru Care did not have approval to bill CalOptima for prescription claims. Complainant contended that this conduct was dishonest, fraudulent, or deceitful. Complainant alleged that by allowing Tru Care to use its NPI number, River's Edge and its PIC, Mr. Benjamin, likewise committed acts that were dishonest, fraudulent, or deceitful.

9. Mr. Benjamin credibly⁵ testified he believed it was permissible for Tru Care to submit claims to CalOptima using River's Edge NPI number while CalOptima was processing Tru Care's application. This belief was in fact mistaken, because CalOptima does not permit a pharmacy to submit claims until its pharmacy benefits manager has approved the pharmacy and ratified a contract. From CalOptima's perspective, it is easy to see why it believed Tru Care's actions were dishonest or deceitful. The only information CalOptima received when a claim was submitted was River's Edge NPI number. CalOptima had no way of knowing that Tru Care was submitting the claim. However, Mr. Benjamin's mistaken belief that his actions were permissible was not entirely unjustified. First, Mr. Benjamin believed that because CalOptima was a Medi-Cal provider, the same rules governing Medi-Cal claims governed CalOptima's claims. Under the regulations, a Medi-Cal credentialed

⁵ The credibility of the witnesses has been evaluated pursuant to the factors set forth in Evidence Code section 780: the demeanor and manner of the witness while testifying, the character of the testimony, the capacity to perceive at the time the events occurred, the character of the witness for honesty, the existence of bias or other motive, other statements of the witness which are consistent or inconsistent with the testimony, the existence or absence of any fact to which the witness testified, and the attitude of the witness toward the proceeding in which the testimony has been given.

provider who has submitted an application package for enrollment at an additional location, may begin billing for services provided at the additional location using the existing provider number. (Cal. Code Regs., tit. 22, § 51000.51, subd. (b).) Although Dr. Vigil testified that in her conversation with Mr. Benjamin she never told him Tru Care could begin billing using River's Edge provider number, she did inform him that Medi-Cal may permit him to use River's Edge Medi-Cal number for purposes of credentialing with CalOptima. In fact, in relation to Mr. Benjamin's Anaheim pharmacy, Dr. Vigil included a screenshot of the Medi-Cal application which clearly indicated that an additional location may begin to bill Medi-Cal using the original provider's number. Thus, it is understandable that Mr. Benjamin could have concluded from his conversation with Dr. Vigil that he could begin billing CalOptima using River's Edge provider number. Bolstering Mr. Benjamin's testimony is the fact that Tru Care did not begin billing CalOptima until May 2012, after he received confirmation of receipt of his application, several months after Tru Care submitted the credentialing application.

Additionally, there was no evidence that anyone at Tru Care or River's Edge was attempting to deceive CalOptima. Mr. Benjamin credibly testified that based upon his understanding of Tru Care's pharmacy software, Tru Care was transmitting to CalOptima information indicating that the prescription had been filled at Tru Care, not River's Edge. For example, Mr. Benjamin believed that Tru Care's address, license numbers, and NPI number, advised CalOptima the prescription was filled at Tru Care, despite the fact that River's Edge NPI number was used in the insurance claim section. Additionally, the pharmacies used different prescription numbers to identify which pharmacy had filled a prescription. When CalOptima called River's Edge in regards to a claim, River's Edge readily reported that the prescription was filled by Tru Care. It would have made little sense for River's Edge to have disclosed this information if the corporation was attempting to deceive or defraud CalOptima.⁶ In short, there was no evidence that Tru Care attempted to obfuscate that it was using River's Edge NPI number. In fact, during DHCS's audit of Tru Care in July 2012, Tru Care readily admitted it was using River's Edge number to bill Medi-Cal and CalOptima. Since DHCS took no steps against Tru Care, and approved it as a Medi-Cal provider, it was reasonable for respondents to continue with the belief that what they were doing was permissible.

Finally, although CalOptima may define a pharmacy provider as an individual pharmacy location, and may not permit a provider to submit claims without having an approved contract, there was no evidence submitted at hearing showing this was contained in any written policy that respondents could have consulted. Thus, it was understandable for Mr. Benjamin to have concluded that CalOptima's policies tracked Medi-Cal's. To be sure, Mr. Benjamin should have explicitly confirmed with CalOptima approval to begin billing in

⁶ Although Mr. Benjamin also argued that he received no financial gain from allowing Tru Care to bill CalOptima because the prescriptions were already being filled by River's Edge, a CalOptima provider, the corporation did receive a financial benefit because it could begin to fulfil prescriptions closer to the nursing homes it serviced, rather than transferring the prescriptions over a hundred miles away to Palm Desert.

this manner; however, even if Mr. Benjamin and Ms. Abdelmalik were negligent in this regard, there was no evidence that their conduct was fraudulent, deceitful, or dishonest. This allegation against all respondents is dismissed.

