

1 KAMALA D. HARRIS
Attorney General of California
2 ARMANDO ZAMBRANO
Supervising Deputy Attorney General
3 LINDA L. SUN
Deputy Attorney General
4 State Bar No. 207108
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-6375
6 Facsimile: (213) 897-2804
Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 5037

11 **OB INTERNATIONAL d.b.a.**
12 **OB MEDICAL SUPPLIES & PHARMACY;**
13 **GREGORY IMOCHI**
(President and Pharmacist-in-Charge)
14 **671 W. 2nd Street**
San Bernardino, CA 92410

A C C U S A T I O N

15 **Permit No. PHY 46742**

16 **GREGORY O. IMOCHI**
17 **P. O. Box 110**
San Bernardino, CA 92402

18 **Pharmacist License No. RPH 42948**

19 Respondents.

20
21 Complainant alleges:

22 **PARTIES**

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

25 2. On or about June 1, 2004, the Board issued Permit Number PHY 46742 to OB
26 International d.b.a. OB Medical Supplies & Pharmacy ("Respondent Pharmacy"), with Gregory O.
27 Imoohi ("Respondent Imoohi") as President and Pharmacist-in-Charge. The Permit was in full
28

1 force and effect at all times relevant to the charges brought herein and will expire on June 1, 2014,
2 unless renewed.

3 3. On or about June 1, 2004, the Board issued Original Pharmacist License Number RPH
4 42948 to Respondent Imoohi. The License was in full force and effect at all times relevant to the
5 charges brought herein and will expire on October 31, 2014, unless renewed.

6 **JURISDICTION**

7 4. This Accusation is brought before the Board under the authority of the following laws.
8 All section references are to the Business and Professions Code unless otherwise indicated.

9 5. Section 4300 of the Code states:

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

11 6. Section 4300.1 of the Code states:

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

17 **STATUTORY PROVISIONS**

18 7. Section 4301 of the Code states:

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

22

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

25

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

28

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

5 8. Section 4022 of the Code states:

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

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

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

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

15 9. Health and Safety Code section 11153 provides:

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

26 ///

27 ///

28 ///

1 **REGULATORY PROVISION**

2 10. California Code of Regulations, title 16 (“Regulations”), section 1761 provides:

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

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

10 **COST RECOVERY PROVISION**

11 11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
12 administrative law judge to direct a licentiate found to have committed a violation or violations of
13 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
14 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
15 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
16 included in a stipulated settlement.

17 **DRUG CLASSIFICATIONS**

18 12. Roxicodone, brand name for oxycodone 30 mg, is a Schedule II controlled substance
19 and a dangerous drug pursuant to Code section 4022. It is used for the relief of pain.

20 13. Xanax, brand name for alprazolam 2mg, is a Schedule IV controlled substance and a
21 dangerous drug pursuant to Code section 4022. It is used for the relief of anxiety.

22 14. Norco, brand name for hydrocodone/acetaminophen 10/325 mg, is a Schedule III
23 controlled substance and a dangerous drug pursuant to Code section 4022. It is used for the relief
24 of pain.

25 15. Phenergan with Codeine, brand name for promethazine with codeine, is a Schedule V
26 controlled substance and a dangerous drug pursuant to Code section 4022. It is used for the relief
27 of cough.

28 ///

BOARD INVESTIGATION

1
2 16. Pursuant to a series of investigations which occurred on March 2, 2013, May 10,
3 2013, and July 11, 2013, the computer records provided by Respondent Pharmacy for the period
4 01/03/2011 to 07/13/2013 revealed the following:

5 a. Respondent Pharmacy dispensed a total of 19,887 prescriptions. 85.18% were for
6 non-controlled substances, and 14.82% were for controlled substances.

7 b. Of all the controlled substances dispensed (Schedules II to V), prescriptions from Dr.
8 C.A. and Dr. D.C. were the highest. Over 50% of all Schedule II medications were written by
9 these two physicians, which were 5.5 times greater than the next prescriber.

