

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 MICHAEL BROWN
Deputy Attorney General
4 State Bar No. 231237
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2095
6 Facsimile: (213) 897-2804
E-mail: MichaelB.Brown@doj.ca.gov
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 3920

12 **KIRPAL ENTERPRISES, INC. dba THE**
13 **MEDICINE SHOPPE NO. 0821, KIRPAL**
14 **S. GAGNEJA, PRESIDENT, RPH 46385,**
STEPHEN CHERMAN, PHARMACIST-
IN- CHARGE

A C C U S A T I O N

15 **16915 Devonshire Street**
16 **Granada Hills, CA 91344**

17 **Original Pharmacy Permit No. 46075**

18 **and**

19 **STEPHEN ALAN CHERMAN**
20 **16915 Devonshire Street**
21 **Granada Hills, CA 91344**

22 **Original Pharmacist License No. RPH 26341**

Respondents.

23 Complainant alleges:

24 **PARTIES**

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

27 ///

28 ///

1 **Kirpal Enterprises, Inc. dba The Medicine Shoppe No. 0821**

2 2. On or about October 10, 2002, the Board of Pharmacy issued Original Pharmacy
3 Permit Number 46075 to Kirpal Enterprises, Inc. to do business as The Medicine Shoppe No.
4 0821 (Respondent Medicine Shoppe) with Kirpal S. Gagneja (RPH 46385) as President and
5 Stephan Cherman as Pharmacist-in-Charge. The Original Pharmacy Permit was in full force and
6 effect at all times relevant to the charges brought herein and will expire on October 1, 2014,
7 unless renewed.

8 **Stephen Alan Cherman**

9 3. On or about November 6, 1969, the Board of Pharmacy issued Original Pharmacist
10 License Number RPH 26341 to Stephen Cherman (Respondent Cherman). The Original
11 Pharmacist License was in full force and effect at all times relevant to the charges brought herein
12 and will expire on May 31, 2014, unless renewed.

13 **JURISDICTION**

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

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

21 6. Section 4011 of the Code provides that the Board shall administer and enforce both
22 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
23 Act [Health & Safety Code, § 11000 et seq.].

24 7. Section 4300(a) of the Code states that every license issued by the Board may be
25 suspended or revoked.

26 8. Section 4300.1 of the Code states:

27 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by
28 operation of law or by order or decision of the board or a court of law, the placement of a license

1 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
2 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
3 proceeding against, the licensee or to render a decision suspending or revoking the license.”

4 **STATUTORY PROVISIONS**

5 9. Section 4043 of the Code states:

6 “(a) ‘Wholesaler’ means and includes a person who acts as a wholesale merchant, broker,
7 jobber, customs broker, reverse distributor, agent, or a nonresident wholesaler, who sells for
8 resale, or negotiates for distribution, or takes possession of, any drug or device included in 4022.
9 Unless otherwise authorized by law a wholesaler may not store, warehouse or authorize the
10 storage or warehousing of drugs with any person or at any location not licensed by the board.”

11 10. Section 4059 of the Code states:

12 ...

13 "(b) This section does not apply to the furnishing of any dangerous drug or dangerous
14 device by a manufacturer, wholesaler, or pharmacy to each other or to a physician, dentist,
15 podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or to a
16 laboratory under sales and purchase records that correctly give the date, the names and addresses
17 of the supplier and the buyer, the drug or device, and its quantity. This section does not apply to
18 the furnishing of any dangerous device by a manufacturer, wholesaler, or pharmacy to a physical
19 therapist acting within the scope of his or her license under sales and purchase records that
20 correctly provide the date the device is provided, the names and addresses of the supplier and the
21 buyer, a description of the device, and the quantity supplied.”

22 11. Code section 4126.5, subdivision (a), provides:

23 “(a) A pharmacy may furnish dangerous drugs only to the following:

24 ...

25 (4) Another pharmacy or wholesaler to alleviate a temporary shortage of a
26 dangerous drug that could result in the denial of health care. A pharmacy furnishing dangerous
27 drugs pursuant to this paragraph may only furnish a quantity sufficient to alleviate the temporary
28 shortage.

1 (5) A patient or to another pharmacy pursuant to a prescription or as otherwise authorized
2 by law.