Unprofessional Conduct – Making a False Document

10. Complainant alleged that Tru Care and Ms. Abdelmalik knowingly prepared and submitted false documents each time they submitted claims to CalOptima using River's Edge NPI number, in violation of Business and Professions Code section 4301, subdivision (g). Complainant alleged that River's Edge and Mr. Benjamin assisted, abetted, or engaged in a conspiracy to submit false documents.

11. A question arises as to whether respondents "knowingly" made a document that falsely represents the existence or nonexistence of a state of facts. In *Brown v. State Dep't of Health* (1978) 86 Cal.App.3d 548, the Court of Appeal explained that in the licensing arena, an individual who falsely represents a state of facts can be guilty of "knowingly" making a false statement, even if the person did not intend to deceive. (*Brown, supra*, 86 Cal.App.3d at 554-555.) The rationale is that false certifications, even if not intended to deceive, "may be put to great mischief." (*Id.*, at p. 555.) Consequently, "a person need only have knowledge of the falsity of the facts certified when making or signing the certificate" to have been found "knowingly" making or signing a false certificate. (*Id.*)

Clear and convincing evidence did not establish that respondents knowingly represented facts that were false when Tru Care submitted claims to CalOptima using River's Edge NPI number. The credible testimony established that neither Ms. Abdelmalik nor Mr. Benjamin believed they were submitting information that was false. Instead, they believed the information they were submitting was true, based on their belief, albeit mistaken, that they could bill CalOptima in the same manner that they billed Medi-Cal. As previously noted, there was no attempt by respondents to obfuscate or hide the fact that Tru Care was submitting the claims using River's Edge number. Although intent to deceive is not an element of the alleged violation, respondents' intent can be considered in the context of their knowledge of a falsity. Because respondents did not know the information they were submitting was false, no violation was established.

General Unprofessional Conduct

12. Complainant alleged that respondents engaged in general unprofessional conduct. Unprofessional conduct has been defined in the health care context as conduct which indicates an unfitness to practice medicine. . . . conduct which breaches the rules or ethical code of a profession, or conduct which is unbecoming a member in good standing of a profession." (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575 and n.5.) As previously discussed, respondents erroneously believed that their actions were permissible. There were several circumstances that supported their belief. Ultimately, respondents made a mistake in their belief. However, clear and convincing evidence did not establish that respondents engaged in conduct unbecoming the practice of pharmacy.

Accusation Against Tru Care Pharmacy and Mervat Abdelmalik

13. Cause does not exist to impose discipline against Tru Care Pharmacy's permit or Ms. Abdelmalik's license. Clear and convincing evidence did not establish respondents committed unprofessional conduct under Business and Professions Code section 4301, subdivisions (f) and (g), or general unprofessional conduct. The three causes for discipline are dismissed.

Accusation Against River's Edge Pharmacy and Hany Benjamin

14. Cause does not exist to impose discipline against River's Edge Pharmacy permit or Mr. Benjamin's license. Clear and convincing evidence did not establish respondents committed unprofessional conduct under Business and Professions Code section 4301, subdivisions (f), (g), and (o), or general unprofessional conduct. The three causes for discipline are dismissed.

Costs of Investigation and Enforcement

15. Business and Professions Code section 125.3, subdivision (a), authorizes an administrative law judge to direct a licensee who has violated the applicable licensing act to pay a sum not to exceed the reasonable costs of investigation and prosecution. Because there was no violation, complainant's request for cost recovery is denied.

Statement of Issues Against River's Edge Specialty Pharmacy

16. Cause does not exist to deny River's Edge Specialty Pharmacy's application for a pharmacy permit pursuant to Business and Professions Code section 480, subdivisions (a)(2) and (a)(3)(A). A preponderance of the evidence established that Han.Sam Corp. did not committed acts of dishonesty or deceit, or that its actions would be grounds for revocation or suspension of a license.

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ORDER

The first amended accusation is dismissed.

Upon satisfaction of all statutory and regulatory requirements for issuance of a pharmacy permit, a permit shall be issued to Han.Sam Corp., doing business as River's Edge Specialty Pharmacy.

