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

11 In the Matter of the Second Amended
12 Accusation Against:

Case No. 4579

13 **FRUITVALE AVENUE PHARMACY INC.**
2693 Fruitvale Avenue
14 Oakland, CA 94601

SECOND AMENDED ACCUSATION

15 Pharmacy License No. PHY 50064,

16 **IJEOMA NWAYIOCHA ESOMONU**
FRUITVALE AVENUE PHARMACY INC.
17 16 Minaret Road
Oakley, CA 94561

18 Pharmacist License No. RPH 53516,

19 and
20

21 **IROEGBU CLIFFORD ESOMONU**
FRUITVALE AVENUE PHARMACY INC.
6726 Corte Santa Maria
22 Pleasanton, CA 94566.

23 Pharmacist No. RPH 53445

24 Respondents.
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1 Complainant alleges:

2 PARTIES

3 1. Virginia Herold (Complainant) brings this Second Amended Accusation solely in her
4 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
5 Affairs.

6 2. On or about October 21, 2009, the Board of Pharmacy issued Pharmacy License
7 Number PHY 50064 to Fruitvale Avenue Pharmacy Inc. (Respondent FAP). The Pharmacy
8 License was in full force and effect at all times relevant to the charges brought in this Second
9 Amended Accusation and will expire on October 1, 2015, unless renewed.

10 3. On or about April 23, 2002, the Board of Pharmacy issued Pharmacist License
11 Number RPH 53516 to Ijeoma Nwanyiocha Esomonu (Respondent INE). The Pharmacist
12 License was in full force and effect at all times relevant to the charges brought in this Second
13 Amended Accusation and will expire on April 30, 2017, unless renewed.

14 4. On or about March 28, 2002, the Board of Pharmacy issued Pharmacist License
15 Number RPH 53445 to Iroegbu Clifford Esomonu (Respondent ICE). The Pharmacist License
16 was in full force and effect at all times relevant to the charges brought in this Second Amended
17 Accusation and will expire on September 30, 2015, unless renewed.

18 JURISDICTION

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

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

25 7. Section 4300 of the Code states, in relevant part:

26 "(a) Every license issued may be suspended or revoked.
27
28

1 “(b) The board shall discipline the holder of any license issued by the board, whose default
2 has been entered or whose case has been heard by the board and found guilty, by any of the
3 following methods:

4 “(1) Suspending judgment.

5 “(2) Placing him or her upon probation.

6 “(3) Suspending his or her right to practice for a period not exceeding one year.

7 “(4) Revoking his or her license.

8 “(5) Taking any other action in relation to disciplining him or her as the board in its
9 discretion may deem proper.

10 ...

11 “(e) The proceedings under this article shall be conducted in accordance with Chapter 5
12 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board
13 shall have all the powers granted therein. The action shall be final, except that the propriety of
14 the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of
15 Civil Procedure.”

16 8. Section 4300.1 of the Code provides that “[t]he expiration, cancellation, forfeiture, or
17 suspension of a board-issued license by operation of law or by order or decision of the board or a
18 court of law, the placement of a license on a retired status, or the voluntary surrender of a license
19 by a licensee shall not deprive the board of jurisdiction to commence or proceed with any
20 investigation of, or action or disciplinary proceeding against, the licensee or to render a decision
21 suspending or revoking the license.”

22 STATUTORY/REGULATORY PROVISIONS

23 9. Section 4301 of the Code states, in relevant part:

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

27 “(a) Gross immorality.

28 ...

1 "(d) The clearly excessive furnishing of controlled substances in violation of subdivision (a)
2 of Section 11153 of the Health and Safety Code.

3 ...

4 "(j) The violation of any of the statutes of this state, or any other state, or of the United
5 States regulating controlled substances and dangerous drugs.

6 ...

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

11 10. Section 4081 of the Code states:

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

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

24 "(c) The pharmacist-in-charge or representative-in-charge shall not be criminally
25 responsible for acts of the owner, officer, partner, or employee that violate this section and of
26 which the pharmacist-in-charge or representative-in-charge had no knowledge, or in which he or
27 she did not knowingly participate."

1 11. Section 4113, subdivision (c), of the Code provides that "[t]he pharmacist-in-charge
2 shall be responsible for a pharmacy's compliance with all state and federal laws and regulations
3 pertaining to the practice of pharmacy."

4 12. Section 4333 of the Code states, in relevant part, that all prescriptions filled by a
5 pharmacy and all other records required by Section 4081 shall be maintained on the premises and
6 available for inspection by authorized officers of the law for a period of at least three years. In
7 cases where the pharmacy discontinues business, these records shall be maintained in a
8 board-licensed facility for at least three years.

9 13. Health and Safety Code section 11165, subdivision (d), states:

10 "For each prescription for a Schedule II, Schedule III, or Schedule IV controlled substance, as
11 defined in the controlled substances schedules in federal law and regulations, specifically
12 Sections 1308.12, 1308.13, and 1308.14, respectively, of Title 21 of the Code of Federal
13 Regulations, the dispensing pharmacy or clinic shall provide the following information to the
14 Department of Justice on a weekly basis and in a format specified by the Department of Justice:

15 "(1) Full name, address, and the telephone number of the ultimate user or research subject,
16 or contact information as determined by the Secretary of the United States Department of Health
17 and Human Services, and the gender, and date of birth of the ultimate user.

18 "(2) The prescriber's category of licensure and license number; federal controlled
19 substance registration number; and the state medical license number of any prescriber using the
20 federal controlled substance registration number of a government-exempt facility.

21 "(3) Pharmacy prescription number, license number, and federal controlled substance
22 registration number.

23 "(4) NDC (National Drug Code) number of the controlled substance dispensed.

24 "(5) Quantity of the controlled substance dispensed.

25 "(6) ICD-9 (diagnosis code), if available.

26 "(7) Number of refills ordered.

27 "(8) Whether the drug was dispensed as a refill of a prescription or as a first-time request.

28 "(9) Date of origin of the prescription.

1 “(10) Date of dispensing of the prescription.”

2 14. Health and Safety Code section 11164 states, in relevant part:

3 “Except as provided in Section 11167, no person shall prescribe a controlled substance, nor shall
4 any person fill, compound, or dispense a prescription for a controlled substance, unless it
5 complies with the requirements of this section.”

6 “(a) Each prescription for a controlled substance classified in Schedule II, III, IV, or V,
7 except as authorized by subdivision (b), shall be made on a controlled substance prescription form
8 as specified in Section 11162.1”

9 15. Health and Safety Code section 11162.1 states, in relevant part:

10 “(a) The prescription forms for controlled substances shall be printed with the following
11 features:

12 ...

13 “(7)(A) Six quantity check off boxes shall be printed on the form so that the prescriber
14 may indicate the quantity by checking the applicable box where the following quantities shall
15 appear:

- 16 ▪ 1-24
- 17 ▪ 25-49
- 18 ▪ 50-74
- 19 ▪ 75-100
- 20 ▪ 101-150
- 21 ▪ 151 and over.

22 ...

23 “(8) Prescription blanks shall contain a statement printed on the bottom of the
24 prescription blank that the ‘Prescription is void if the number of drugs prescribed is not noted.’”

25 ...

26 “(b) Each batch of controlled substance prescription forms shall have the lot number printed
27 on the form and each form within that batch shall be numbered sequentially beginning with the
28 numeral one.”

29 16. Health and Safety Code section 11153, subdivision (a), states:

30 “A prescription for a controlled substance shall only be issued for a legitimate medical
31 purpose by an individual practitioner acting in the usual course of his or her professional

1 practice. The responsibility for the proper prescribing and dispensing of controlled substances is
2 upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist
3 who fills the prescription. Except as authorized by this division, the following are not legal
4 prescriptions: (1) an order purporting to be a prescription which is issued not in the usual course
5 of professional treatment or in legitimate and authorized research; or (2) an order for an addict or
6 habitual user of controlled substances, which is issued not in the course of professional treatment
7 or as part of an authorized narcotic treatment program, for the purpose of providing the user with
8 controlled substances, sufficient to keep him or her comfortable by maintaining customary use."

9 17. Health and Safety Code section 111295 states:

10 "It is unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any drug
11 or device that is adulterated."

12 18. California Code of Regulations, title 16, section 1761, states:

13 "(a) No pharmacist shall compound or dispense any prescription which contains any
14 significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon receipt of any
15 such prescription, the pharmacist shall contact the prescriber to obtain the information needed to
16 validate the prescription.

17 "(b) Even after conferring with the prescriber, a pharmacist shall not compound or dispense
18 a controlled substance prescription where the pharmacist knows or has objective reason to know
19 that said prescription was not issued for a legitimate medical purpose."

20 19. California Code of Regulations, title 16, section 1707.2, states, in relevant part:

21 "(a) A pharmacist shall provide oral consultation to his or her patient or the patient's agent
22 in all care settings:

23 "(1) upon request; or

24 "(2) whenever the pharmacist deems it warranted in the exercise of his or her professional
25 judgment.

26 "(b)(1) In addition to the obligation to consult set forth in subsection (a), a pharmacist shall
27 provide oral consultation to his or her patient or the patient's agent in any care setting in which the
28 patient or agent is present:

1 “(A) whenever the prescription drug has not previously been dispensed to a patient; or

2 “(B) whenever a prescription drug not previously dispensed to a patient in the same dosage
3 form, strength or with the same written directions, is dispensed by the pharmacy.”

4 20. California Code of Regulations, title 16, section 1716, states:

5 “Pharmacists shall not deviate from the requirements of a prescription except upon the
6 prior consent of the prescriber or to select the drug product in accordance with Section 4073 of
7 the Business and Professions Code.

8 “Nothing in this regulation is intended to prohibit a pharmacist from exercising commonly-
9 accepted pharmaceutical practice in the compounding or dispensing of a prescription.”

10 21. California Code of Regulations, title 16, section 1718, states:

11 ““Current Inventory”” as used in Sections 4081 and 4332 of the Business and Professions
12 Code shall be considered to include complete accountability for all dangerous drugs handled by
13 every licensee enumerated in Sections 4081 and 4332.

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

16 22. Code section 4306.5, states:

17 “Unprofessional conduct for a pharmacist may include any of the following:

18 “(a) Acts or omissions that involve, in whole or in part, the inappropriate exercise of his or
19 her education, training, or experience as a pharmacist, whether or not the act or omission arises in
20 the course of the practice of pharmacy or the ownership, management, administration, or
21 operation of a pharmacy or other entity licensed by the board.

22 “(b) Acts or omissions that involve, in whole or in part, the failure to exercise or implement
23 his or her best professional judgment or corresponding responsibility with regard to the
24 dispensing or furnishing of controlled substances, dangerous drugs, or dangerous devices, or with
25 regard to the provision of services.

26 “(c) Acts or omissions that involve, in whole or in part, the failure to consult appropriate
27 patient, prescription, and other records pertaining to the performance of any pharmacy function.

28 “(d) Acts or omissions that involve, in whole or in part, the failure to fully maintain and

1 retain appropriate patient-specific information pertaining to the performance of any pharmacy
2 function."

3 23. Section 4307 of the Code states, in relevant part:

4 "(a) Any person who has been denied a license or whose license has been revoked or is
5 under suspension, or who has failed to renew his or her license while it was under suspension, or
6 who has been a manager, administrator, owner member, officer, director, associate, or partner of
7 any partnership, corporation, firm, or association whose application for a license has been denied
8 or revoked, is under suspension or has been placed on probation, and while acting as the manger,
9 administrator, owner, member, officer, director, associate, or partner had knowledge or
10 knowingly participated in any conduct for which the license was denied, revoked, suspended, or
11 placed on probation, shall be prohibited from serving as a manger, administrator, owner, member,
12 officer, director, associate, or partner of a licensee as follows:

13 "(1) Where a probationary license is issued or where an existing license is placed on
14 probation, this prohibition shall remain in effect for a period not to exceed five years.

15 "(2) Where the license is denied or revoked, the prohibition shall continue until the license
16 is issued or reinstated."

17 24. Code section 4022, states:

18 "'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self-use in
19 humans or animals, and includes the following:

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

22 "(b) Any device that bears the statement: "Caution: federal law restricts this device to sale
23 by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in
24 with the designation of the practitioner licensed to use or order use of the device.

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

27 ///

28 ///

CONTROLLED SUBSTANCES

25. Section 4021 of the Code states:

“Controlled substance’ means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.”

26. Oxycodone is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(M).

27. Hydrocodone with acetaminophen is a Schedule III controlled substance as designated by Health and Safety Code section 11056, subdivision (e)(4).

28. Promethazine with codeine is a Schedule V controlled substance as designated by Health and Safety Code section 11058.