3 ...

4 (7) To another pharmacy under common control.”

5 12. Section 4160 of the Code states:

6 "(a) A person may not act as a wholesaler of any dangerous drug or dangerous device
7 unless he or she has obtained a license from the board.

8 13. Section 4301 of the Code states:

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

12 ...

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

15

16 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
17 violation of or conspiring to violate any provision or term of this chapter or of the applicable
18 federal and state laws and regulations governing pharmacy, including regulations established by
19 the board.”

20 14. Section 125.3 of the Code provides, 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, with failure of the licentiate to comply subjecting the license to not being
24 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
25 included in a stipulated settlement.

26 ///

27 ///

28 ///

1 **CONTROLLED SUBSTANCES / DANGEROUS DRUGS**

2 15. Section 4021 of the Code states:

3 "Controlled substance' means any substance listed in Chapter 2 (commencing with Section
4 11053) of Division 10 of the Health and Safety Code."

5 16. Section 4022 of the Code states, in pertinent part:

6 "Dangerous drug' or 'dangerous device' means any drug or device unsafe for self-use,
7 except veterinary drugs that are labeled as such, and includes the following:

8 "(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without
9 prescription,' 'Rx only,' or words of similar import.

10 ...
11 "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
12 prescription or furnished pursuant to Section 4006."

13 17. Fentanyl is a Schedule II controlled substance pursuant to Health and Safety Code
14 section 11055(c)(8) and is a dangerous drug pursuant to Business and Professions Code section
15 4022.

16 **FIRST CAUSE FOR DISCIPLINE**

17 (Selling Dangerous Drugs without a Wholesaler License)

18 As to Respondent Medicine Shoppe and Cherman

19 18. Respondents are subject to disciplinary action under section 4301, subdivisions (j)
20 and (o) for violating section 4160, subdivision (a) for selling dangerous drugs without a
21 wholesaler license. The circumstances are as follows:

22 19. On or between November 17, 2008 and May 1, 2009 and on or between March 8,
23 2010 and June 21, 2010, Respondents sold approximately \$558,401.57 worth of dangerous drugs
24 to Moazzem H. Chowdhury dba Desert Drugs (Desert Drugs) without a wholesaler license.

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	Date	Invoice Record	Approximate Amount
1	11/17/08	5086472	\$29,810.28
2	1/16/09	5101683	\$30,978.78
3	2/16/09	5109398	\$30,725.29
4	3/23/09	5118598	\$28,878.28
5	4/17/09	512496	\$15,228.11
6	4/22/09	5126555	\$18,217.48
7	5/1/09	5129239	\$16,855.89
8	3/8/10	5211037	\$4,536.50
9	3/8/10	5211041	\$11,459.07
10	3/8/10	5211045	\$8,279.99
11	3/8/10	5211046	\$17,831.89
12	3/9/10	5211394	\$11,247.87
13	3/22/10	5214841	\$8,413.05
14	3/22/10	5214825	\$4,928.29
15	3/22/10	5214831	\$11,884.65
16	3/22/10	5214848	\$8,564.01
17	3/25/10	5216095	\$7,093.09
18	3/25/10	5216020	\$13,538.21
19	4/5/10	5218890	\$6,566.60
20	4/5/10	5218878	\$6,123.76
21	4/5/10	5217714	\$10,675.64
22	4/15/10	5222026	\$3,249.51
23	4/15/10	5221993	\$19,451.55
24	4/19/10	5222617	\$6,715.74
25	4/20/10	5223338	\$11,512.52
26	4/20/10	5223458	\$10,837.33
27	4/26/10	5224720	\$15,501.81
28	4/26/10	5224708	\$6,610.43
29	5/5/10	5227898	\$7,378.55
30	5/5/10	5227802	\$9,176.29
31	5/5/10	5227789	\$14,835.42
32	5/5/10	5227779	\$12,074.72
33	5/6/10	5228560	\$11,488.62
34	5/19/10	5231912	\$6,443.70
35	5/20/10	5232375	\$12,370.40
36	5/20/10	5232360	\$14,762.11
37	5/21/10	5232649	\$11,313.05
38	5/21/10	5232556	\$12,511.09
39	6/2/10	5235364	\$11,295.47