DATED: April 15, 2016

DocuSigned by:



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ADAM L. BERG
Administrative Law Judge
Office of Administrative Hearings

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8

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

12
13 In the Matter of the Accusation Against:

Case No. 5277

14 **HAN.SAM.CORP., DBA TRU CARE**
PHARMACY, HANY S. BENJAMIN,
15 **PRESIDENT; MERVAT MECHEAL**
16 **ABDELMALIK, PHAMACIST-IN-**
CHARGE
17 **6301 Beach Blvd., Ste. 105**
Buena Park, CA 90621

FIRST AMENDED ACCUSATION

18 **Pharmacy Permit No. PHY 50663**

19 **HANY BENJAMIN**
20 **AKA, HANY SAMUEL-BENJAMIN**
GADALLA
21 **812 Ventana Ridge**
Palm Springs, CA 92262

22 **Pharmacist License No. RPH 58261**

24 **MERVAT MECHEAL ABDELMALIK**
25 **1 Odessa**
Foothill Ranch, CA 92610

26 **Pharmacist License No. RPH 56346**

27 Respondents.
28

1 In the Matter of the Accusation Against:

Case No. 5278

2 **HAN.SAM.CORP., DBA RIVER'S EDGE**
3 **PHARMACY, SAMUEL BENJAMIN**
4 **GADALLA HANY, PRESIDENT; HANY**
5 **BENJAMIN, PHARMACIST-IN-CHARGE**
6 **36919 Cook Street, Suite 102**
7 **Palm Desert, CA 92211**

8 **Pharmacy Permit No. PHY 49157**

9 **HANY BENJAMIN**
10 **AKA, HANY SAMUEL-BENJAMIN**
11 **GADALLA**
12 **812 Ventana Ridge**
13 **Palm Springs, CA 92262**

14 **Pharmacist License No. RPH 58261**

15 Respondents.

16 In the Matter of the Statement of Issues
17 Against:

Case No. 5308

18 **HAN.SAM CORP., DBA RIVER'S EDGE**
19 **SPECIALTY PHARMACY; HANY**
20 **BENJAMIN, CHIEF EXECUTIVE**
21 **OFFICER AND PRESIDENT**

22 **Pharmacy Permit Applicant**

23 Respondent.

24 Complainant alleges:

25 **PARTIES**

26 1. Virginia Herold (Complainant) brings this First Amended Accusation¹ solely in her
27 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
28 Affairs.

29 2. On or about May 9, 2006, the Board of Pharmacy (Board) issued Original Pharmacist
30 License Number RPH 58261 to Hany Benjamin, aka Hany Samuel-Benjamin Gadalla

31 ¹ On January 20, 2016, this Court issued an Order Granting Consolidation of the three
32 above-captioned cases for hearing. The Accusations and Statement of Issues regarding these
33 three cases are consolidated herein and pled in this First Amended Accusation.

1 (Respondent Benjamin). The Pharmacist License was in full force and effect at all times relevant
2 to the charges brought herein and will expire on October 31, 2017, unless renewed.

3 3. On or about September 28, 2004, the Board issued Original Pharmacist License
4 Number RPH 56346 to Mervat Mecheal Abdelmalik (Respondent Abdelmalik). The Pharmacist
5 License was in full force and effect at all times relevant to the charges brought herein and will
6 expire on January 31, 2018, unless renewed.

7 4. On or about October 3, 2011, the Board issued Pharmacy Permit Number PHY 50663
8 to Han.Sam.Corp., dba Tru Care Pharmacy, Hany S. Benjamin, President, Vice President,
9 Secretary and Treasurer/Chief Financial Officer (Respondent Tru Care Pharmacy). Respondent
10 Abdelmalik was associated as the Pharmacist-in-Charge (PIC) for Respondent Tru Care
11 Pharmacy from October 3, 2011 to present. The Pharmacy Permit was in full force and effect at
12 all times relevant to the charges brought herein and will expire on October 1, 2016, unless
13 renewed.

14 5. On or about September 15, 2008, the Board issued Pharmacy Permit Number PHY
15 49157 to Han.Sam.Corp., dba River's Edge Pharmacy, Samuel Benjamin Gadalla Hany,
16 President, Vice President, Chief Executive Officer and Treasurer/Chief Financial Officer
17 (Respondent River's Edge Pharmacy). Respondent Benjamin was the PIC for Respondent
18 River's Edge Pharmacy from September 1, 2009 to June 13, 2013. The Pharmacy Permit was in
19 full force and effect at all times relevant to the charges brought herein and will expire on
20 September 1, 2016, unless renewed.

21 6. On or about May 21, 2014, the Board received an application for a Pharmacy Permit
22 from Han.Sam Corp., doing business as River's Edge Specialty Pharmacy, Hany Benjamin, Chief
23 Executive Officer and President (Applicant River's Edge Specialty Pharmacy). On or about May
24 17, 2014, Respondent certified under penalty of perjury to the truthfulness of all statements,
25 answers, and representations in the application. The Board denied the application on July 17,
26 2014.