COST RECOVERY

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

FACTUAL BACKGROUND

30. From about October 21, 2009, to the present, Respondent Fruitvale Avenue Pharmacy (FAP) has been operating as a pharmacy in Oakland, California. From on or about October 21, 2009, until about May 19, 2011, Respondent Ijeoma Nwanyiocha Esomonu (INE), the owner of FAP, was also the pharmacist-in-charge (PIC) at FAP. From on or about October 21, 2009, to the present, Respondent Iroegbu Clifford Esomonu (ICE) worked as a pharmacist at FAP. From about May 19, 2011, to the present, Respondent ICE worked as the PIC at FAP.

May 17, 2011 Inspection

31. On May 17, 2011, a Board inspector (Inspector 1) conducted an inspection at FAP because the Board identified FAP as a pharmacy that failed to report any Controlled Substances Utilization Review and Evaluation System (CURES) data to the Department of Justice (DOJ).

1 During the inspection, Inspector 1 observed several pharmacy law violations, including, but not
2 limited to, never transmitting any CURES data to the DOJ.

3 32. While at FAP, Inspector 1 reviewed prescription documents from Bay Internal
4 Medicine (BIM). The prescriptions appeared legitimate but, upon further investigation, Inspector
5 1 found that none of the prescribers' contact information on the prescriptions contained a valid
6 working phone number. Inspector 1 asked Respondent ICE to verify the BIM prescribers on the
7 Medical Board of California's website. The web search revealed that none of the BIM
8 prescribers' listed addresses on the Medical Board's website matched the addresses on the
9 prescriptions. Significantly, Respondent ICE admitted to Inspector 1 that he had never before
10 verified a prescriber using the Medical Board's website. In addition, Inspector 1 observed
11 numerous other violations of pharmacy laws. During his inspection, Inspector 1 obtained several
12 materials including prescription documents, dispensing detail reports, and Cardinal Health
13 Narcotic Sales Reports. Inspector 1 also requested FAP to provide additional documents and
14 explanations regarding pharmacy law violations indicated in the report. At the conclusion of the
15 inspection, Inspector 1 prepared an inspection report documenting various pharmacy law
16 violations. Inspector 1 gave a copy of the report to Respondent ICE, and then had Respondent
17 ICE review and sign off on it.

18 33. On or about May 30, 2011, Inspector 1 received and reviewed faxed responses from
19 FAP. Subsequently, Inspector 1 contacted 15 different prescribers listed as the supposed
20 prescriber on the prescription documents. Inspector 1 sent each prescriber a list of prescriptions
21 from FAP to verify the legitimacy of the prescriptions. Each of the prescribers responded with a
22 written statement that they did not authorize the prescriptions from FAP. In fact, one prescriber
23 from Kaiser stated he did not authorize any of the prescriptions and that they were written on
24 prescriptions that were stolen from his locker at the hospital. Additionally, one prescriber from
25 BIM stated BIM's practice had been closed since June 2009. All the BIM prescription documents
26 that Inspector 1 sent to the BIM prescribers to review were dated and filled by FAP in 2011.

34. Physician Assistant G. P.¹ (G.P.) was one of the 15 prescribers that Inspector 1 contacted to verify the legitimacy of the prescription documents he got from FAP. On or about June 7, 2011, Inspector 1 received a response from G.P., indicating that he did not authorize the prescriptions and the documents were forgeries. In addition, G.P. noted that several of the prescription documents were not written on proper controlled substances prescription forms. Significantly, during the May 17, 2012 visit to FAP, Inspector 1 made the same observation: that FAP had improperly dispensed controlled substances on five invalid prescription documents. These five prescription documents were invalid because they lacked several required security features such as quantity check off boxes, the required statement of "Prescription is void if the number of drugs prescribed is not noted," and the prescriptions were not sequentially numbered.

35. Inspector 1's investigation revealed that from October 2009, to about April 2011, FAP failed to transmit CURES data to the DOJ. The investigation further showed that from about July 2010, to May 2011, Respondent INE and Respondent ICE had filled approximately 350 fraudulent prescriptions. Many of these prescription documents contained significant irregularities that should have prompted Respondent INE and Respondent ICE to verify the legitimacy of the prescription before dispensing the controlled substances. In addition, a review of FAP's dispensing printouts obtained during the investigation showed Respondent ICE's initials on most, if not all, of the printouts' "filled by" section. Furthermore, in a written statement, Respondent ICE admitted that he was the pharmacist on duty everyday since the opening of FAP.

September 17, 2014 Inspection

36. On or about July 7, 2014, the Board opened an investigation for pharmacies filing prescriptions written by Dr. Tan Nguyen based on news articles stating the prescriber was charged with excessive prescribing of controlled substances. The subsequent review of pharmacies filling those prescriptions revealed that 44.59 percent of written prescriptions by another prescriber, Dr. Hai Nguyen, were being filled at Fruitvale Avenue Pharmacy (FAP). That information led to an investigation of FAP and its dispensing practices regarding several

¹ G.P. is used in this document rather than the actual name of the Physician Assistant.

1 prescribers, Dr. Hai Nguyen, Dr. Collin Leong, Dr. Tan Nguyen, and Dr. Daniel Shin (the
2 Prescribers).

3 37. On July 25, 2014, a Board inspector (Inspector 2) began an investigation which
4 included gathering information and conducting an inspection of FAP. Documents and
5 information were requested from FAP and information was obtained regarding the prescription
6 patterns of the Prescribers. These documents and information included, but were not limited to,
7 CURES reports, prescriptions, and drug usage reports.

8 38. On September 17, 2014, Inspector 2 reviewed the Medical Board of California's
9 website and checked the license status of the Prescribers. That same day, Inspector 2 and other
10 board inspectors went to FAP, conducted an inspection, and reviewed pharmacy operations and
11 various documents, including pharmacy self-assessment data, policy and procedures on
12 preventing medication diversion and controlled substances, DEA biennial inventory for CIII-V
13 controlled substances report, dispensing reports, sample prescription labels, the current inventory
14 including a large box filled with approximately 80-100 prescription vials returned by patients for
15 destruction, and prescription hard copies for controlled substances.

16 39. During the inspection, Inspector 2 interviewed the Pharmacist-in-Charge (PIC),
17 Respondent ICE, and asked about prescription dispensing and filling processes in general, and
18 specifically regarding the Prescribers. Inspector 2 requested additional documents including,
19 multiple dispensing histories for various prescribers, some drug usage reports, on-hand quantity
20 of selected drugs, the DEA biennial inventory, total prescriptions dispensed from September 17,
21 2011, to September 17, 2014, prescription hard copies for Dr. Tan Nguyen, purchase history for
22 selected drugs, policy and procedure for theft/diversion, interpretive services and quality
23 assurance, and patient centered labeling corrections (font and clustering information). FAP failed
24 to provide the current DEA biennial inventory for inspection.

25 40. On October 21, 2014, Inspector 2 sent survey letters to numerous patients listed on
26 FAP's dispensing records for prescriptions written by the Prescribers. The surveys were sent to
27 gather information from the patients who used FAP to have their prescriptions filled.

1 41. The evaluation of dispensing practices of FAP demonstrates that the Prescribers aided
2 the medically illegitimate dispensing of controlled substances, and that FAP and Respondent ICE
3 filled and dispensed medically illegitimate prescriptions. The data showed that FAP dispensed
4 excessive amounts of controlled substances for irregular or uncertain prescriptions and ignored
5 key objective factors suggesting the medical illegitimacy of the prescriptions. Some of these
6 objective factors were: (1) payment methods for controlled substances were in excess of normal
7 distribution between cash and insurance; (2) there was an irregular pattern of patients willing to
8 pay cash for expensive medication (100% cash payment method for 2 of the 4 Prescribers); (3)
9 there was an irregular pattern of patients willing to drive well over 50 miles to obtain controlled
10 substance prescriptions from the Prescribers and to fill prescriptions at FAP (average distance
11 travelled was 165.55 miles); (4) sequential or near sequential numbering of prescriptions filled for
12 patients of the Prescribers; (5) excessive filling of controlled substances in comparison to
13 competitor pharmacies in proximity to FAP; (6) failing to assess "narcotic naïve" patients to
14 determine if large doses of highly abused drugs were written for a legitimate medical purpose; (7)
15 failing to exercise professional judgment when filling prescriptions for large quantities of
16 controlled substances for highly abused drugs; and (8) failing to exercise education, training and
17 experience as a pharmacist when assessing prescriptions written for highly abused controlled
18 substances. Additionally, FAP and its PIC (Respondent ICE) did not assume their corresponding
19 responsibility when they failed to appropriately scrutinize patients' drug therapy with readily
20 available tools such as CURES reports and industry "red flags" to verify prescriptions, so they
21 repeatedly prescribed controlled substances to pharmacy and doctor shoppers. Some of the "red
22 flags" that existed but were not heeded were: prescribers and patients from outside the pharmacy
23 service area, prescriptions for highly abused drugs, prescriptions paid for in cash (or debit or
24 credit card), large quantities outside the normal scope of dispensing, early dispensing, and
25 sequential filling of prescriptions from a single prescriber for multiple patients for "drug
26 cocktails"²

27 ² "Drug cocktails" are typically a combination of hydrocodone/APAP-10/325 mg,
28 promethazine with codeine, oxycodone 30 mg, diazepam 10 mg, carisoprodol 350 mg and other
(continued...)

42. During the inspection, Inspector 2 interviewed Respondent ICE regarding FAP's controlled substance filling and dispensing practices. Respondent ICE explained that FAP is registered for the CURES PDMP program³ but he does not utilize it much because he knows the doctors are checking the CURES, so he does not do it.

43. From September 17, 2011, to September 17, 2014, FAP dispensed controlled substances with an established history of high potential for abuse despite multiple cues of irregularity and uncertainty based on the patients and prescribers. In general, FAP dispensed 32,553 prescriptions and 19,502 prescriptions for various controlled substances from 4 specific prescribers. FAP dispensed a total of 598,928 doses of hydrocodone/APAP 10/32mg, 312,680 tablets of oxycodone 30mg, and 5,336 pints of promethazine with codeine. Specifically, FAP dispensed 15,926 controlled substance prescriptions written by Dr. Hai Nguyen, 2,822 by Dr. Collin Leong, 704 by Dr. Daniel Shin, and 50 by Dr. Tan Nguyen with disregard or negligence to the following factors: distance from FAP to the prescriber's office, distance from FAP to patient's home, percentage of cash patients in relation to specific prescribers, same or similar prescribing patterns for individual patients, and filling controlled substance prescriptions in groups. Also, FAP did not scrutinize patients' drug therapy with readily available tools, like the CURES PDMP program, and industry "red flags" to verify prescriptions.⁴ These omissions resulted in repeated dispensing of controlled substances to patients who engaged in doctor and pharmacy shopping activity, and filling prescriptions for large quantities of narcotics for patients who used multiple

controlled substances prescribed all together or in other combinations of 2 or 3 of these drugs.

³ The CURES PDMP program allows the pharmacist to look up a patient's prescription fill history.

⁴ A pharmacist must be alert to see potential "red flags" that will suggest that the prescriptions are not for a legitimate medical purposes some of these "red flags include, but are not limited to:

- a. prescriptions written by prescribers from outside the pharmacy service area;
- b. patients are from outside the pharmacy service area;
- c. prescriptions for highly abused drugs;
- d. prescriptions paid for in cash;
- e. large quantities of medicine prescribed outside the normal scope of dispensing;
- f. early dispensing;
- g. sequential filling of prescriptions from a single prescriber for multiple patients for "drug cocktails."

1 prescribers and without confirming the prescriptions and that the quantities of narcotics
2 prescribed were for a legitimate medical purpose.

3 44. Inspector 2's review of the prescription hard copies revealed: 39 prescription hard
4 copies were not provided; 18 prescriptions were in scanned image form, not hard copies; and
5 several prescriptions were processed with the wrong prescriber. Also, FAP could not account for
6 140.8 pints of promethazine with codeine syrup that it purchased between September 17, 2011
7 and September 17, 2014.

8 45. During the September 17, 2014, board inspector 2 spoke with two FAP clerks who
9 stated that when a "new" prescription is picked up, they review the patient's profile to see if the
10 patient was previously on the medication and ask the patients if they have any questions for the
11 pharmacists. During the inspection on September 17, 2014, the inspector observed that there
12 were no requests for consultation from the pharmacist.

13 Prescriber Information

14 46. Dr. Collin Leung surrendered his California Medical License with an effective date of
15 February 4, 2014. Dr. Leung's surrender of his license was a disciplinary resolution to
16 Accusation No. 03-2012-220574 brought against his medical license by the Medical Board of
17 California. There were numerous causes for discipline alleged in the Accusation including causes
18 based on excessive prescribing.

19 47. On October 3, 2014, Dr. Tan Nguyen surrendered his California Medical License.
20 Dr. Tan Nguyen's surrender of his license was a disciplinary resolution to Accusation No.
21 5002014000107 brought against his medical license.

22 48. On March 20, 2014, the Medical Board of California filed Accusation No. 12 2011
23 216564 against Dr. Hai Van Nguyen's medical license. The Accusation alleges numerous causes
24 for discipline including several causes for discipline for prescribing dangerous drugs without
25 appropriate prior examination and indication. The Accusation is currently pending against Dr.
26 Hai Van Nguyen.