10 c. Respondent Pharmacy's dispensing ratio of oxycodone 30 mg was greatly
11 disproportionate when compared with neighboring pharmacies – about 13 times greater than its
12 closest competitor in terms of prescriptions filled, and 22 times greater in terms of total tablets
13 dispensed. However, based on the total number of controlled substance prescriptions filled for
14 the queried time period, Respondent Pharmacy dispensed 6.7 times less prescriptions when
15 compared to one neighboring pharmacy and 8 times less when compared to another neighboring
16 pharmacy. Yet, Respondent Pharmacy dispensed a quantity of oxycodone 30 mg which exceeds
17 these major pharmacies by the tens of thousands.

18 d. Respondent Pharmacy dispensed more alprazolam 2 mg (in terms of tablets) than its
19 neighboring pharmacies.

20 17. Dr. C.A.'s Prescriber Profile reveals the following:

21 a. A review of Respondent Pharmacy's overall practice shows a more even distribution
22 of payment methods for all prescriptions, but 100% of all prescriptions dispensed under Dr. C.A.
23 were paid for without the use of insurance.

24 b. Patients who purchased 180 oxycodone 30 mg without the use of insurance paid
25 between \$338.99 to \$900 per prescription.

26 c. According to Respondent Imoohi, Dr. C.A. is a pain specialist. However, of the 276
27 prescriptions written by Dr. C.A., no prescriptions were written for gabapentin (Neurontin),
28 pregabalin (Lyrica), and duloxetine (Cymbalta), which are all common medications indicated for

1 the treatment of nerve pain, and only 5 were written for anti-inflammatory medications (ibuprofen,
2 meloxicam, celecoxib/Celebrex).

3 d. On some days, the sequential numbering of RX numbers and the time each
4 prescription was processed suggested that groups of patients arrived at Respondent Pharmacy or 1
5 person provided prescriptions for other patients at or about the same time.

6 e. On multiple occasions, multiple patients received the exact same prescription (same
7 medication, same dose, same directions, and same quantity) from an out-of-area prescriber.

8 f. Selected data shows that all of the alprazolam prescriptions were written for 2 mg (the
9 highest dose in immediate release form), #90, 1 tablet by mouth twice daily, with 0 refills.

10 g. Selected data shows that nearly all of the oxycodone prescriptions were written for 30
11 mg (the highest dose in immediate release form), #180, 1 tablet by mouth every 4 hours, with 0
12 refills.

13 h. The patients' age range was from birth year 1946 to 1992.

14 i. Selected samples show that Dr. C.A.'s patients drove an average of 141.7 miles to
15 obtain medications at Respondent Pharmacy. The shortest distance was 137.7 miles and the
16 longest was 145.5 miles.

17 18. Dr. D.C.'s Prescriber Profile reveals the following:

18 a. A review of Respondent Pharmacy's overall practice shows a more even distribution
19 of payment methods for all prescriptions, but 99.47% of all prescriptions dispensed under Dr. D.C.
20 were paid for without the use of insurance. 100% of controlled substances were paid for without
21 the use of insurance.

22 b. Patients who purchased 180 oxycodone 30 mg without the use of insurance paid
23 between \$338.99 to \$900 per prescription.

24 c. According to Respondent Imoohi, Dr. D.C. is a also pain specialist. However, of the
25 376 prescriptions written by Dr. D.C., 2 prescriptions were written for gabapentin (Neurontin), 0
26 for pregabalin (Lyrica), and 0 for duloxetine (Cymbalta), which are all common medications
27 indicated for the treatment of nerve pain, and only 1 was written for anti-inflammatory medications
28 (ibuprofen meloxicam, celecoxib/Celebrex).

1 d. On some days, the sequential numbering of RX numbers and the time each
2 prescription was processed suggested that groups of patients arrived at Respondent Pharmacy or 1
3 person provided prescriptions for other patients at or about the same time.

4 e. On multiple occasions, multiple patients received the exact same prescription (same
5 medication, same dose, same directions, and same quantity) from an out-of-area prescriber.

