

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 NICOLE R. TRAMA
Deputy Attorney General
4 State Bar No. 263607
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2143
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11
12 Case No. 5059

13 In the Matter of the Accusation Against:

14 **D & R PHARMACY, INC.,**
DBA PICO UNION PHARMACY
15 **1273 S. Union Ave**
Los Angeles, CA 90015

A C C U S A T I O N

16 **Pharmacy Permit No. PHY 45340**

17 **and**

18 **DANA MADIEVSKY**
11357 Dona Lisa Drive
Studio City, CA 91604

19 **Pharmacist License No. RPH 48684**

20 Respondents.
21

22
23 Complainant alleges:

24 **PARTIES**

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

27 2. On or about August 28, 2001, the Board of Pharmacy issued Permit Number 45340 to
28 D & R Pharmacy, Inc., dba Pico Union Pharmacy (Respondents). The Permit was in full force

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

3 3. On or about April 23, 1996, the Board of Pharmacy issued Pharmacist License No.
4 RPH 48684 to Dana Madievsky (Respondent). The Pharmacist License was in full force and
5 effect at all times relevant to the charges brought herein and will expire on July 31, 2015, unless
6 renewed.

7 JURISDICTION

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

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

14 6. Section 4300(a) of the Code provides that every license issued by the Board may be
15 suspended or revoked.

16 7. Section 4300.1 of the Code states:

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

21 STATUTORY PROVISIONS

22 8. Section 4022 of the Code states:

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

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

27 (b) Any device that bears the statement: "Caution: federal law restricts this
28 device to sale by or on the order of a _____," "Rx only," or words of similar import,

1 the blank to be filled in with the designation of the practitioner licensed to use or
2 order use of the device.

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

5 9. Section 4113, subdivision (c) of the Code states: "The pharmacist-in-charge shall be
6 responsible for a pharmacy's compliance with all state and federal laws and regulations
7 pertaining to the practice of pharmacy."

8 10. Section 4301 of the Code states:

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

13

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

19

20 11. Section 4333 of the Code states, in pertinent part, that all prescriptions filled by a
21 pharmacy and all other records required by Section 4081 shall be maintained on the premises and
22 available for inspection by authorized officers of the law for a period of at least three years. In
23 cases where the pharmacy discontinues business, these records shall be maintained in a
24 board-licensed facility for at least three years.

25 REGULATORY PROVISIONS

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

27 (a) No pharmacist shall compound or dispense any prescription which
28 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.

1 **COST RECOVERY**

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

8 **DRUGS**

9 14. Amoxicillin, is a dangerous drug pursuant to Business and Professions Code section
10 4022.

11 15. Bactrim DS, a brand name for trimethoprim/sulfam ethoxazole, is a dangerous drug
12 pursuant to Business and Professions Code section 4022.

13 16. Keflex, a brand name for cephalexin, is a dangerous drug pursuant to Business and
14 Professions Code section 4022.

15 17. Lortab, a brand name for hydrocodone, is a Schedule III controlled substance
16 pursuant to Health and Safety Code section 11056, subdivision (e), and a dangerous drug
17 pursuant to Business and Professions Code section 4022.

18 18. Norco, a brand name for acetaminophen and hydrocodone bitartrate, is a Schedule III
19 controlled substance pursuant to Health and Safety Code section 11056, subdivision (e), and a
20 dangerous drug pursuant to Business and Professions Code section 4022.

21 19. Phenergan/Codeine, the brand name for Promethazine with Codeine Syrup is a
22 Schedule V controlled substance under Health and Safety Code section 11058 and is a dangerous
23 drug pursuant to Business and Professions Code section 4022.

24 **FACTUAL ALLEGATIONS**

25 20. At all times mentioned herein and since August 28, 2001, Dana Madievsky
26 (Respondent) has been the President and Pharmacist-in-Charge (PIC) of D & R Pharmacy, Inc.,
27 dba Pico Union Pharmacy (Respondent) located in Los Angeles, California.