27 49. On March 25, 2014, Judge Longoria of the Los Angeles County Superior Court
28 issued an order in the case of *State of California v. Daniel Shin*, Case No. BA421892, that as a

1 condition of his bail, Dr. Daniel Shin shall cease and desist from the practice of medicine, and
2 immediately surrender any and all controlled substance prescription forms. Previously, on
3 January 13, 2012, the Medical Board of California filed Accusation No. 19-2010-208332 against
4 Dr. Daniel Shin's medical license. On August 31, 2012, the Medical Board of California placed
5 Dr. Shinn's medical license on probation for 5 years.

6 **CAUSES OF DISCIPLINE AGAINST RESPONDENT FAP**

7 **FIRST CAUSE FOR DISCIPLINE**

8 **(Unprofessional Conduct-Failure to Transmit Dispensing Data to CURES)**
9 **(Bus. & Prof. § 4301, subd. (j), & Health and Safety Code § 11165, subd. (d))**

10 50. Respondent Fruitvale Avenue Pharmacy's (FAP) Pharmacy License is subject to
11 disciplinary action under Code section 4301, subdivision (j), because FAP violated Health and
12 Safety Code section 11165, subdivision (d), in that from on or about October 21, 2009, until
13 approximately April 2011, FAP failed to transmit dispensing data for Schedule II, Schedule III,
14 and Schedule IV controlled substances to the Department of Justice for the Controlled Substances
15 Utilization Review and Evaluation System (CURES) on a weekly basis. The circumstances are
16 further explained in paragraphs 30 through 35, above.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Unprofessional Conduct-Filled Prescriptions with Significant Irregularity)**
19 **(Bus. & Prof. § 4301, subd. (o) and 16 CCR § 1761, subd. (a))**

20 51. Respondent FAP's Pharmacy License is subject to disciplinary action under Code
21 section 4301, subdivision (o), because FAP violated California Code of Regulations, title 16,
22 section 1761, subdivision (a), in that pharmacists and staff at FAP filled approximately 350
23 irregular prescriptions. Many of these prescriptions reflect orders for an unusually large amount
24 of controlled substances for "as-needed" purposes. The circumstances are further explained in
25 paragraphs 30 through 35, above.

26 **THIRD CAUSE FOR DISCIPLINE**

27 **(Unprofessional Conduct-Failure to Verify Legitimacy of Prescriptions for Controlled Substances)**
28 **(Bus. & Prof. § 4301, subd. (j), and Health and Safety Code § 11153, subd. (a))**

52. Respondent FAP's Pharmacy License is subject to disciplinary action under Code
section 4301, subdivision (j), because FAP violated Health and Safety Code section 11153,
subdivision (a), in that pharmacists and staff at FAP failed to uphold their corresponding

1 responsibility of verifying the patient's legitimate medical purposes for controlled substances.
2 The pharmacists and staff at FAP breached their corresponding responsibility by furnishing
3 unusually large quantities of controlled substances to patients without confirming the legitimacy
4 of the prescriptions with the supposed prescribers. In fact, the pharmacists and staff at FAP filled
5 approximately 350 fraudulent prescriptions, many of which were for unusually large quantities of
6 controlled substances. The circumstances are further explained in paragraphs 30-35, above.

7 **FOURTH CAUSE FOR DISCIPLINE**
8 **(Unprofessional Conduct-Dispensed Controlled Substances on Invalid Prescriptions)**
9 **(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11164)**

10 53. Respondent FAP's Pharmacy License is subject to disciplinary action under Code
11 section 4301, subdivision (j), because FAP violated Health and Safety Code section 11164, in that
12 the pharmacists and staff at FAP furnished controlled substances to patients based on invalid
13 controlled substances prescription forms. Specifically, during May 2011, FAP filled five
14 prescription documents that lacked several required security measures. The circumstances are
15 further explained in paragraph 34, above.

16 **FIFTH CAUSE FOR DISCIPLINE**
17 **(Unprofessional Conduct-Failure to Maintain Records of Disposition)**
18 **(Bus. & Prof. §§ 4301, subd. (j), & 4333)**

19 54. Respondent FAP's Pharmacy License is subject to disciplinary action under Code
20 section 4301, subd. (j), because it violated Code section 4081, in that it did not maintain on its
21 premises and have available for inspection all records of disposition for three years. Specifically,
22 on September 17, 2014, Inspector 2 obtained prescription hard copies and requested additional
23 documents after the inspection. During the inspection, 39 prescription hard copies—which were
24 filled between September 17, 2011 and September 17, 2014—were missing and FAP only
25 provided scan images of 18 prescriptions filled by the pharmacy during this three year period for
26 patients of Dr. Tan Nguyen.

27 **SIXTH CAUSE FOR DISCIPLINE**
28 **(Unprofessional Conduct-Possessing Adulterated Drugs)**
(Bus. & Prof. § 4301, subd. (j), and Health and Safety Code § 111295)

55. Respondent FAP's Pharmacy License is subject to disciplinary action under Code
sections 4301, subd. (j), in that FAP violated Health and Safety Code section 111295, in that the

1 pharmacists and staff at FAP possessed dangerous drugs that had been adulterated. Specifically,
2 on September 17, 2014, during an inspection at FAP, a board inspector discovered a large box fill
3 with approximately 80 prescription vials returned by patients for destruction in the pharmacy.

4 **SEVENTH CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct-Failure to Provide Record of DEA Biennial Inventory)**
6 **(Bus. & Prof. § 4301, subd. (o), & 16 CCR § 1718)**

7 56. Respondent FAP's Pharmacy License is subject to disciplinary action under Code
8 section 4301, subdivision (o), because it failed to comply with title 16 section 1718 of the
9 California Code of Regulations. Specifically, on September 17, 2104, during an inspection, a
10 Board inspector requested the record of the DEA biennial inventory for inspection. Respondent
11 FAP failed to provide the record for inspection.⁵

12 **EIGHTH CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct-Failure to Consult with Patient)**
14 **(Bus. & Prof. § 4301, subd. (o), and 16 CCR § 1707.2, subd. (b)(1)(A))**

15 57. Respondent FAP's Pharmacy License is subject to disciplinary action under Code
16 section 4301, subdivision (o), because FAP violated California Code of Regulations, title 16,
17 section 1707.2, subdivision (b)(1)(A), in that FAP failed to consult with patients regarding new
18 medications. The circumstances are further explained in paragraph 45, above.

19 **NINTH CAUSE FOR DISCIPLINE**

20 **(Unprofessional Conduct-Failure to Verify Legitimacy of Prescriptions for Controlled Substances)**
21 **(Bus. & Prof. § 4301, subd. (d), & Health and Safety Code § 11153, subd. (a))**

22 58. Respondent FAP's Pharmacy License is subject to disciplinary action under Code
23 section 4301, subdivision (d), because FAP engaged in the excessive furnishing of controlled
24 substances in violation of Health and Safety Code section 11153, subdivision (a), in that
25 pharmacists and staff at FAP failed to uphold their corresponding responsibility of verifying the
26 patient's legitimate medical purposes for controlled substances. Specifically, the pharmacists and
27 staff at FAP breached their corresponding responsibility by furnishing unusually large quantities
28

⁵ Under title 21 of the Code of Federal Regulations (CFR) section 1304, the DEA biennial
inventory shall be available for inspection upon request for at least 3 years after the date of the
inventory.

1 of controlled substances to patients from September 17, 2011 to September 17, 2014. The
2 circumstances are further explained in paragraphs 36-49, above.

3 **TENTH CAUSE FOR DISCIPLINE**
4 **(Unprofessional Conduct-Variation from Prescription)**
5 **(Bus. & Prof. § 4301, subd. (o) and 16 CCR § 1716)**

6 59. Respondent FAP's Pharmacy License is subject to disciplinary action under Code
7 section 4301, subdivision (o), because FAP violated California Code of Regulations, title 16,
8 section 1716, in that FAP deviated from the requirements of a prescription without prior consent
9 of the prescriber on several occasions. During the inspection of FAP on September 17, 2014,
10 Inspector 2 reviewed prescription hard copies which were processed with the wrong prescriber.
11 The circumstances are further explained in paragraph 44, above.

12 **ELEVENTH CAUSE FOR DISCIPLINE**
13 **(Unprofessional Conduct-Failure to Maintain Records of Disposition)**
14 **(Bus. & Prof. § 4301, subd. (o), and 4081)**

15 60. Respondent FAP's Pharmacy License is subject to disciplinary action under Code
16 section 4301, subdivision (o), because FAP violated Code section 4081, in that Respondent FAP
17 did not have all records of manufacturer and of sale, acquisition, or disposition of dangerous
18 drugs or dangerous devices at all times during business hours open to inspection by an authorized
19 officer of the law, for at least three years. Specifically, between the dates of September 17, 2011
20 and September 17, 2014, FAP could not account for 140.8 pints of promethazine with codeine
21 syrup. The circumstances are further explained in paragraphs 36 through 44, above.

22 **CAUSES OF DISCIPLINE AGAINST RESPONDENT INE**

23 **TWELFTH CAUSE FOR DISCIPLINE**
24 **(Unprofessional Conduct-Failure to Transmit Dispensing Data to CURES)**
25 **(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11165, subd. (d))**

26 61. Respondent Ijeoma Nwanyiocha Esomonu (INE), as Pharmacist-in-Charge of FAP,
27 has subjected her Pharmacist License to disciplinary action under Code section 4301, subdivision
28 (j), by violating Health and Safety Code sections 11165, subdivision (d), in that from on or about
October 21, 2009, until approximately May 19, 2011, INE failed to insure that FAP transmit to
the Department of Justice for the Controlled Substances Utilization Review and Evaluation
System (CURES) dispensing data for Schedule II, Schedule III, and Schedule IV controlled

1 substances on a weekly basis. The circumstances are further explained in paragraphs 30-35,
2 above.

3 **THIRTEENTH CAUSE FOR DISCIPLINE**
4 **(Unprofessional Conduct-Filled Prescriptions with Significant Irregularity)**
5 **(Bus. & Prof. § 4301, subd. (o) and 16 CCR § 1761, subd. (a))**

6 62. Respondent INE, as Pharmacist-in-Charge of FAP, has subjected her Pharmacist
7 License to disciplinary action under Code section 4301, subdivision (o), because she violated
8 California Code of Regulations, title 16, section 1761, subdivision (a), in that pharmacists and
9 staff at FAP filled approximately 350 irregular prescriptions. Many of these prescriptions order
10 an unusually large amount of controlled substances for "as-needed" purposes. The circumstances
11 are further explained in paragraphs 30-35, above.

12 **FOURTEENTH CAUSE FOR DISCIPLINE**
13 **(Unprofessional Conduct-Failure to Verify Legitimacy of Prescriptions for Controlled Substances)**
14 **(Bus. & Prof. § 4301, subd. (j), & Health and Safety Code § 11153, subd. (a))**

15 63. Respondent INE, as Pharmacist-in-Charge of FAP, has subjected her Pharmacist
16 License to disciplinary action under Code section 4301, subdivision (j), because she violated
17 Health and Safety Code section 11153, subdivision (a), in that pharmacists and staff at FAP failed
18 to uphold their corresponding responsibility of verifying the patient's legitimate medical purposes
19 for controlled substances. The pharmacists and staff at FAP breached their corresponding
20 responsibility by furnishing unusually large quantities of controlled substances to patients without
21 confirming with the supposed prescribers the legitimacy of the prescriptions. In fact, the
22 pharmacists and staff at FAP filled approximately 350 fraudulent prescriptions, many of which
23 were for unusually large quantities of controlled substances. The circumstances are further
24 explained in paragraphs 30-35, above.

25 **FIFTEENTH CAUSE FOR DISCIPLINE**
26 **(Unprofessional Conduct-Dispensed Controlled Substances on Invalid Prescriptions)**
27 **(Bus. & Prof. § 4301, subd. (j), & Health and Safety Code § 11164)**

28 64. Respondent INE, as Pharmacist-in-Charge of FAP, has subjected her Pharmacist
License to disciplinary action under Code section 4301, subdivision (j), because she violated
Health and Safety Code section 11164, in that the pharmacists and staff at FAP furnished
controlled substances to patients based on invalid controlled substances prescription forms.

Specifically, during May 2011, FAP filled five prescription documents that lacked several required security measures. The circumstances are further explained in paragraph 34, above.