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1 ACCUSATION JURISDICTION

2 7. This First Amended Accusation is brought before the Board under the authority of the
 3 following laws. All section references are to the Business and Professions Code (Code) unless
 4 otherwise indicated.

5 8. Section 4113 of the Code states in pertinent part:

6 . . .

7 (c) The pharmacist-in-charge shall be responsible for a pharmacy's
 8 compliance with all state and federal laws and regulations pertaining to the
 9 practice of pharmacy.

10

11 9. Section 4300 of the Code states:

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

13

14 10. Section 4300.1 of the Code states:

15 The expiration, cancellation, forfeiture, or suspension of a board-issued
 16 license by operation of law or by order or decision of the board or a court of law,
 17 the placement of a license on a retired status, or the voluntary surrender of a
 18 license by a licensee shall not deprive the board of jurisdiction to commence or
 19 proceed with any investigation of, or action or disciplinary proceeding against, the
 20 licensee or to render a decision suspending or revoking the license.

21 11. Section 4301 of the Code states:

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

26 . . .

27 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
 28 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.

(g) Knowingly making or signing any certificate or other document that
 falsely represents the existence or nonexistence of a state of facts.

. . . .

1 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
2 abetting the violation of or conspiring to violate any provision or term of this
3 chapter or of the applicable federal and state laws and regulations governing
4 pharmacy, including regulations established by the board or by any other state or
5 federal regulatory agency.

6 **ACCUSATION REGULATIONS**

7 12. California Code of Regulations, title 16, section 1709.1 provides:

8 (a) The pharmacist-in-charge of a pharmacy shall be employed at that
9 location and shall have responsibility for the daily operation of the pharmacy.

10 (b) The pharmacy owner shall vest the pharmacist-in-charge with adequate
11 authority to assure compliance with the laws governing the operation of a
12 pharmacy.

13

14 **STATEMENT OF ISSUES JURISDICTION**

15 13. The Statement of Issues is brought before the Board under the authority of the
16 following laws.

17 14. Section 4300, subdivision (c) of the Code states "The board may refuse a license to
18 any applicant guilty of unprofessional conduct."

19 **STATEMENT OF ISSUES STATUTORY PROVISIONS**

20 15. Section 480 of the Code states:

21 (a) A board may deny a license regulated by this code on the grounds that
22 the applicant has one of the following:

23 . . .

24 (2) Done any act involving dishonesty, fraud, or deceit with the intent to
25 substantially benefit himself or herself or another, or substantially injure another.

26 (3) (A) Done any act that if done by a licentiate of the business or profession
27 in question, would be grounds for suspension or revocation of license.

28 (B) The board may deny a license pursuant to this subdivision only if the
crime or act is substantially related to the qualifications, functions, or duties of the
business or profession for which application is made.

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16. 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.

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

...

(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.

STATEMENT OF ISSUES REGULATORY PROVISIONS

17. California Code of Regulations, title 16, section 1770, states:

For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.

COSTS

18. 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.

FACTS

19. "CalOptima" is the name of an integrated health care system that administers public health insurance programs for children, low income families, and persons with disabilities who are eligible for Medi-Cal in Orange County, California.

///

1 20. In Orange County, California, pharmacies that fill prescriptions for Medi-Cal patients
2 obtain payment through CalOptima. In order to receive payment from CalOptima, a pharmacy
3 must apply to CalOptima and receive approval to become a registered provider for CalOptima
4 and sign a contract with CalOptima. CalOptima requires a separate application and review
5 process than is required for the Medi-Cal program.

6 21. Respondent Tru Care Pharmacy is a Board licensed pharmacy that is located in Buena
7 Park, California. Respondent Hany Benjamin owns Tru Care Pharmacy.

8 22. In or about February 2013, Respondent Tru Care Pharmacy applied to be added to the
9 CalOptima Pharmacy Provider Network. Respondent Tru Care Pharmacy did not meet the
10 contracting requirements and was not added as a registered provider for CalOptima.

11 23. Respondent River's Edge Pharmacy is a Board licensed pharmacy that is located in
12 Palm Springs, California. It was and is a registered provider for the CalOptima program.
13 Respondent Hany Benjamin owns River's Edge Pharmacy.