6 f. Selected data shows that nearly all of the oxycodone prescriptions were written for 30
7 mg (the highest dose in immediate release form), #150 or #180, 1 tablet by mouth five times a day
8 or 2 tablets by mouth three times a day, with 0 refills.

9 g. The patients' age range was from birth year 1932 to 1984.

10 h. Selected samples show that Dr. D.C.'s patients drove an average of 95.3 miles to
11 obtain medications at Respondent Pharmacy. The shortest distance was 91.1 miles and the longest
12 was 100.6 miles.

13 CAUSE FOR DISCIPLINE

14 **(Failure to Assume Corresponding Responsibility to Validate Legitimacy of Prescriptions)**

15 19. Respondents Pharmacy and Imoohi are subject to disciplinary action under
16 Code section 4301, subdivisions (d) and (j) for violating Health and Safety Code section 11153,
17 subdivision (a), and Code section 4301, subdivision (o), for violating Regulations sections 1761, in
18 that between 01/03/2011 to 07/13/2013, Respondents failed to assume corresponding
19 responsibility by failing to validate the legitimacy of the prescriptions and/or reviewing the
20 patients' drug therapy, by dispensing prescriptions without regard to objective factors, and/or by
21 dispensing irregular/uncertain prescriptions. Complainant refers to and incorporates all the
22 allegations contained in paragraphs 16-18, as though set forth fully.

23 DISCIPLINE CONSIDERATIONS

24 20. To determine the degree of discipline, if any, to be imposed on Respondent Pharmacy,
25 Complainant alleges that on or about September 11, 2013, in a prior action, the Board of
26 Pharmacy issued Citation Number CI 2011 49326 and ordered Respondent Pharmacy to pay a fine
27 of \$500 for violation of Regulations sections 1714.1, subdivision (b) and 1714, subdivision (e)
28 [temporary absence of a pharmacist; operational standards and security; pharmacy responsible for

1 pharmacy security], and Regulations section 1715 [self-assessment of a pharmacy by the
2 pharmacist-in-charge.] That Citation is now final and is incorporated by reference as if fully set
3 forth.

4 21. To determine the degree of discipline, if any, to be imposed on Respondent Imoohi,
5 Complainant alleges that on or about September 11, 2013, in a prior action, the Board of
6 Pharmacy issued Citation Number CI 2013 58110 and ordered Respondent Imoohi to pay a fine of
7 \$1,000 for violation of Regulations sections 1714.1, subdivision (b) and 1714 subdivision (e)
8 [temporary absence of a pharmacist; operational standards and security; pharmacy responsible for
9 pharmacy security], and Regulations section 1715 [self-assessment of a pharmacy by the
10 pharmacist-in-charge.] That Citation is now final and is incorporated by reference as if fully set
11 forth.

12 **PRAYER**

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

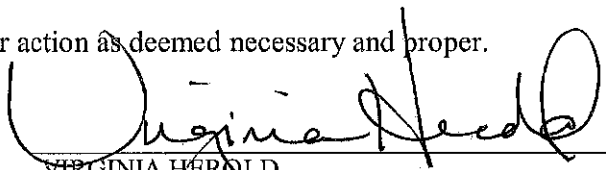
15 1. Revoking or suspending Permit Number PHY 46742, issued to OB International d.b.a.
16 OB Medical Supplies & Pharmacy; with Gregory O. Imoohi as President and Pharmacist-in-
17 Charge;

18 2. Revoking or suspending Original Pharmacist License Number RPH 42948 issued to
19 Gregory O. Imoohi;

20 3. Ordering OB International d.b.a. OB Medical Supplies & Pharmacy, and Gregory O.
21 Imoohi to pay the Board of Pharmacy, jointly and severally, the reasonable costs of the
22 investigation and enforcement of this case, pursuant to Code section 125.3;

23 4. Taking such other and further action as deemed necessary and proper.

24 DATED: 6/14/14

25 
26 VIRGINIA HEROLD
27 Executive Officer
28 Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

LA2014510967/51496267.doc