CAUSES OF DISCIPLINE AGAINST RESPONDENT ICE

SIXTEENTH CAUSE FOR DISCIPLINE

**(Unprofessional Conduct-Filled Prescriptions with Significant Irregularity)
(Bus. & Prof. § 4301, subd. (o), & 16 CCR § 1761, subd. (a))**

65. Respondent Iroegbu Clifford Esomonu (ICE), as a pharmacist of FAP, has subjected his Pharmacist License to disciplinary action under Code section 4301, subdivision (o), because he violated California Code of Regulations, title 16, section 1761, subdivision (a), in that Respondent ICE filled prescriptions with significant irregularity. Many of the prescriptions ordered unusually large quantities of controlled substances including oxycodone, hydrocodone with acetaminophen, alprazolam and promethazine with codeine. The circumstances are further explained in paragraphs 30-35, above.

SEVENTEENTH CAUSE FOR DISCIPLINE

**(Unprofessional Conduct-Failure to Verify Legitimacy of Prescriptions for Controlled Substances)
(Bus. & Prof. § 4301, subd. (j), & Health and Safety Code § 11153, subd. (a))**

66. Respondent ICE, as a pharmacist of FAP, has subjected his Pharmacist License to disciplinary action under Code section 4301, subdivision (j), because he violated Health and Safety Code section 11153, subdivision (a), in that, on numerous occasions, Respondent ICE failed to verify the legitimate medical purpose for prescribing an unusually large quantity of controlled substances. In fact, FAP's drug dispensing printouts show that Respondent ICE filled approximately 350 fraudulent prescriptions, many which were for unusually large quantities of controlled substances. The circumstances are further explained in paragraphs 30-35, above.

EIGHTEENTH CAUSE FOR DISCIPLINE

**(Unprofessional Conduct-Dispensed Controlled Substances on Invalid Prescriptions)
(Bus. & Prof. § 4301, subd. (j), & Health and Safety Code § 11164)**

67. Respondent ICE has subjected his Pharmacist License to disciplinary action under Code section 4301, subdivision (j), in that Respondent ICE dispensed controlled substances based on invalid prescription documents. Specifically, Respondent ICE's initials were on the pharmacy dispensing printouts for five invalid prescription documents. The circumstances are further explained in paragraph 34, above.

NINETEENTH CAUSE FOR DISCIPLINE

**(Unprofessional Conduct-Failure to Maintain Records of Disposition)
(Bus. & Prof. §§ 4301, subd. (j), & 4081)**

68. Respondent ICE, as the pharmacist-in-charge of FAP⁶, has subjected his Pharmacist License to disciplinary action under Code section 4301, subd. (j), because he violated Code section 4081, in that he did not maintain on FAP's premises and have available for inspection all records of disposition for inspection for 3 years. Specifically, on September 17, 2014, inspector 2 obtained prescription hard copies and requested additional documents after the inspection. During the inspection, 39 prescription hard copies—which were filled between September 17, 2011 and September 17, 2014—were missing and FAP provided scan images of 18 prescriptions filled by the pharmacy during this three year period for patients of Dr. Tan Nguyen.

TWENTIETH CAUSE FOR DISCIPLINE

**(Unprofessional Conduct-Possessing Adulterated Drugs)
(Bus. & Prof. § 4301, subd. (j), and Health and Safety Code § 111295)**

69. Respondent ICE, as pharmacist-in-charge of FAP, has subjected his Pharmacist License to disciplinary action under Code sections 4031, subd. (j) because FAP violated Health and Safety Code section 111295, in that the pharmacists and staff at FAP possessed dangerous drugs that had been adulterated. Specifically, on September 17, 2014, during an inspection at FAP, a board inspector discovered a large box fill with approximately 80 prescription vials returned by patients for destruction in the pharmacy.

TWENTY-FIRST CAUSE FOR DISCIPLINE

**(Unprofessional Conduct-Failure to Provide Record of DEA Biennial Inventory)
(Bus. & Prof. § 4031, subd. (o), & 16 CCR § 1718)**

70. Respondent ICE, as pharmacist-in-charge of FAP, has subjected his Pharmacist License to disciplinary action under Code Section 4301, subdivision (o), because he failed to comply with title 16 section 1718 of the California Code of Regulations. Specifically, on September 17, 2104, during an inspection, a Board inspector requested the record of the DEA biennial inventory for inspection. Respondent FAP failed to provide the record for inspection.⁷

⁶ On or about September 19, 2011, Respondent ICE became the PIC at Fruitvale Avenue Pharmacy.

⁷ Under title 21 of the CFR-section 1304, the DEA biennial inventory shall be available for inspection upon request for at least 3 years after the date of the inventory.

1 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct-Failure to Consult with Patient)**
3 **(Bus. & Prof. § 4301, subd. (o) and 16 CCR § 1707.2, subd. (b)(1)(A))**

4 71. Respondent ICE, as pharmacist-in-charge of FAP, has subjected his Pharmacist
5 License to disciplinary action under Code section 4301, subdivision (o), because he violated
6 California Code of Regulations, title 16, section 1707.2, subdivision (b)(1)(A), in that pharmacists
7 and staff at FAP failed to consult with patients regarding new medications. The circumstances
8 are further explained in paragraph 45, above.

9 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct-Failure to Verify Legitimacy of Prescriptions for Controlled Substances)**
11 **(Bus. & Prof. § 4301, subd. (d), & Health and Safety Code § 11153, subd. (a))**

12 72. Respondent ICE, as pharmacist-in-charge of FAP, has subjected his Pharmacist
13 License to disciplinary action under Code section 4301, subdivision (d), because FAP engaged in
14 the excessive furnishing of controlled substances in violation of Health and Safety Code section
15 11153, subdivision (a), in that pharmacists and staff at FAP failed to uphold their corresponding
16 responsibility of verifying the patient's legitimate medical purposes for controlled substances.
17 Specifically, the pharmacists and staff at FAP breached their corresponding responsibility by
18 furnishing unusually large quantities of controlled substances to patients from September 17,
19 2011 to September 17, 2014. The circumstances are further explained in paragraphs 36-49,
20 above.

21 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

22 **(Unprofessional Conduct-Variation from Prescription)**
23 **(Bus. & Prof. § 4301, subd. (o), & 16 CCR § 1716)**

24 73. Respondent ICE, as the pharmacist-in-charge of FAP, has subjected his
25 Pharmacist License to disciplinary action under Code section 4301, subdivision (o), because FAP
26 violated California Code of Regulations, title 16, section 1716, in that FAP deviated from the
27 requirements of a prescription without prior consent of the prescriber on several occasions.
28 During the inspection of FAP on September 17, 2014, Inspector 2 reviewed prescription hard
copies which were processed with the wrong prescriber. The circumstances are further explained
in paragraph 44, above.

///

TWENTY-FIFTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Failure to Maintain Records of Disposition)
(Bus. & Prof. § 4301, subd. (o), & 4081)

74. Respondent ICE, as the pharmacist-in-charge of FAP, has subjected his Pharmacist License to disciplinary action under Code section 4301, subdivision (o), because FAP violated Code section 4081, in that Respondent FAP did not have all records of manufacturer and of sale, acquisition, or disposition of dangerous drugs or dangerous devices at all times during business hours open to inspection by an authorized officer of the law, for at least three years. Specifically, between the dates of September 17, 2011 and September 17, 2014, FAP could not account for 140.8 pints of promethazine and codeine syrup. The circumstances are further explained in paragraphs 36 through 44, above.

TWENTY-SIXTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Misuse of Education by Pharmacist)
(Bus. & Prof. §§ 4301, subd. (o), & 4306.5)

75. Respondent ICE, as the pharmacist-in-charge of FAP, has subjected his Pharmacist License to disciplinary action under Code sections 4301, subdivision (o), and 4306 in that between September 17, 2011 and September 17, 2014, Respondent ICE failed to use his education, training, and experience when he filled prescriptions for large quantities of narcotics for patients who used multiple prescribers without confirming the prescriptions and the quantities of narcotics prescribed were for a legitimate medical purpose. The circumstances are further explained in paragraphs 36 through 49, above.

OTHER MATTERS

76. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number PHY 50064 issued to Fruitvale Avenue Pharmacy Inc., it shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 50064 is placed on probation or until Pharmacy Permit Number PHY 50064 are reinstated if they are revoked.

77. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number PHY 50064 issued to Fruitvale Avenue Pharmacy, Inc., while Respondent Iroegbu Clifford Esomonu had been an officer and owner and had knowledge of or knowingly participated in any

1 conduct for which the licensee was disciplined, Respondent Iroegbu Clifford Esomonu shall be
2 prohibited from serving as a manager, administrator, owner, member, officer, director, associate,
3 or partner of a licensee for five years if Pharmacy Permit Number PHY 50064 are placed on
4 probation or until Pharmacy Permit Number PHY 50064 are reinstated if they are revoked.

5 78. Pursuant to Code section 4307, if discipline is imposed on Pharmacist License No.
6 RPH 53445 issued to Respondent Iroegbu Clifford Esomonu, Respondent Iroegbu Clifford
7 Esomonu, shall be prohibited from serving as a manager, administrator, owner, member, officer,
8 director, associate, or partner of a licensee for five years if Pharmacist License Number RPH
9 53445 is placed on probation or until Pharmacist License Number RPH 53445 is reinstated if it is
10 revoked.

11 DISCIPLINE CONSIDERATIONS

12 79. To determine the degree of discipline, if any, to be imposed on Respondent ICE,
13 Complainant alleges that on or about December 28, 2010, in a prior action, the Board of
14 Pharmacy issued Citation Number CI 2010 45230 and ordered Respondent ICE to pay a \$2,500
15 fine for violating sections 4301, subdivisions (h) and (l) (arrest for driving under the influence
16 and conviction on the lesser charge of wet/reckless). That Citation is now final and is
17 incorporated by reference as if fully set forth.

18 PRAYER

19 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
20 Second Amended Accusation, and that following the hearing, the Board of Pharmacy issue a
21 decision:

- 22 1. Revoking or suspending Pharmacy License Number PHY 50064, issued to
23 Fruitvale Avenue Pharmacy Inc.;
- 24 2. Revoking or suspending Pharmacist License Number RPH 53516, issued to
25 Ijeoma Nwanyiocha Esomonu, Fruitvale Avenue Pharmacy Inc.;
- 26 3. Revoking or suspending Pharmacist License Number RPH 53445, issued to
27 Iroegbu Clifford Esomonu, Fruitvale Avenue Pharmacy Inc.;

1 4. Prohibiting Fruitvale Avenue Pharmacy, Inc. from serving as a manager,
2 administrator, owner, member, officer, director, associate, or partner of a licensee for five years if
3 Pharmacy Permit Number PHY 50064 are placed on probation or until Pharmacy Permit Number
4 PHY 50064 are reinstated if Pharmacy Permit Number PHY 50064 issued to Fruitvale Avenue
5 Pharmacy, Inc. are revoked;

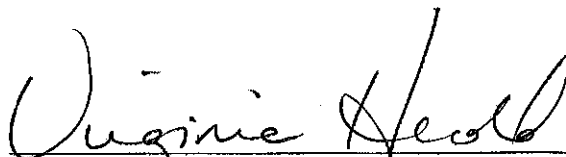
6 5. Prohibiting Respondent Iroegbu Clifford Esomonu from serving as a manager,
7 administrator, owner, member, officer, director, associate, or partner of a licensee for five years if
8 Pharmacy Permit Number PHY 50064 is placed on probation or until Pharmacy Permit Numbers
9 PHY 50064 are reinstated if Pharmacy Permit Number PHY 50064 issued to Fruitvale Avenue
10 Pharmacy, Inc. is revoked;

11 6. Prohibiting Respondent Iroegbu Clifford Esomonu from serving as a manager,
12 administrator, owner, member, officer, director, associate, or partner of a licensee for five years if
13 Pharmacist License Number RPH 53445 is placed on probation or until Pharmacist License
14 Number RPH 53445 is reinstated if Pharmacist License Number RPH 53445 issued to
15 Respondent Iroegbu Clifford Esomonu is revoked;

16 7. Ordering Fruitvale Avenue Pharmacy Inc., Ijeoma Nwanyiocha Esomonu and
17 Iroegbu Clifford Esomonu to pay the Board of Pharmacy the reasonable costs of the investigation
18 and enforcement of this case, pursuant to Business and Professions Code section 125.3;

19 8. Taking such other and further action as deemed necessary and proper.
20

21
22 DATED: 5/6/15



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

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

11 In the Matter of the Accusation Against:

Case No. 4579

12 **FRUITVALE AVENUE PHARMACY INC.**
13 **2693 Fruitvale Avenue**
14 **Oakland, CA 94601**

AMENDED ACCUSATION

15 **Pharmacy License No. PHY 50064,**

16 **IJEOMA NWAYIOCHA ESOMONU**
17 **FRUITVALE AVENUE PHARMACY INC.**
16 Minaret Road
Oakley, CA 94561

18 **Pharmacist License No. RPH 53516,**

19 **and**

20 **IROEGBU CLIFFORD ESOMONU**
21 **FRUITVALE AVENUE PHARMACY INC.**
6726 Corte Santa Maria
Pleasanton, CA 94566

22 **Pharmacist No. RPH 53445**

23 Respondents.
24
25
26
27
28

1 Complainant alleges:

2 PARTIES

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

5 2. On or about October 21, 2009, the Board of Pharmacy issued Pharmacy License
6 Number PHY 50064 to Fruitvale Avenue Pharmacy Inc. (Respondent FAP). The Pharmacy
7 License was in full force and effect at all times relevant to the charges brought in this Accusation
8 and will expire on October 1, 2013, unless renewed.