14 24. On or about December 31, 2013, CalOptima staff called Respondent River's Edge
15 Pharmacy regarding processing a claim for a CalOptima member under their National Provider
16 Identifier (NPI)² number and were told that Respondent River's Edge Pharmacy had not
17 processed the claim, but that Respondent Tru Care Pharmacy had processed the claim.
18 CalOptima contacted Respondent Tru Care Pharmacy and Tru Care Pharmacy admitted to
19 CalOptima that they were using Respondent River's Edge Pharmacy's NPI number to bill for
20 CalOptima members' prescriptions that were processed and filled at Respondent Tru Care
21 Pharmacy.

22 25. Respondent Tru Care Pharmacy's computer software was programmed with
23 Respondent River's Edge Pharmacy's NPI number to bill to CalOptima for prescriptions that
24 were processed and filled by Respondent Tru Care Pharmacy.

25
26 ² A National Provider Identifier number is a unique 10-digit identification number
27 required by HIPAA for all health care providers. Health care providers and all health plans must
28 use their unique NPI number in administrative and financial transactions to identify themselves in
all HIPAA transactions.

1 26. From approximately January 1, 2012 to March 13, 2014, Respondents Tru Care
2 Pharmacy and PIC Abdelmalik, used the NPI number of Respondent River's Edge Pharmacy to
3 process and bill CalOptima for 642 prescriptions and/or refills, that Respondent Tru Care
4 Pharmacy had filled. The prescriptions were for CalOptima patients RW, HV, SB, HN, PB, BJ,
5 WM, MC, MG, RA and RG.

6 27. From approximately January 1, 2012 to March 13, 2014, Respondent Tru Care
7 Pharmacy was not a registered provider for CalOptima.

8 28. CalOptima did not give Respondent Tru Care Pharmacy a temporary authorization to
9 use Respondent River's Edge Pharmacy's NPI number to bill for CalOptima prescriptions.

10 29. CalOptima does not give authorization to anyone to use another pharmacy's NPI
11 number to process claims or request payment from CalOptima, even if the pharmacy has an
12 application pending before CalOptima.

13 30. CalOptima requires each pharmacy location to bill with their own NPI number with
14 no exceptions.

15 **ACCUSATION**

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Unprofessional Conduct – Dishonesty, Fraud or Deceit)**

18 31. Respondents Tru Care Pharmacy and PIC Abdelmalik are each subject to disciplinary
19 action under Code section 4301(f) for dishonesty and/or deceit in that they submitted Tru Care
20 Pharmacy prescription claims to CalOptima using River's Edge Pharmacy's NPI number, when
21 Tru Care Pharmacy did not have approval to bill CalOptima for prescription claims. Respondents
22 were dishonest when they represented to CalOptima that River's Edge Pharmacy had filled the
23 prescriptions, when in fact, Tru Care Pharmacy had. Tru Care Pharmacy received payment for
24 claims that they were not authorized to submit to CalOptima. The circumstances are set forth in
25 detail in paragraphs 19 through 30 above, and incorporated herein as though fully referenced.

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27 ///.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct - Making a Document that is False)**

3 32. Respondents Tru Care Pharmacy and PIC Abdelmalik are each subject to disciplinary
4 action under Code section 4301(g) for knowingly making or signing any certificate or other
5 document that falsely represents the existence or nonexistence of a state of facts in that they
6 submitted Tru Care Pharmacy's prescription claims to CalOptima using River's Edge Pharmacy's
7 NPI number. Respondents prepared false documents each time they submitted prescription
8 claims to CalOptima and represented to CalOptima that River's Edge Pharmacy had filled the
9 prescriptions, when in fact, Tru Care Pharmacy had. The circumstances are set forth in detail in
10 paragraphs 19 through 30 above, and incorporated herein as though fully referenced.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(General Unprofessional Conduct)**

13 33. Respondents Tru Care Pharmacy and PIC Abdelmalik are each subject to disciplinary
14 action under Code section 4301 in that they engaged in unprofessional conduct when they
15 submitted Tru Care Pharmacy prescription claims to CalOptima using River's Edge Pharmacy's
16 NPI number, when Tru Care Pharmacy did not have approval to bill CalOptima for prescription
17 claims. Respondents Tru Care Pharmacy and PIC Abdelmalik misrepresented to CalOptima that
18 River's Edge Pharmacy had filled the prescriptions, when in fact, Tru Care Pharmacy had. Tru
19 Care Pharmacy received payment for claims that they were not authorized to submit to
20 CalOptima. The circumstances are set forth in detail in paragraphs 19 through 30 above, and
21 incorporated herein as though fully referenced.

