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

10 In the Matter of the Accusation Against:

Case No. 4186

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

ACCUSATION

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

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

20 Respondents.

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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."

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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:

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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:

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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:

PI	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 **(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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