9 3. On or about April 23, 2002, the Board of Pharmacy issued Pharmacist License
10 Number RPH 53516 to Ijeoma Nwanyiocha Esomonu (Respondent INE). The Pharmacist
11 License was in full force and effect at all times relevant to the charges brought in this Accusation
12 and will expire on April 30, 2015, unless renewed.

13 4. On or about March 28, 2002, the Board of Pharmacy issued Pharmacist Number RPH
14 53445 to Iroegbu Clifford Esomonu (Respondent ICE). The Pharmacist License was in full force
15 and effect at all times relevant to the charges brought in this Accusation and will expire on
16 September 30, 2013, unless renewed.

17 JURISDICTION

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

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 of the Code states:

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

26 “(b) The board shall discipline the holder of any license issued by the board, whose default
27 has been entered or whose case has been heard by the board and found guilty, by any of the
28 following methods:

1 “(1) Suspending judgment.

2 “(2) Placing him or her upon probation.

3 “(3) Suspending his or her right to practice for a period not exceeding one year.

4 “(4) Revoking his or her license.

5 “(5) Taking any other action in relation to disciplining him or her as the board in its
6 discretion may deem proper.

7 ...

8 “(e) The proceedings under this article shall be conducted in accordance with Chapter 5
9 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board
10 shall have all the powers granted therein. The action shall be final, except that the propriety of
11 the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of
12 Civil Procedure.”

13 8. Section 4300.1 of the Code provides that “[t]he expiration, cancellation, forfeiture, or
14 suspension of a board-issued license by operation of law or by order or decision of the board or a
15 court of law, the placement of a license on a retired status, or the voluntary surrender of a license
16 by a licensee shall not deprive the board of jurisdiction to commence or proceed with any
17 investigation of, or action or disciplinary proceeding against, the licensee or to render a decision
18 suspending or revoking the license.”

19 STATUTORY/REGULATORY PROVISIONS

20 9. Section 4301 of the Code states, in relevant part:

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

24 “(a) Gross immortality.

25 ...

26 “(h) The administering to oneself, of any controlled substance, or the use of any dangerous
27 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
28 oneself, to a person holding a license under this chapter, or to any other person or to the public, or

1 to the extent that the use impairs the ability of the person to conduct with safety to the public the
2 practice authorized by the license.

3 . . .

4 “(j) The violation of any of the statutes of this state, or any other state, or of the United
5 States regulating controlled substances and dangerous drugs.

6 . . .

7 “(l) The conviction of a crime substantially related to the qualifications, functions, and
8 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
9 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
10 substances or of a violation of the statutes of this state regulating controlled substances or
11 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
12 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
13 The board may inquire into the circumstances surrounding the commission of the crime, in order
14 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
15 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
16 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
17 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
18 of this provision. The board may take action when the time for appeal has elapsed, or the
19 judgment of conviction has been affirmed on appeal or when an order granting probation is made
20 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
21 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
22 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
23 indictment.

24 . . .

25 “(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
26 violation of or conspiring to violate any provision or term of this chapter or of the applicable
27 federal and state laws and regulations governing pharmacy, including regulations established by
28 the board or by any other state or federal regulatory agency.”

1 10. Section 4113, subdivision (c), of the Code provides that “[t]he pharmacist-in-charge
2 shall be responsible for a pharmacy’s compliance with all state and federal laws and regulations
3 pertaining to the practice of pharmacy.”

4 11. Section 490 of the Code provides, in relevant part, that the Board may suspend or
5 revoke a license when it finds that the licensee has been convicted of a crime substantially related
6 to the qualifications, functions or duties of the license.

7 12. Section 493 of the Code states:

8 “Notwithstanding any other provision of law, in a proceeding conducted by a board within
9 the department pursuant to law to deny an application for a license or to suspend or revoke a
10 license or otherwise take disciplinary action against a person who holds a license, upon the
11 ground that the applicant or the licensee has been convicted of a crime substantially related to the
12 qualifications, functions, and duties of the licensee in question, the record of conviction of the
13 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
14 and the board may inquire into the circumstances surrounding the commission of the crime in
15 order to fix the degree of discipline or to determine if the conviction is substantially related to the
16 qualifications, functions, and duties of the licensee in question.

17 “As used in this section, ‘license’ includes ‘certificate,’ ‘permit,’ ‘authority,’ and
18 ‘registration.’”

19 13. Health and Safety Code section 11165, subdivision (d), states:

20 “For each prescription for a Schedule II, Schedule III, or Schedule IV controlled substance, as
21 defined in the controlled substances schedules in federal law and regulations, specifically

22 Sections 1308.12, 1308.13, and 1308.14, respectively, of Title 21 of the Code of Federal
23 Regulations, the dispensing pharmacy or clinic shall provide the following information to the
24 Department of Justice on a weekly basis and in a format specified by the Department of Justice:

25 “(1) Full name, address, and the telephone number of the ultimate user or research subject,
26 or contact information as determined by the Secretary of the United States Department of Health
27 and Human Services, and the gender, and date of birth of the ultimate user.

1 “(2) The prescriber's category of licensure and license number; federal controlled
2 substance registration number; and the state medical license number of any prescriber using the
3 federal controlled substance registration number of a government-exempt facility.

4 “(3) Pharmacy prescription number, license number, and federal controlled substance
5 registration number.

6 “(4) NDC (National Drug Code) number of the controlled substance dispensed.

7 “(5) Quantity of the controlled substance dispensed.

8 “(6) ICD-9 (diagnosis code), if available.

9 “(7) Number of refills ordered.

10 “(8) Whether the drug was dispensed as a refill of a prescription or as a first-time request.

11 “(9) Date of origin of the prescription.

12 “(10) Date of dispensing of the prescription.”

13 14. Health and Safety Code section 11164 states, in relevant part:

14 “Except as provided in Section 11167, no person shall prescribe a controlled substance, nor shall
15 any person fill, compound, or dispense a prescription for a controlled substance, unless it
16 complies with the requirements of this section.”

17 “(a) Each prescription for a controlled substance classified in Schedule II, III, IV, or V,
18 except as authorized by subdivision (b), shall be made on a controlled substance prescription form
19 as specified in Section 11162.1”

20 15. Health and Safety Code section 11162.1 states, in relevant part:

21 “(a) The prescription forms for controlled substances shall be printed with the following features:

22

23 “(7)(A) Six quantity check off boxes shall be printed on the form so that the prescriber
24 may indicate the quantity by checking the applicable box where the following quantities shall
25 appear:

- 26 ▪ 1-24
- 27 ▪ 25-49
- 28 ▪ 50-74
- 75-100
- 101-150
- 151 and over.

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“(8) Prescription blanks shall contain a statement printed on the bottom of the prescription blank that the ‘Prescription is void if the number of drugs prescribed is not noted.’”

...

“(b) Each batch of controlled substance prescription forms shall have the lot number printed on the form and each form within that batch shall be numbered sequentially beginning with the numeral one.”

16. Health and Safety Code section 11153, subdivision (a), states:

“A prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. Except as authorized by this division, the following are not legal prescriptions: (1) an order purporting to be a prescription which is issued not in the usual course of professional treatment or in legitimate and authorized research; or (2) an order for an addict or habitual user of controlled substances, which is issued not in the course of professional treatment or as part of an authorized narcotic treatment program, for the purpose of providing the user with controlled substances, sufficient to keep him or her comfortable by maintaining customary use.”

17. California Code of Regulations, title 16, section 1761, states:

“(a) No pharmacist shall compound or dispense any prescription which contains any significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon receipt of any such prescription, the pharmacist shall contact the prescriber to obtain the information needed to validate the prescription.

“(b) Even after conferring with the prescriber, a pharmacist shall not compound or dispense a controlled substance prescription where the pharmacist knows or has objective reason to know that said prescription was not issued for a legitimate medical purpose.”

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

“For the purpose of denial, suspension, or revocation of a personal or facility license

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

6 CONTROLLED SUBSTANCES

7 19. Section 4021 of the Code states:

8 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
9 11053) of Division 10 of the Health and Safety Code.”

10 20. Oxycodone is a Schedule II controlled substance as designated by Health and Safety
11 Code section 11055, subdivision (b)(1)(M).

12 21. Hydrocodone with acetaminophen is a Schedule III controlled substance as
13 designated by Health and Safety Code section 11056, subdivision (e)(4).

14 22. Alprazolam is a Schedule IV controlled substance as designated by Health and Safety
15 Code section 11057, subdivision (d)(1).

16 23. Promethazine with codeine is a Schedule V controlled substance as designated by
17 Health and Safety Code section 11058.

18 COST RECOVERY

19 24. Section 125.3 of the Code provides, in relevant part, that the Board may request the
20 administrative law judge to direct a licentiate found to have committed a violation or violations of
21 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and

22 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
23 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
24 included in a stipulated settlement.

25 FACTUAL BACKGROUND

26 25. From about October 21, 2009, to the present, Respondent Fruitvale Avenue Pharmacy
27 (FAP) has been operating as a pharmacy in Oakland, California. From on or about October 21,
28 2009, until May 19 2011, Respondent Ijeoma Nwanyiocha Esomonu (INE), the owner of FAP,

1 was also the pharmacist-in-charge (PIC) at FAP. From on or about October 21, 2009, until May
2 19, 2011, Respondent Iroegbu Clifford Esomonu (ICE) worked as a pharmacist at FAP. From
3 May 19, 2011, to the present, Respondent ICE took over as the PIC at FAP.

4 26. On May 17, 2011, a Board inspector (inspector) conducted an inspection at FAP
5 because the Board had identified FAP as a pharmacy that failed to report any Controlled
6 Substances Utilization Review and Evaluation System (CURES) data to the Department of
7 Justice (DOJ). During the inspection at FAP, the inspector observed several pharmacy law
8 violations. Specifically, the inspector noted that FAP had never transmitted any CURES data to
9 the DOJ.

10 27. While at FAP, the inspector looked into prescription documents from Bay Internal
11 Medicine (BIM). The prescriptions appeared legitimate but, upon further investigation, the
12 inspector found that none of prescribers' contact information on the prescriptions contained a
13 valid working phone number. The inspector asked Respondent ICE to verify the BIM prescribers
14 on the Medical Board of California's website. The web search revealed that none of the BIM
15 prescribers' listed addresses on the Medical Board's website matched the addresses on the
16 prescriptions. Significantly, Respondent ICE admitted to the inspector that he had never before
17 verified a prescriber using the Medical Board's website. In addition, the inspector observed
18 numerous other violations of pharmacy laws. At the conclusion of the inspection, the inspector
19 prepared an inspection report documenting various pharmacy law violations. The inspector gave
20 a copy of the report to Respondent ICE, and then had Respondent ICE review and sign off on it.
21 During his inspection, the inspector obtained certain documents including prescription

22 documents, dispensing detail reports, and Cardinal Health Narcotic Sales Reports. The inspector
23 also requested FAP to provide additional documents and explanations regarding pharmacy law
24 violations indicated in the report.

25 28. On or about May 30, 2011, the inspector received and reviewed faxed responses from
26 FAP. Subsequently, the inspector contacted 15 different prescribers listed as the supposed
27 prescriber on the prescription documents. The inspector sent each prescriber a list of
28 prescriptions from FAP to verify the legitimacy of the prescriptions. Each of the prescribers

1 responded with a written statement that they did not authorize the prescriptions from FAP. In
2 fact, one prescriber from Kaiser stated he did not authorize any of the prescriptions and that they
3 were written on prescriptions that were stolen from his locker at the hospital. Additionally, one
4 prescriber from BIM stated their practice had been closed since June 2009. All the BIM
5 prescription documents that the inspector sent to the BIM prescribers to review were dated and
6 filled by FAP in 2011.

7 29. Physician Assistant G. P.¹ (G. P.) was one of the 15 prescribers that the inspector
8 contacted to verify the legitimacy of the prescription documents he got from FAP. On or about
9 June 7, 2011, the inspector received a response from G. P., indicating that he did not authorize the
10 prescriptions and the documents were forgeries. In addition, G. P. noted that several of the
11 prescription documents were not written on proper controlled substances prescription forms.
12 Significantly, during the May 17, 2011 visit to FAP, the inspector had made the same observation
13 that FAP had improperly dispensed controlled substances on five invalid prescription documents.
14 These five prescription documents were invalid because they lacked several required security
15 features such as quantity check off boxes, the required statement of "Prescription is void if the
16 number of drugs prescribed is not noted," and the prescriptions were not sequentially numbered.