22 **FOURTH CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct – Dishonesty, Fraud or Deceit)**

24 34. Respondents River's Edge Pharmacy and PIC Benjamin are each subject to
25 disciplinary action under Code section 4301(f) for dishonesty and/or deceit in that they aided and
26 abetted Tru Care Pharmacy in submitting claims to CalOptima using River's Edge Pharmacy's
27 NPI number, when Tru Care Pharmacy did not have approval from CalOptima to bill for
28 prescription claims. Respondents River's Edge Pharmacy and PIC Benjamin allowed Tru Care

1 Pharmacy to misrepresent to CalOptima that River's Edge Pharmacy had filled the prescriptions,
2 when in fact, Tru Care Pharmacy had. The circumstances are set forth in detail in paragraphs 19
3 through 30 above, and incorporated herein as though fully referenced.

4 **FIFTH CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct – Violation of State Laws Governing Pharmacy)**

6 35. Respondents River's Edge Pharmacy and PIC Benjamin are each subject to
7 disciplinary action for unprofessional conduct under Code section 4301(o), for assisting in or
8 abetting the violation of, or conspiring to violate Code section 4301(g), in that they knew, and
9 allowed Tru Care Pharmacy to submit claims to CalOptima for payment by using River's Edge
10 Pharmacy's NPI number and allowed Tru Care Pharmacy to misrepresent to CalOptima that
11 River's Edge Pharmacy had filled the prescriptions, when in fact, Tru Care Pharmacy had. The
12 circumstances are set forth in detail in paragraphs 19 through 30 above, and incorporated herein
13 as though fully referenced.

14 **SIXTH CAUSE FOR DISCIPLINE**

15 **(General Unprofessional Conduct)**

16 36. Respondents River's Edge Pharmacy and PIC Benjamin are each subject to
17 disciplinary action under Code section 4301 in that they engaged in unprofessional conduct when
18 they allowed Tru Care Pharmacy to submit prescription claims to CalOptima using River's Edge
19 Pharmacy's NPI number, when Tru Care Pharmacy did not have approval to bill CalOptima for
20 prescription claims. Respondents River's Edge Pharmacy and PIC Benjamin let Tru Care
21 Pharmacy and PIC Abdelmalik misrepresent to CalOptima that River's Edge Pharmacy had filled
22 the prescriptions, when in fact, Tru Care Pharmacy had. The circumstances are set forth in detail
23 in paragraphs 19 through 30 above, and incorporated herein as though fully referenced.

24 **STATEMENT OF ISSUES**

25 **FIRST CAUSE FOR DENIAL OF APPLICATION**

26 **(Acts Involving Dishonesty, Fraud or Deceit)**

27 37. Applicant River's Edge Specialty Pharmacy's application is subject to denial under
28 Code section 480, subdivision (a)(2) in that Respondent Benjamin committed acts of dishonesty

1 and/or deceit during the operation of his two pharmacies, Tru Care Pharmacy and River's Edge
2 Pharmacy. The circumstances are set forth in paragraphs 19 through 30 above, and incorporated
3 herein as though fully referenced, and as follows:

4 a. Tru Care Pharmacy was dishonest when it submitted prescription claims to
5 CalOptima using River's Edge Pharmacy's NPI number, when Tru Care Pharmacy did not have
6 approval to bill CalOptima for prescription claims.

7 b. Tru Care Pharmacy was dishonest when it misrepresented to CalOptima that River's
8 Edge Pharmacy had filled the prescriptions, when in fact, Tru Care Pharmacy had.

9 c. Tru Care Pharmacy was dishonest when it received payment for claims submitted to
10 CalOptima that it was not entitled to.

11 d. River's Edge Pharmacy and Respondent Benjamin were dishonest when they aided
12 and abetted Tru Care Pharmacy in submitting claims to CalOptima using River's Edge
13 Pharmacy's NPI number, when Tru Care Pharmacy did not have approval to submit claims to
14 CalOptima.

15 e. River's Edge Pharmacy and Respondent Benjamin were dishonest when they allowed
16 Tru Care Pharmacy to misrepresent to CalOptima that River's Edge Pharmacy had filled the
17 prescriptions, when in fact, Tru Care Pharmacy had filled them.

18 **SECOND CAUSE FOR DENIAL OF APPLICATION**

19 **(Commission of Acts Which if Done by a Licensee Would be**
20 **Grounds for Suspension or Revocation of License- Dishonesty)**

21 38. Applicant River's Edge Specialty Pharmacy's application is subject to denial under
22 Code section 480, subdivision (a)(3)(A) in that Respondent Benjamin committed acts, that if done
23 by a licensee, would be grounds for suspension or revocation of the license under Code section
24 4301(f) for dishonesty and deceit. The circumstances are set forth in paragraphs 19 through 30
25 above, and incorporated herein as though fully referenced, and as follows:

26 a. Tru Care Pharmacy was dishonest when it submitted prescription claims to
27 CalOptima using River's Edge Pharmacy's NPI number, when Tru Care Pharmacy did not have
28 approval to bill CalOptima for prescription claims.