40	6/2/10	5235362	\$9,798.80
41	6/2/10	5235680	\$12,660.76
42	6/7/10	5237198	\$9,177.14
43	6/10/10	5238199	\$6,253.06
44	6/21/10	5240770	\$5,880.21
45	6/21/10	5240767	\$15,266.56
		Total	\$558,401.57

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Furnishing Dangerous Drugs without a Prescription)

As to Respondent Medicine Shoppe and Cherman

20. Respondents are subject to disciplinary action under section 4301, subdivisions (j) and (o) for violating section 4059, subdivision (b) in that Respondents furnished prescription medications without prescriptions. The circumstances are as follows:

21. On or between November 17, 2008 and June 21 2009 and on or between March 8, 2010 and June 21, 2010, Respondents furnished approximately \$558,401.57 worth of dangerous drugs to Desert Pharmacy without proper sales records that correctly documented the date and the names and addresses of the supplier and buyer.

	Date	Invoice Record	Approximate Amount
1	11/17/08	5086472	\$29,810.28
2	1/16/09	5101683	\$30,978.78
3	2/16/09	5109398	\$30,725.29
4	3/23/09	5118598	\$28,878.28
5	4/17/09	512496	\$15,228.11
6	4/22/09	5126555	\$18,217.48
7	5/1/09	5129239	\$16,855.89
8	3/8/10	5211037	\$4,536.50
9	3/8/10	5211041	\$11,459.07
10	3/8/10	5211045	\$8,279.99
11	3/8/10	5211046	\$17,831.89
12	3/9/10	5211394	\$11,247.87
13	3/22/10	5214841	\$8,413.05
14	3/22/10	5214825	\$4,928.29

1	15	3/22/10	5214831	\$11,884.65
	16	3/22/10	5214848	\$8,564.01
2	17	3/25/10	5216095	\$7,093.09
	18	3/25/10	5216020	\$13,538.21
3	19	4/5/10	5218890	\$6,566.60
	20	4/5/10	5218878	\$6,123.76
4	21	4/5/10	5217714	\$10,675.64
	22	4/15/10	5222026	\$3,249.51
5	23	4/15/10	5221993	\$19,451.55
	24	4/19/10	5222617	\$6,715.74
6	25	4/20/10	5223338	\$11,512.52
	26	4/20/10	5223458	\$10,837.33
7	27	4/26/10	5224720	\$15,501.81
	28	4/26/10	5224708	\$6,610.43
8	29	5/5/10	5227898	\$7,378.55
	30	5/5/10	5227802	\$9,176.29
9	31	5/5/10	5227789	\$14,835.42
	32	5/5/10	5227779	\$12,074.72
10	33	5/6/10	5228560	\$11,488.62
	34	5/19/10	5231912	\$6,443.70
11	35	5/20/10	5232375	\$12,370.40
	36	5/20/10	5232360	\$14,762.11
12	37	5/21/10	5232649	\$11,313.05
	38	5/21/10	5232556	\$12,511.09
13	39	6/2/10	5235364	\$11,295.47
	40	6/2/10	5235362	\$9,798.80
14	41	6/2/10	5235680	\$12,660.76
	42	6/7/10	5237198	\$9,177.14
15	43	6/10/10	5238199	\$6,253.06
	44	6/21/10	5240770	\$5,880.21
16	45	6/21/10	5240767	\$15,266.56
17			Total	\$558,401.57
18				
19				
20				
21				
22				
23				

PRAYER

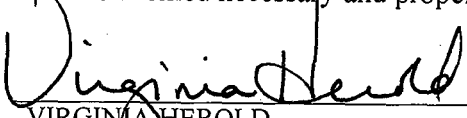
25 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
 26 and that following the hearing, the Board of Pharmacy issue a decision:

- 27 1. Revoking or suspending Original Pharmacy Permit Number 46075, issued to Kirpal
 28 Enterprises, Inc. to do business as The Medicine Shoppe No. 0821;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 2. Revoking or suspending Original Pharmacist License Number RPH 26341, issued to Stephen Cherman;
- 3. Ordering the Medicine Shoppe and Stephen Cherman to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
- 4. Taking such other and further action as deemed necessary and proper.

DATED: 11/4/13



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

LA2010601521
51383064.docx