17 30. The inspector's investigation revealed that, from October 2009, to about April 2011,
18 FAP failed to transmit CURES data to the DOJ. The investigation further showed that, from
19 about July 2010, to May 2011, Respondent INE, and Respondent ICE had filled over 350
20 fraudulent prescriptions. Many of these prescription documents contained significant
21 irregularities that should have prompted Respondent INE and Respondent ICE to verify the
22 legitimacy of the prescription before dispensing the controlled substances. In addition, a review
23 of FAP's dispensing printouts obtained during the investigation showed Respondent Ice's initials
24 on most, if not all, of the printouts' "filled by" section. Furthermore, in a written statement,
25 Respondent ICE admitted that he was the pharmacist on duty everyday since the opening of FAP.
26 ///

27 _____
28 ¹ G. P. is used in this document rather than the actual name of the Physician Assistant.

1 **CAUSES OF DISCIPLINE AGAINST RESPONDENT FAP**

2 **FIRST CAUSE FOR DISCIPLINE**

3 **(Unprofessional Conduct-Failure to Transmit Dispensing Data to CURES)**
4 **(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11165, subd. (d))**

5 31. Respondent Fruitvale Avenue Pharmacy's (FAP) Pharmacy License is subject to
6 disciplinary action under Code section 4301, subdivision (j), because FAP violated Health and
7 Safety Code section 11165, subdivision (d), in that from on or about October 21, 2009, until
8 approximately April 2011, FAP failed to transmit dispensing data for Schedule II, Schedule III,
9 and Schedule IV controlled substances to the Department of Justice for the Controlled Substances
10 Utilization Review and Evaluation System (CURES) on a weekly basis. The circumstances are
11 further explained in paragraphs 25-30, above.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct-Filled Prescriptions with Significant Irregularity)**
14 **(Bus. & Prof. § 4301, subd. (o) and 16 CCR § 1761, subd. (a))**

15 32. Respondent FAP's Pharmacy License is subject to disciplinary action under Code
16 section 4301, subdivision (o), because FAP violated California Code of Regulations, title 16,
17 section 1761, subdivision (a), in that pharmacists and staff at FAP filled over 350 irregular
18 prescriptions. Many of these prescription documents order an unusually large amount of
19 controlled substances for "as-needed" purposes. The circumstances are further explained in
20 paragraphs 25-30, above.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Unprofessional Conduct-Failure to Verify Legitimacy of Prescriptions for Controlled Substances)**
23 **(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11153, subd. (a))**

24 33. Respondent FAP's Pharmacy License is subject to disciplinary action under Code
25 section 4301, subdivision (j), because FAP violated Health and Safety Code section 11153,
26 subdivision (a), in that pharmacists and staff at FAP failed to uphold their corresponding
27 responsibility of verifying the patient's legitimate medical purposes for controlled substances.
28 The pharmacists and staff at FAP breached their corresponding responsibility by furnishing
unusually large quantities of controlled substances to patients without confirming with the
supposed prescribers the legitimacy of the prescriptions. In fact, the pharmacists and staff at FAP
filled approximately 350 fraudulent prescriptions, many of which were for unusually large

1 quantities of controlled substances. The circumstances are further explained in paragraphs 25-30,
2 above.

3 **FOURTH CAUSE FOR DISCIPLINE**
4 **(Unprofessional Conduct-Dispensed Controlled Substances on Invalid Prescriptions)**
5 **(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11164)**

6 34. Respondent FAP's Pharmacy License is subject to disciplinary action under Code
7 section 4301, subdivision (j), because FAP violated Health and Safety Code section 11164, in that
8 the pharmacists and staff at FAP furnished controlled substances to patients based on invalid
9 controlled substances prescription forms. Specifically, during May 2011, FAP filled five
10 prescription documents that lacked several required security measures. The circumstances are
11 further explained in paragraphs 25-30, above.

12 **CAUSES OF DISCIPLINE AGAINST RESPONDENT INE**

13 **FIFTH CAUSE FOR DISCIPLINE**
14 **(Unprofessional Conduct-Failure to Transmit Dispensing Data to CURES)**
15 **(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11165, subd. (d))**

16 35. Respondent Ijeoma Nwanyiocha Esomonu (INE), as Pharmacist-in-Charge of FAP,
17 has subjected her Pharmacist License to disciplinary action under Code section 4301, subdivision
18 (j), by violating Health and Safety Code sections 11165, subdivision (d), in that from on or about
19 October 21, 2009, until approximately April 2011, INE failed to insure that FAP transmit to the
20 Department of Justice for the Controlled Substances Utilization Review and Evaluation System
21 (CURES) dispensing data for Schedule II, Schedule III, and Schedule IV controlled substances on
22 a weekly basis. The circumstances are further explained in paragraphs 25-30, above.

23 **SIXTH CAUSE FOR DISCIPLINE**
24 **(Unprofessional Conduct-Filled Prescriptions with Significant Irregularity)**
25 **(Bus. & Prof. § 4301, subd. (o) and 16 CCR § 1761, subd. (a))**

26 36. Respondent INE, as Pharmacist-in-Charge of FAP, has subjected her Pharmacist
27 License to disciplinary action under Code section 4301, subdivision (o), because she violated
28 California Code of Regulations, title 16, section 1761, subdivision (a), in that pharmacists and
staff at FAP filled over 350 irregular prescriptions. Many of these prescription documents order
an unusually large amount of controlled substances for "as-needed" purposes. The circumstances
are further explained in paragraphs 25-30, above.

**(Unprofessional Conduct-Failure to Verify Legitimacy of Prescriptions for Controlled Substances)
(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11153, subd. (a))**

EIGHTH CAUSE FOR DISCIPLINE

38. Respondent INE, as Pharmacist-in-Charge of FAP, has subjected her Pharmacist License to disciplinary action under Code section 4301, subdivision (j), because she violated Health and Safety Code section 11164, in that the pharmacists and staff at FAP furnished controlled substances to patients based on invalid controlled substances prescription forms. Specifically, during May 2011, FAP filled five prescription documents that lacked several required security measures. The circumstances are further explained in paragraphs 25-30, above.

NINTH CAUSE FOR DISCIPLINE

39. Respondent Iroegbu Clifford Esomonu (ICE), as a pharmacist of FAP, has subjected his Pharmacist License to disciplinary action under Code section 4301, subdivision (o), because he violated California Code of Regulations, title 16, section 1761, subdivision (a), in that Respondent ICE filled prescriptions with significant irregularity. Many of the prescriptions order unusually large quantities of controlled substances including oxycodone, hydrocodone with

1 acetaminophen, alprazolam and promethazine with codeine. The circumstances are further
2 explained in paragraphs 25-30, above.

3 **TENTH CAUSE FOR DISCIPLINE**
4 **(Unprofessional Conduct-Failure to Verify Legitimacy of Prescriptions for Controlled Substances)**
5 **(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11153, subd. (a))**

6 40. Respondent ICE, as a pharmacist of FAP, has subjected his Pharmacist License to
7 disciplinary action under Code section 4301, subdivision (j), because he violated Health and
8 Safety Code section 11153, subdivision (a), in that, on numerous occasions, Respondent ICE
9 failed to verify the legitimate medical purpose for prescribing an unusually large quantity of
10 controlled substances. In fact, FAP's drug dispensing printouts show that Respondent ICE filled
11 approximately 350 fraudulent prescriptions, many which were for unusually large quantities of
12 controlled substances. The circumstances are further explained in paragraphs 25-30, above.

13 **ELEVENTH CAUSE FOR DISCIPLINE**
14 **(Unprofessional Conduct-Dispensed Controlled Substances on Invalid Prescriptions)**
15 **(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11164)**

16 41. Respondent ICE, as a pharmacist of FAP, has subjected his Pharmacist License to
17 disciplinary action under Code section 4301, subdivision (j), in that Respondent ICE dispensed
18 controlled substances based on invalid prescription documents. Specifically, Respondent ICE's
19 initials were on the pharmacy dispensing printouts for those five invalid prescription documents.
20 The circumstances are further explained in paragraphs 25-30 above.

21 **TWELFTH CAUSE FOR DISCIPLINE**
22 **(Unprofessional Conduct-Use of Alcohol in a Dangerous Manner)**
23 **(Bus. & Prof. § 4301, subd. (h))**

24 42. Respondent ICE has subjected his Pharmacist License to disciplinary action under
25 Code section 4301, subdivision (h), in that on or about April 23, 2012, Respondent ICE was
26 arrested by a San Leandro police officer for driving under the influence of alcohol. The
27 circumstances are as follows:

28 43. On or about 12:25 a.m. on April 23, 2012, a San Leandro police officer stopped
Respondent's vehicle for a violation of Vehicle Code section 21650 (a vehicle on the highway
must be driven on the right side of the road). The officer approached Respondent's vehicle and
observed symptoms of intoxication including red watery eyes, alcoholic odor emitting from

1 Respondent's breath and slurred speech. Respondent failed a series of field sobriety tests. Two
2 breath tests from Respondent at approximately 1:19 a.m. and 1:22 a.m. revealed a blood alcohol
3 concentration (BAC) of .13.

4 **THIRTEENTH CAUSE FOR DISCIPLINE**
5 **(Unprofessional Conduct-Conviction)**
6 **(Bus. & Prof. §§ 490 & 4301, subd. (l))**

7 44. Respondent ICE has subjected his Pharmacist License to disciplinary action under
8 Code section 4301, subdivision (l), and section 490, in that Respondent ICE was convicted of a
9 crime substantially related to the qualifications, functions and duties of a pharmacist. The
10 circumstances are as follows:

11 45. On or about December 13, 2012, in a criminal matter entitled *People of the State of*
12 *California v. Iroegbu Clifford Esomonu*, in the Alameda County Superior Court, Respondent ICE
13 was convicted upon plea of no contest to the violation of Vehicle Code section 23152,
14 subdivision (b) (driving with a blood alcohol level of .08 or more), a misdemeanor. Respondent
15 ICE was ordered to serve 15 days in county jail. Respondent was placed on probation for 3 years
16 with various conditions including completing a Drinking Driver Program and paying various fees
17 and fines.

18 **DISCIPLINE CONSIDERATIONS**

19 46. To determine the degree of discipline, if any, to be imposed on Respondent ICE,
20 Complainant alleges that on or about December 28, 2010, in a prior action, the Board of
21 Pharmacy issued Citation Number CI 2010 45230 and ordered Respondent ICE to pay a \$2,500
22 fine for violating sections 4301, subdivisions (h) and (l) [arrest for driving under the influence
23 and conviction on the lesser charge of wet/reckless]. That Citation is now final and is
24 incorporated by reference as if fully set forth.

25 **PRAYER**

26 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
27 Accusation, and that following the hearing, the Board of Pharmacy issue a decision:

28 1. Revoking or suspending Pharmacy License Number PHY 50064, issued to
Fruitvale Avenue Pharmacy Inc.;

2. Revoking or suspending Pharmacist License Number RPH 53516, issued to Ijeoma Nwanyiocha Esomonu, Fruitvale Avenue Pharmacy Inc.;

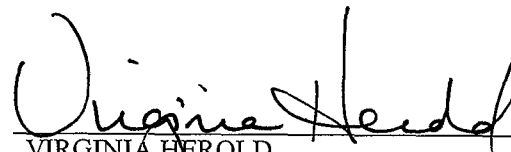
3. Revoking or suspending Pharmacist License Number RPH 53445, issued to Iroegbu Clifford Esomonu, Fruitvale Avenue Pharmacy Inc.;

4. Ordering Fruitvale Avenue Pharmacy Inc., Ijeoma Nwanyiocha Esomonu and Iroegbu Clifford Esomonu 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:

12/17/13



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

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

11 In the Matter of the Accusation Against:

Case No. 4579

12 **FRUITVALE AVENUE PHARMACY INC.**
13 **2693 Fruitvale Avenue**
14 **Oakland, CA 94601**

ACCUSATION

15 **Pharmacy License No. PHY 50064,**

16 **IJEOMA NWAYIOCHA ESOMONU**
17 **FRUITVALE AVENUE PHARMACY INC.**
16 Minaret Road
Oakley, CA 94561

18 **Pharmacist License No. RPH 53516,**

19 **and**

20 **IROEGBU CLIFFORD ESOMONU**
21 **FRUITVALE AVENUE PHARMACY INC.**
6726 Corte Santa Maria
22 **Pleasanton, CA 94566**

23 **Pharmacist No. RPH 53445**

24 Respondents.

1 Complainant alleges:

2 PARTIES

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

5 2. On or about October 21, 2009, the Board of Pharmacy issued Pharmacy License
6 Number PHY 50064 to Fruitvale Avenue Pharmacy Inc. (Respondent FAP). The Pharmacy
7 License was in full force and effect at all times relevant to the charges brought in this Accusation
8 and will expire on October 1, 2013, unless renewed.