1 b. Tru Care Pharmacy was dishonest when it misrepresented to CalOptima that River's
2 Edge Pharmacy had filled the prescriptions, when in fact, Tru Care Pharmacy had.

3 c. Tru Care Pharmacy was dishonest when it received payment for claims submitted to
4 CalOptima that it was not entitled to.

5 d. River's Edge Pharmacy and Respondent Benjamin were dishonest when they aided
6 and abetted Tru Care Pharmacy in submitting claims to CalOptima using River's Edge
7 Pharmacy's NPI number, when Tru Care Pharmacy did not have approval to submit claims to
8 CalOptima.

9 e. River's Edge Pharmacy and Respondent Benjamin were dishonest when they allowed
10 Tru Care Pharmacy to misrepresent to CalOptima that River's Edge Pharmacy had filled the
11 prescriptions, when in fact, Tru Care Pharmacy had filled them.

12 **THIRD CAUSE FOR DENIAL OF APPLICATION**

13 **(Commission of Acts Which if Done by a Licensee Would be**

14 **Grounds for Suspension or Revocation of License- Making a Document That is False)**

15 39. Applicant River's Edge Specialty Pharmacy's application is subject to denial under
16 Code section 480, subdivision (a)(3)(A) in that Respondent Benjamin committed acts, that if done
17 by a licensee, would be grounds for suspension or revocation of the license under Code section
18 4301(g) for knowingly making or signing any certificate or other document that falsely represents
19 the existence or nonexistence of a state of facts, in that Tru Care Pharmacy submitted its
20 prescription claims to CalOptima using River's Edge Pharmacy's NPI number. Tru Care
21 Pharmacy prepared false documents each time it submitted prescription claims to CalOptima and
22 misrepresented to CalOptima that River's Edge Pharmacy had filled the prescriptions, when in
23 fact, Tru Care Pharmacy had. The circumstances are set forth in paragraphs 19 through 30 above,
24 and incorporated herein as though fully referenced.

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1 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

2 **(Commission of Acts Which if Done by a Licensee Would be Grounds**
3 **for Suspension or Revocation of License- Violation of State Laws Governing Pharmacy)**

4 40. Applicant River's Edge Specialty Pharmacy's application is subject to denial under
5 Code section 480, subdivision (a)(3)(A) in that Respondent Benjamin committed acts, that if done
6 by a licensee, would be grounds for suspension or revocation of the license under Code section
7 4301(o), for violating pharmacy laws by assisting in or abetting the violation of, or conspiring to
8 violate Code section 4301(g), in that Respondent Benjamin knew, and allowed Tru Care
9 Pharmacy to submit claims to CalOptima for payment by using River's Edge Pharmacy's NPI
10 number and allowed Tru Care Pharmacy to misrepresent to CalOptima that River's Edge
11 Pharmacy had filled the prescriptions, when in fact, Tru Care Pharmacy had. The circumstances
12 are set forth in detail in paragraphs 19 through 30 above, and incorporated herein as though fully
13 referenced.

14 **DISCIPLINE CONSIDERATIONS**

15 41. To determine the degree of discipline, if any, to be imposed on Respondent
16 Abdelmalik, Complainant alleges that on or about November 9, 2009, in a prior disciplinary
17 action entitled *In the Matter of the Citation Against Mervat Mecheal Abdelmalik* before the Board
18 of Pharmacy, in Case Number CI 2009 41872, Respondent Abdelmalik's Pharmacist License was
19 cited and fined. That citation is now final and is incorporated by reference as if fully set forth
20 herein. The citation against Respondent Abdelmalik, acting as PIC at ACD Pharmacy, was based
21 on failing to label prescription containers with the physical description of the drug, unlicensed
22 technician activity and lacking policies and procedures for licensed employee impairment or theft.

23 42. To determine the degree of discipline, if any, to be imposed on Respondent River's
24 Edge Pharmacy, and in determining whether licensure should be granted to Applicant River's
25 Edge Specialty Pharmacy, Complainant alleges that on or about June 17, 2010, in a prior
26 disciplinary action entitled *In the Matter of the Citation Against River's Edge Pharmacy* before
27 the Board of Pharmacy, in Citation Number CI 2009 42563, Respondent River's Edge
28 Pharmacy's Pharmacy License was cited and fined. That citation is now final and is incorporated

1 by reference as if fully set forth herein. The citation was based on River's Edge Pharmacy's
2 failure to report to the Board and the DEA that controlled substances were lost during a night
3 break-in at the Pharmacy and that it failed to do a complete inventory to document the loss.