1 21. From August 1, 2010 to June 10, 2011, Respondents dispensed 596 fraudulent
2 prescriptions to patients allegedly written by Dr. D.B. Of the 596 fraudulent prescriptions, 16
3 prescriptions were for hydrocodone products, 290 prescriptions were for Phenergan with
4 Codeine, and 290 prescriptions were for antibiotics (Keflex 500 mg, Bactrim DS, and
5 Amoxicillin 500 mg). All of the hydrocodone prescriptions (Lortab 10/500 mg and Norco 10/325
6 mg) were dispensed with the same directions to take one tablet every six to eight hours and in the
7 same total quantity of one hundred tablets. All of the 290 prescriptions for Phenergan with
8 Codeine showed the same directions (take 1 teaspoon every six to eight hours) and the same total
9 quantity (1 pint) and were prescribed on the same prescription document as the antibiotic. All of
10 the prescriptions for antibiotics showed the same total quantity (10 capsules).

11 22. Dr. D.B. did not write or authorize any of the fraudulent prescriptions. None of the
12 patients who were dispensed fraudulent prescriptions were patients of Dr. D.B. or were patients at
13 the clinic where Dr. D.B. worked. Respondents never contacted Dr. D.B. or the clinic to verify
14 the fraudulent prescriptions prior to dispensing the drugs to patients.

15 23. During the Board of Pharmacy's investigation, copies of the original fraudulent
16 prescriptions were obtained from Respondents. The majority of the prescriptions were noted by
17 Respondents as "verified with Michelle and Akisha" on the back of the prescription documents.
18 However, nobody by the name "Michelle" or "Akisha" were employed by Dr. D.B. or the clinic
19 where Dr. D.B. worked. Dr. D.B. confirmed that the clinic would not verify these prescriptions
20 because the clinic never saw those patients.

21 24. Respondents were also unable to produce the original prescriptions for the following
22 six prescriptions that were dispensed: RX No. 1559731 for Bactrim dispensed to D.J.; RX No.
23 1559732 for Phenergan with Codeine dispensed to D.J.; RX No. 1566999 for Phenergan with
24 Codeine dispensed to B.A.; RX No. 1567000 for Bactrim dispensed to B.A.; RX No. 1555690 for
25 Phenergan with Codeine dispensed to S.M.; and RX No. 1555691 for Bactrim dispensed to S.M.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Dispensing Erroneous, Irregular, Uncertain, or Altered Prescriptions)**

3 25. Respondents are subject to disciplinary action for unprofessional conduct under Code
4 section 4301, subdivision (o), for violation of California Code of Regulations section 1761(a) for
5 dispensing prescriptions which contained significant errors, omissions, irregularities,
6 uncertainties, ambiguities or alterations, and failing to verify the prescriptions with the prescriber,
7 as set forth in paragraphs 20 through 24, which are incorporated herein by reference.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Failure to Maintain Prescription Records)**

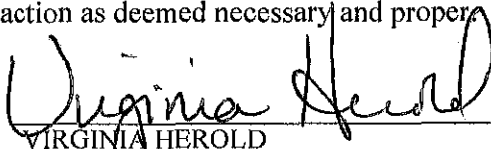
10 26. Respondents are subject to disciplinary action for unprofessional conduct under Code
11 section 4301, subdivision (o), for violation of Code section 4333 failing to maintain prescription
12 records, as set forth in paragraphs 20 through 24, which are incorporated herein by reference.

13 **PRAYER**

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

- 16 1. Revoking or suspending Permit Number 45340, issued to D & R Pharmacy, Inc., dba
17 Pico Union Pharmacy;
- 18 2. Revoking or suspending Pharmacist License Number RPH 48684, issued to Dana
19 Madievsky;
- 20 3. Ordering Respondents to pay the Board of Pharmacy the reasonable costs of the
21 investigation and enforcement of this case, pursuant to Business and Professions Code section
22 125.3;
- 23 4. Taking such other and further action as deemed necessary and proper.

24 DATED: 8/16/14


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

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