9 3. On or about April 23, 2002, the Board of Pharmacy issued Pharmacist License
10 Number RPH 53516 to Ijeoma Nwanyiocha Esomonu (Respondent INE). The Pharmacist
11 License was in full force and effect at all times relevant to the charges brought in this Accusation
12 and will expire on April 30, 2015, unless renewed.

13 4. On or about March 28, 2002, the Board of Pharmacy issued Pharmacist Number RPH
14 53445 to Iroegbu Clifford Esomonu (Respondent ICE). The Pharmacist License was in full force
15 and effect at all times relevant to the charges brought in this Accusation and will expire on
16 September 30, 2013, unless renewed.

17 JURISDICTION

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

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 of the Code states:

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

26 "(b) The board shall discipline the holder of any license issued by the board, whose default
27 has been entered or whose case has been heard by the board and found guilty, by any of the
28 following methods:

- 1 “(1) Suspending judgment.
2 “(2) Placing him or her upon probation.
3 “(3) Suspending his or her right to practice for a period not exceeding one year.
4 “(4) Revoking his or her license.
5 “(5) Taking any other action in relation to disciplining him or her as the board in its
6 discretion may deem proper.

7 ...

8 “(e) The proceedings under this article shall be conducted in accordance with Chapter 5
9 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board
10 shall have all the powers granted therein. The action shall be final, except that the propriety of
11 the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of
12 Civil Procedure.”

13 8. Section 4300.1 of the Code provides that “[t]he expiration, cancellation, forfeiture, or
14 suspension of a board-issued license by operation of law or by order or decision of the board or a
15 court of law, the placement of a license on a retired status, or the voluntary surrender of a license
16 by a licensee shall not deprive the board of jurisdiction to commence or proceed with any
17 investigation of, or action or disciplinary proceeding against, the licensee or to render a decision
18 suspending or revoking the license.”

19 STATUTORY/REGULATORY PROVISIONS

20 9. Section 4301 of the Code states, in relevant part:

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

24 “(a) Gross immortality.

25 ...

26 “(h) The administering to oneself, of any controlled substance, or the use of any dangerous
27 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
28 oneself, to a person holding a license under this chapter, or to any other person or to the public, or

1 to the extent that the use impairs the ability of the person to conduct with safety to the public the
2 practice authorized by the license.

3 ...

4 “(j) The violation of any of the statutes of this state, or any other state, or of the United
5 States regulating controlled substances and dangerous drugs.

6 ...

7 “(l) The conviction of a crime substantially related to the qualifications, functions, and
8 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
9 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
10 substances or of a violation of the statutes of this state regulating controlled substances or
11 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
12 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
13 The board may inquire into the circumstances surrounding the commission of the crime, in order
14 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
15 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
16 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
17 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
18 of this provision. The board may take action when the time for appeal has elapsed, or the
19 judgment of conviction has been affirmed on appeal or when an order granting probation is made
20 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
21 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
22 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
23 indictment.

24 ...

25 “(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
26 violation of or conspiring to violate any provision or term of this chapter or of the applicable
27 federal and state laws and regulations governing pharmacy, including regulations established by
28 the board or by any other state or federal regulatory agency.”

1 10. Section 4113, subdivision (c), of the Code provides that "[t]he pharmacist-in-charge
2 shall be responsible for a pharmacy's compliance with all state and federal laws and regulations
3 pertaining to the practice of pharmacy."

4 11. Section 490 of the Code provides, in relevant part, that the Board may suspend or
5 revoke a license when it finds that the licensee has been convicted of a crime substantially related
6 to the qualifications, functions or duties of the license.

7 12. Section 493 of the Code states:

8 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
9 the department pursuant to law to deny an application for a license or to suspend or revoke a
10 license or otherwise take disciplinary action against a person who holds a license, upon the
11 ground that the applicant or the licensee has been convicted of a crime substantially related to the
12 qualifications, functions, and duties of the licensee in question, the record of conviction of the
13 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
14 and the board may inquire into the circumstances surrounding the commission of the crime in
15 order to fix the degree of discipline or to determine if the conviction is substantially related to the
16 qualifications, functions, and duties of the licensee in question.

17 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
18 'registration.'"

19 13. Health and Safety Code section 11165, subdivision (d), states:

20 "For each prescription for a Schedule II, Schedule III, or Schedule IV controlled substance, as
21 defined in the controlled substances schedules in federal law and regulations, specifically
22 Sections 1308.12, 1308.13, and 1308.14, respectively, of Title 21 of the Code of Federal
23 Regulations, the dispensing pharmacy or clinic shall provide the following information to the
24 Department of Justice on a weekly basis and in a format specified by the Department of Justice:

25 "(1) Full name, address, and the telephone number of the ultimate user or research subject,
26 or contact information as determined by the Secretary of the United States Department of Health
27 and Human Services, and the gender, and date of birth of the ultimate user.

1 “(2) The prescriber's category of licensure and license number; federal controlled
2 substance registration number; and the state medical license number of any prescriber using the
3 federal controlled substance registration number of a government-exempt facility.

4 “(3) Pharmacy prescription number, license number, and federal controlled substance
5 registration number.

6 “(4) NDC (National Drug Code) number of the controlled substance dispensed.

7 “(5) Quantity of the controlled substance dispensed.

8 “(6) ICD-9 (diagnosis code), if available.

9 “(7) Number of refills ordered.

10 “(8) Whether the drug was dispensed as a refill of a prescription or as a first-time request.

11 “(9) Date of origin of the prescription.

12 “(10) Date of dispensing of the prescription.”

13 14. Health and Safety Code section 11164 states, in relevant part:

14 “Except as provided in Section 11167, no person shall prescribe a controlled substance, nor shall
15 any person fill, compound, or dispense a prescription for a controlled substance, unless it
16 complies with the requirements of this section.”

17 “(a) Each prescription for a controlled substance classified in Schedule II, III, IV, or V,
18 except as authorized by subdivision (b), shall be made on a controlled substance prescription form
19 as specified in Section 11162.1”

20 15. Health and Safety Code section 11162.1 states, in relevant part:

21 “(a) The prescription forms for controlled substances shall be printed with the following features:

22 ...

23 “(7)(A) Six quantity check off boxes shall be printed on the form so that the prescriber
24 may indicate the quantity by checking the applicable box where the following quantities shall
25 appear:

- 26 ▪ 1-24
- 25-49
- 27 ▪ 50-74
- 75-100
- 101-150
- 28 ▪ 151 and over.

1 ...
2 “(8) Prescription blanks shall contain a statement printed on the bottom of the
3 prescription blank that the ‘Prescription is void if the number of drugs prescribed is not noted.’”
4 ...

5 “(b) Each batch of controlled substance prescription forms shall have the lot number printed on
6 the form and each form within that batch shall be numbered sequentially beginning with the
7 numeral one.”

8 16. Health and Safety Code section 11153, subdivision (a), states:

9 “A prescription for a controlled substance shall only be issued for a legitimate medical
10 purpose by an individual practitioner acting in the usual course of his or her professional
11 practice. The responsibility for the proper prescribing and dispensing of controlled substances is
12 upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist
13 who fills the prescription. Except as authorized by this division, the following are not legal
14 prescriptions: (1) an order purporting to be a prescription which is issued not in the usual course
15 of professional treatment or in legitimate and authorized research; or (2) an order for an addict or
16 habitual user of controlled substances, which is issued not in the course of professional treatment
17 or as part of an authorized narcotic treatment program, for the purpose of providing the user with
18 controlled substances, sufficient to keep him or her comfortable by maintaining customary use.”

19 17. California Code of Regulations, title 16, section 1761, states:

20 “(a) No pharmacist shall compound or dispense any prescription which contains any
21 significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon receipt of any
22 such prescription, the pharmacist shall contact the prescriber to obtain the information needed to
23 validate the prescription.

24 “(b) Even after conferring with the prescriber, a pharmacist shall not compound or dispense
25 a controlled substance prescription where the pharmacist knows or has objective reason to know
26 that said prescription was not issued for a legitimate medical purpose.”

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

28 “For the purpose of denial, suspension, or revocation of a personal or facility license

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

6 CONTROLLED SUBSTANCES

7 19. Section 4021 of the Code states:

8 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
9 11053) of Division 10 of the Health and Safety Code.”

10 20. Oxycodone is a Schedule II controlled substance as designated by Health and Safety
11 Code section 11055, subdivision (b)(1)(M).

12 21. Hydrocodone with acetaminophen is a Schedule III controlled substance as
13 designated by Health and Safety Code section 11056, subdivision (e)(4).

14 22. Alprazolam is a Schedule IV controlled substance as designated by Health and Safety
15 Code section 11057, subdivision (d)(1).

16 23. Promethazine with codeine is a Schedule V controlled substance as designated by
17 Health and Safety Code section 11058.

18 COST RECOVERY

19 24. Section 125.3 of the Code provides, in relevant part, that the Board may request the
20 administrative law judge to direct a licensee found to have committed a violation or violations of
21 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
22 enforcement of the case, with failure of the licensee to comply subjecting the license to not being
23 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
24 included in a stipulated settlement.

25 FACTUAL BACKGROUND

26 25. From about October 21, 2009, to the present, Respondent Fruitvale Avenue Pharmacy
27 (FAP) has been operating as a pharmacy in Oakland, California. From on or about October 21,
28 2009, until May 19 2011, Respondent Ijeoma Nwanyiocha Esomonu (INE), the owner of FAP,

1 was also the pharmacist-in-charge (PIC) at FAP. From on or about October 21, 2009, until May
2 19, 2011, Respondent Iroegbu Clifford Esomonu (ICE) worked as a pharmacist at FAP. From
3 May 19, 2011, to the present, Respondent ICE took over as the PIC at FAP.

4 26. On May 17, 2011, Board Inspector [REDACTED] conducted an inspection at FAP
5 because the Board had identified FAP as a pharmacy that failed to report any Controlled
6 Substances Utilization Review and Evaluation System (CURES) data to the Department of
7 Justice (DOJ). During the inspection at FAP, Inspector [REDACTED] observed several pharmacy law
8 violations. Specifically, Inspector [REDACTED] noted that FAP had never transmitted any CURES
9 data to the DOJ.

10 27. While at FAP, Inspector [REDACTED] looked into prescription documents from Bay
11 Internal Medicine (BIM). The prescriptions appeared legitimate but, upon further investigation,
12 Inspector [REDACTED] found that none of prescribers' contact information on the prescriptions
13 contained a valid working phone number. Inspector [REDACTED] asked Respondent ICE to verify the
14 BIM prescribers on the Medical Board of California's website. The web search revealed that
15 none of the BIM prescribers' listed addresses on the Medical Board's website matched the
16 addresses on the prescriptions. Significantly, Respondent ICE admitted to Inspector [REDACTED] that
17 he had never before verified a prescriber using the Medical Board's website. In addition,
18 Inspector [REDACTED] observed numerous other violations of pharmacy laws. At the conclusion of
19 the inspection, Inspector [REDACTED] prepared an inspection report documenting various pharmacy
20 law violations. Inspector [REDACTED] gave a copy of the report to Respondent ICE, and then had
21 Respondent ICE review and sign off on it. During his inspection, Inspector [REDACTED] obtained
22 certain documents including prescription documents, dispensing detail reports, and Cardinal
23 Health Narcotic Sales Reports. Inspector [REDACTED] also requested FAP to provide additional
24 documents and explanations regarding pharmacy law violations indicated in the report.

25 28. On or about May 30, 2011, Inspector [REDACTED] received and reviewed faxed responses
26 from FAP. Subsequently, Inspector [REDACTED] contacted 15 different prescribers listed as the
27 supposed prescriber on the prescription documents. Inspector [REDACTED] sent each prescriber a list
28 of prescriptions from FAP to verify the legitimacy of the prescriptions. Each of the prescribers

1 responded with a written statement that they did not authorize the prescriptions from FAP. In
2 fact, one prescriber from Kaiser stated he did not authorize any of the prescriptions and that they
3 were written on prescriptions that were stolen from his locker at the hospital. Additionally, one
4 prescriber from BIM stated their practice had been closed since June 2009. All the BIM
5 prescription documents that Inspector [REDACTED] sent to the BIM prescribers to review were dated
6 and filled by FAP in 2011.

7 29. Physician Assistant George Pearson was one of the 15 prescribers that Inspector
8 [REDACTED] contacted to verify the legitimacy of the prescription documents he got from FAP. On or
9 about June 7, 2011, Inspector [REDACTED] received a response from Mr. Pearson, indicating that he
10 did not authorize the prescriptions and the documents were forgeries. In addition, Mr. Pearson
11 noted that several of the prescription documents were not written on proper controlled substances
12 prescription forms. Significantly, during the May 17, 2011 visit to FAP, Inspector [REDACTED] had
13 made the same observation that FAP had improperly dispensed controlled substances on five
14 invalid prescription documents. These five prescription documents were invalid because they
15 lacked several required security features such as quantity check off boxes, the required statement
16 of "Prescription is void if the number of drugs prescribed is not noted," and the prescriptions were
17 not sequentially numbered.