4 43. To determine the degree of discipline, if any, to be imposed on Respondent River's
5 Edge Pharmacy, and in determining whether licensure should be granted to Applicant River's
6 Edge Specialty Pharmacy, Complainant alleges that on or about August 11, 2011, in a prior
7 disciplinary action entitled *In the Matter of the Citation Against River's Edge Pharmacy* before
8 the Board of Pharmacy, in Citation Number CI 2010 45075, Respondent River's Edge
9 Pharmacy's Pharmacy License was cited and fined. That citation is now final and is incorporated
10 by reference as if fully set forth herein. The citation was based on Respondent River's Edge
11 Pharmacy dispensing a prescription which contained an error and variation from a prescription.

12 44. To determine the degree of discipline, if any, to be imposed on Respondent Benjamin,
13 Complainant alleges that on or about June 17, 2010, in a prior disciplinary action entitled *In the*
14 *Matter of the Citation Against Hany Benjamin* before the Board of Pharmacy, in Citation Number
15 CI 2009 44779, Respondent Benjamin's Pharmacist License was cited and fined. That citation is
16 now final and is incorporated by reference as if fully set forth herein. The citation was based on
17 Respondent Benjamin's, acting as the PIC for River's Edge Pharmacy, failure to report to the
18 Board and the DEA that controlled substances were lost during a night break-in at the Pharmacy
19 and that he failed to do a complete inventory to document the loss.

20 45. To determine the degree of discipline, if any, to be imposed on Respondent Benjamin,
21 and in determining whether licensure should be granted to Applicant River's Edge Specialty
22 Pharmacy, Complainant alleges that on or about August 11, 2011, in a prior disciplinary action
23 entitled *In the Matter of the Citation Against Hany Benjamin* before the Board of Pharmacy, in
24 Citation Number CI 2011 49204, Respondent Benjamin's Pharmacist License was cited and
25 fined. That citation is now final and is incorporated by reference as if fully set forth herein. The
26 citation was based on Respondent Benjamin, acting as the PIC for River's Edge Pharmacy,
27 dispensing a prescription which contained an error and variation from a prescription.

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1 **PRAYER**

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

4 1. Revoking or suspending Pharmacy Permit Number PHY 50663, issued to
5 Han.Sam.Corp., dba Tru Care Pharmacy, Hany S. Benjamin, President, Vice President, Secretary
6 and Treasurer/Chief Financial Officer;

7 2. Ordering Han.Sam.Corp., dba Tru Care Pharmacy, Hany S. Benjamin, President,
8 Vice President, Secretary and Treasurer/Chief Financial Officer, to pay the Board of Pharmacy
9 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
10 Professions Code section 125.3;

11 3. Revoking or suspending Pharmacy Permit Number PHY 49157, issued to
12 Han.Sam.Corp., dba River's Edge Pharmacy, Samuel Benjamin Gadalla Hany, President, Vice
13 President, Chief Executive Officer and Treasurer/Chief Financial Officer;

14 4. Ordering Han.Sam.Corp., dba River's Edge Pharmacy, Samuel Benjamin Gadalla
15 Hany, President, Vice President, Chief Executive Officer and Treasurer/Chief Financial Officer to
16 pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case,
17 pursuant to Business and Professions Code section 125.3;

18 5. Revoking or suspending Pharmacist License Number RPH 58261, issued to Hany
19 Benjamin, aka Hany Samuel-Benjamin Gadalla;

20 6. Ordering Hany Benjamin, aka Hany Samuel-Benjamin Gadalla to pay the Board of
21 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to
22 Business and Professions Code section 125.3; and

23 7. Revoking or suspending Pharmacist License Number RPH 56346, issued to Mervat
24 Mecheal Abdelmalik;

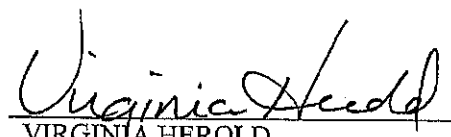
25 8. Ordering Mervat Mecheal Abdelmalik to pay the Board of Pharmacy the reasonable
26 costs of the investigation and enforcement of this case, pursuant to Business and Professions
27 Code section 125.3;

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- 9. Denying the application of Han.Sam Corp., doing business as River's Edge Specialty Pharmacy, Hany Benjamin, Chief Executive Officer and President, for a Pharmacy Permit; and
- 10. Taking such other and further action as deemed necessary and proper.

DATED: 3/10/16



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

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