18 30. Inspector [REDACTED]'s investigation revealed that, from October 2009, to about April
19 2011, FAP failed to transmit CURES data to the DOJ. The investigation further showed that,
20 from about July 2010, to May 2011, Respondent INE, and Respondent ICE had filled over 350
21 fraudulent prescriptions. Many of these prescription documents contained significant
22 irregularities that should have prompted Respondent INE and Respondent ICE to verify the
23 legitimacy of the prescription before dispensing the controlled substances. In addition, a review
24 of FAP's dispensing printouts obtained during the investigation showed Respondent Ice's initials
25 on most, if not all, of the printouts' "filled by" section. Furthermore, in a written statement,
26 Respondent ICE admitted that he was the pharmacist on duty everyday since the opening of FAP.

27 ///

28 ///

1 **CAUSES OF DISCIPLINE AGAINST RESPONDENT FAP**

2 **FIRST CAUSE FOR DISCIPLINE**

3 **(Unprofessional Conduct-Failure to Transmit Dispensing Data to CURES)**
4 **(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11165, subd. (d))**

5 31. Respondent Fruitvale Avenue Pharmacy's (FAP) Pharmacy License is subject to
6 disciplinary action under Code section 4301, subdivision (j), because FAP violated Health and
7 Safety Code section 11165, subdivision (d), in that from on or about October 21, 2009, until
8 approximately April 2011, FAP failed to transmit dispensing data for Schedule II, Schedule III,
9 and Schedule IV controlled substances to the Department of Justice for the Controlled Substances
10 Utilization Review and Evaluation System (CURES) on a weekly basis. The circumstances are
11 further explained in paragraphs 25-30, above.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct-Filled Prescriptions with Significant Irregularity)**
14 **(Bus. & Prof. § 4301, subd. (o) and 16 CCR § 1761, subd. (a))**

15 32. Respondent FAP's Pharmacy License is subject to disciplinary action under Code
16 section 4301, subdivision (o), because FAP violated California Code of Regulations, title 16,
17 section 1761, subdivision (a), in that pharmacists and staff at FAP filled over 350 irregular
18 prescriptions. Many of these prescription documents order an unusually large amount of
19 controlled substances for "as-needed" purposes. The circumstances are further explained in
20 paragraphs 25-30, above.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Unprofessional Conduct-Failure to Verify Legitimacy of Prescriptions for Controlled Substances)**
23 **(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11153, subd. (a))**

24 33. Respondent FAP's Pharmacy License is subject to disciplinary action under Code
25 section 4301, subdivision (j), because FAP violated Health and Safety Code section 11153,
26 subdivision (a), in that pharmacists and staff at FAP failed to uphold their corresponding
27 responsibility of verifying the patient's legitimate medical purposes for controlled substances.
28 The pharmacists and staff at FAP breached their corresponding responsibility by furnishing
unusually large quantities of controlled substances to patients without confirming with the
supposed prescribers the legitimacy of the prescriptions. In fact, the pharmacists and staff at FAP
filled approximately 350 fraudulent prescriptions, many of which were for unusually large

1 quantities of controlled substances. The circumstances are further explained in paragraphs 25-30,
2 above.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct-Dispensed Controlled Substances on Invalid Prescriptions)**
5 **(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11164)**

6 34. Respondent FAP's Pharmacy License is subject to disciplinary action under Code
7 section 4301, subdivision (j), because FAP violated Health and Safety Code section 11164, in that
8 the pharmacists and staff at FAP furnished controlled substances to patients based on invalid
9 controlled substances prescription forms. Specifically, during May 2011, FAP filled five
10 prescription documents that lacked several required security measures. The circumstances are
11 further explained in paragraphs 25-30, above.

12 **CAUSES OF DISCIPLINE AGAINST RESPONDENT INE**

13 **FIFTH CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct-Failure to Transmit Dispensing Data to CURES)**
15 **(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11165, subd. (d))**

16 35. Respondent Ijeoma Nwanyiocha Esomonu (INE), as Pharmacist-in-Charge of FAP,
17 has subjected her Pharmacist License to disciplinary action under Code section 4301, subdivision
18 (j), by violating Health and Safety Code sections 11165, subdivision (d), in that from on or about
19 October 21, 2009, until approximately April 2011, INE failed to insure that FAP transmit to the
20 Department of Justice for the Controlled Substances Utilization Review and Evaluation System
21 (CURES) dispensing data for Schedule II, Schedule III, and Schedule IV controlled substances on
22 a weekly basis. The circumstances are further explained in paragraphs 25-30, above.

23 **SIXTH CAUSE FOR DISCIPLINE**

24 **(Unprofessional Conduct-Filled Prescriptions with Significant Irregularity)**
25 **(Bus. & Prof. § 4301, subd. (o) and 16 CCR § 1761, subd. (a))**

26 36. Respondent INE, as Pharmacist-in-Charge of FAP, has subjected her Pharmacist
27 License to disciplinary action under Code section 4301, subdivision (o), because she violated
28 California Code of Regulations, title 16, section 1761, subdivision (a), in that pharmacists and
staff at FAP filled over 350 irregular prescriptions. Many of these prescription documents order
an unusually large amount of controlled substances for "as-needed" purposes. The circumstances
are further explained in paragraphs 25-30, above.

1 **SEVENTH CAUSE FOR DISCIPLINE**
2 (Unprofessional Conduct-Failure to Verify Legitimacy of Prescriptions for Controlled Substances)
3 (Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11153, subd. (a))

4 37. Respondent INE, as Pharmacist-in-Charge of FAP, has subjected her Pharmacist
5 License to disciplinary action under Code section 4301, subdivision (j), because she violated
6 Health and Safety Code section 11153, subdivision (a), in that pharmacists and staff at FAP failed
7 to uphold their corresponding responsibility of verifying the patient's legitimate medical purposes
8 for controlled substances. The pharmacists and staff at FAP breached their corresponding
9 responsibility by furnishing unusually large quantities of controlled substances to patients without
10 confirming with the supposed prescribers the legitimacy of the prescriptions. In fact, the
11 pharmacists and staff at FAP filled approximately 350 fraudulent prescriptions, many of which
12 were for unusually large quantities of controlled substances. The circumstances are further
13 explained in paragraphs 25-30, above.

14 **EIGHTH CAUSE FOR DISCIPLINE**
15 (Unprofessional Conduct-Dispensed Controlled Substances on Invalid Prescriptions)
16 (Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11164)

17 38. Respondent INE, as Pharmacist-in-Charge of FAP, has subjected her Pharmacist
18 License to disciplinary action under Code section 4301, subdivision (j), because she violated
19 Health and Safety Code section 11164, in that the pharmacists and staff at FAP furnished
20 controlled substances to patients based on invalid controlled substances prescription forms.
21 Specifically, during May 2011, FAP filled five prescription documents that lacked several
22 required security measures. The circumstances are further explained in paragraphs 25-30, above.

23 **CAUSES OF DISCIPLINE AGAINST RESPONDENT ICE**

24 **NINTH CAUSE FOR DISCIPLINE**
25 (Unprofessional Conduct-Filled Prescriptions with Significant Irregularity)
26 (Bus. & Prof. § 4301, subd. (o) and 16 CCR § 1761, subd. (a))

27 39. Respondent Iroegbu Clifford Esomonu (ICE), as a pharmacist of FAP, has subjected
28 his Pharmacist License to disciplinary action under Code section 4301, subdivision (o), because
he violated California Code of Regulations, title 16, section 1761, subdivision (a), in that
Respondent ICE filled prescriptions with significant irregularity. Many of the prescriptions order
unusually large quantities of controlled substances including oxycodone, hydrocodone with

1 acetaminophen, alprazolam and promethazine with codeine. The circumstances are further
2 explained in paragraphs 25-30, above.

3 **TENTH CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct-Failure to Verify Legitimacy of Prescriptions for Controlled Substances)**
5 **(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11153, subd. (a))**

6 40. Respondent ICE, as a pharmacist of FAP, has subjected his Pharmacist License to
7 disciplinary action under Code section 4301, subdivision (j), because he violated Health and
8 Safety Code section 11153, subdivision (a), in that, on numerous occasions, Respondent ICE
9 failed to verify the legitimate medical purpose for prescribing an unusually large quantity of
10 controlled substances. In fact, FAP's drug dispensing printouts show that Respondent ICE filled
11 approximately 350 fraudulent prescriptions, many which were for unusually large quantities of
12 controlled substances. The circumstances are further explained in paragraphs 25-30, above.

13 **ELEVENTH CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct-Dispensed Controlled Substances on Invalid Prescriptions)**
15 **(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11164)**

16 41. Respondent ICE, as a pharmacist of FAP, has subjected his Pharmacist License to
17 disciplinary action under Code section 4301, subdivision (j), in that Respondent ICE dispensed
18 controlled substances based on invalid prescription documents. Specifically, Respondent ICE's
19 initials were on the pharmacy dispensing printouts for those five invalid prescription documents.
20 The circumstances are further explained in paragraphs 25-30 above.

21 **TWELFTH CAUSE FOR DISCIPLINE**

22 **(Unprofessional Conduct-Use of Alcohol in a Dangerous Manner)**
23 **(Bus. & Prof. § 4301, subd. (h))**

24 42. Respondent ICE has subjected his Pharmacist License to disciplinary action under
25 Code section 4301, subdivision (h), in that on or about April 23, 2012, Respondent ICE was
26 arrested by a San Leandro police officer for driving under the influence of alcohol. The
27 circumstances are as follows:

28 43. On or about 12:25 a.m. on April 23, 2012, a San Leandro police officer stopped
Respondent's vehicle for a violation of Vehicle Code section 21650 (a vehicle on the highway
must be driven on the right side of the road). The officer approached Respondent's vehicle and
observed symptoms of intoxication including red watery eyes, alcoholic odor emitting from

1 Respondent's breath and slurred speech. Respondent failed a series of field sobriety tests. Two
2 breath tests from Respondent at approximately 1:19 a.m. and 1:22 a.m. revealed a blood alcohol
3 concentration (BAC) of .13.

4 **THIRTEENTH CAUSE FOR DISCIPLINE**
5 **(Unprofessional Conduct-Conviction)**
6 **(Bus. & Prof. §§ 490 & 4301, subd. (I))**

7 44. Respondent ICE has subjected his Pharmacist License to disciplinary action under
8 Code section 4301, subdivision (I), and section 490, in that Respondent ICE was convicted of a
9 crime substantially related to the qualifications, functions and duties of a pharmacist. The
10 circumstances are as follows:

11 45. On or about December 13, 2012, in a criminal matter entitled *People of the State of*
12 *California v. Iroegbu Clifford Esomonu*, in the Alameda County Superior Court, Respondent ICE
13 was convicted upon plea of no contest to the violation of Vehicle Code section 23152,
14 subdivision (b) (driving with a blood alcohol level of .08 or more), a misdemeanor. Respondent
15 ICE was ordered to serve 15 days in county jail. Respondent was placed on probation for 3 years
16 with various conditions including completing a Drinking Driver Program and paying various fees
17 and fines.

18 **DISCIPLINE CONSIDERATIONS**

19 46. To determine the degree of discipline, if any, to be imposed on Respondent ICE,
20 Complainant alleges that on or about December 28, 2010, in a prior action, the Board of
21 Pharmacy issued Citation Number CI 2010 45230 and ordered Respondent ICE to pay a \$2,500
22 fine for violating sections 4301, subdivisions (h) and (I) [arrest for driving under the influence
23 and conviction on the lesser charge of wet/reckless]. That Citation is now final and is
24 incorporated by reference as if fully set forth.

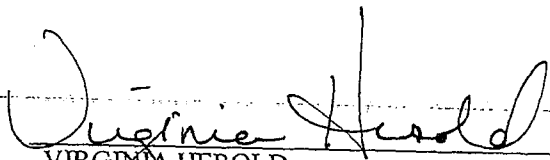
25 **PRAYER**

26 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
27 Accusation, and that following the hearing, the Board of Pharmacy issue a decision:

28 1. Revoking or suspending Pharmacy License Number PHY 50064, issued to
Fruitvale Avenue Pharmacy Inc.;

- 1 2. Revoking or suspending Pharmacist License Number RPH 53516, issued to
2 Ijeoma Nwanyiocha Esomonu, Fruitvale Avenue Pharmacy Inc.;
- 3 3. Revoking or suspending Pharmacist License Number RPH 53445, issued to
4 Iroegbu Clifford Esomonu, Fruitvale Avenue Pharmacy Inc.;
- 5 4. Ordering Fruitvale Avenue Pharmacy Inc., Ijeoma Nwanyiocha Esomonu and
6 Iroegbu Clifford Esomonu to pay the Board of Pharmacy the reasonable costs of the investigation
7 and enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 8 5. Taking such other and further action as deemed necessary and proper.
- 9

10
11 DATED: 9/6/13


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

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