

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 DESIREE I. KELLOGG
Deputy Attorney General
4 State Bar No. 126461
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2996
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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. 5242

12 **OBERLIN MEDICAL SUPPLY &**
13 **SERVICE CORP.**

14 **9883 Pacific Heights Blvd., #B**
San Diego, CA 92121

A C C U S A T I O N

15 **Wholesaler Permit No. WLS 3600**

16 **MAHER D. IDRIS**
17 **9883 Pacific Heights Blvd., #B**
San Diego, CA 92121

18 **Designated Representative License No.**
19 **EXC 15125**

20 Respondents.

21
22 Complainant alleges:

23 **PARTIES**

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

26 2. On or about August 30, 1999, the Board of Pharmacy issued Wholesaler Permit
27 Number WLS 3600 to Oberlin Medical Supply & Service Corp. (Respondent Oberlin Medical
28

1 Supply & Service Corp.). The Wholesaler Permit expired on August 1, 2012, and was cancelled
2 on July 21, 2014.

3 3. On or about August 30, 1999, the Board of Pharmacy issued Designated
4 Representative License No. EXC 15125 to Maher D. Idriss (Respondent Maher Idriss.) The
5 Designated Representative License expired on August 1, 2012, and was cancelled on June 25,
6 2013.

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

23 8. Section 4307(a) of the Code states that:

24 Any person who has been denied a license or whose license has been revoked or
25 is under suspension, or who has failed to renew his or her license while it was under
26 suspension, or who has been a manager, administrator, owner member, officer,
27 director, associate, or partner of any partnership, corporation, firm, or association
28 whose application for a license has been denied or revoked, is under suspension or
has been placed on probation, and while acting as the manger, administrator, owner,
member, officer, director, associate, or partner had knowledge or knowingly
participated in any conduct for which the license was denied, revoked, suspended, or
placed on probation, shall be prohibited from serving as a manger, administrator,
owner, member, officer, director, associate, or partner of a licensee as follows:

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

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

3 **STATUTORY PROVISIONS**

4 9. Section 490 of the Code provides, in pertinent part, that a board may suspend or
5 revoke a license on the ground that the licensee has been convicted of a crime substantially related
6 to the qualifications, functions, or duties of the business or profession for which the license was
7 issued.

8 10. Section 493 of the Code states:

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

19 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,'
20 and 'registration.'

21 11. Section 4022 of the Code states:

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

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

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

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

12. Section 4043 of the Code, in pertinent part, defines "wholesaler" to mean and include
"a person who acts as a wholesale merchant, broker, jobber, customs broker, reverse distributor,
agent, or a nonresident wholesaler, who sells for resale, or negotiates for distribution, or takes
possession of, any drug or device included in Section 4022."

1 13. Section 4053(a) of the Code states:

2 Notwithstanding Section 4051, the board may issue a license as a designated
3 representative to provide sufficient and qualified supervision in a wholesaler or
4 veterinary food-animal drug retailer. The designated representative shall protect the
5 public health and safety in the handling, storage, and shipment of dangerous drugs
6 and dangerous devices in the wholesaler or veterinary food-animal drug retailer.

7 14. Section 4160 of the Code provides, in pertinent part, that a wholesaler license shall be
8 required for a person or entity to act as a wholesaler, that every wholesaler shall be supervised or
9 managed by a Designated Representative in Charge, and that the Designated Representative in
10 Charge shall be responsible for the wholesaler's compliance with state and federal laws.

11 15. Section 4301 of the Code states in pertinent part:

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

16 ...

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

19 ...

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

...

(o) Violating or attempting to violate, directly or indirectly, or assisting in or

1 abetting the violation of or conspiring to violate any provision or term of this chapter
2 or of the applicable federal and state laws and regulations governing pharmacy,
3 including regulations established by the board or any other state or federal regulatory
4 agency.

5 ...

6 16. Section 4302 of the Code states:

7 The board may deny, suspend, or revoke any license of a corporation where
8 conditions exist in relation to any person holding 10 percent or more of the corporate
9 stock of the corporation, or where conditions exist in relation to any officer or director
10 of the corporation that would constitute grounds for disciplinary action against a
11 licensee.

12 17. Sections 4305.5 (a) and (c) of the Code state:

13 (a) A person who has obtained a license to conduct a wholesaler or veterinary
14 food-animal drug retailer, shall notify the board within 30 days of the termination of
15 employment of the designated representative-in-charge. Failure to notify the board
16 within the 30-day period shall constitute grounds for disciplinary action.

17 ...

18 (c) A designated representative-in-charge of a wholesaler or veterinary food-
19 animal drug retailer, who terminates his or her employment at the licensee, shall
20 notify the board within 30 days of the termination of employment. Failure to notify
21 the board within the 30-day period shall constitute grounds for disciplinary action.

22 18. Health and Safety Code section 111330 provides that any drug or device is
23 misbranded if its labeling is false or misleading in any particular.

24 19. Health and Safety Code section 111430 provides that a drug or device is misbranded
25 if it was manufactured in an establishment not duly registered with the Secretary of Health,
26 Education, and Welfare of the United States.

27 20. Health and Safety Code section 111440 provides that it is unlawful for any person to
28 manufacture, sell, deliver, hold, or offer for sale any drug or device that is misbranded.

29 21. Health and Safety Code section 111450 provides that it is unlawful for any person to
30 receive in commerce any drug or device that is misbranded or to deliver or proffer for delivery
31 any drug or device.

32 REGULATORY PROVISIONS

33 22. Title 16, California Code of Regulations, section 1708.2, states:

34 Any permit holder shall contact the board prior to transferring or selling any
35 dangerous drugs, devices or hypodermics inventory as a result of termination of

1 business or bankruptcy proceedings and shall follow official instructions given by the
2 board applicable to the transaction.

3 23. Title 16, California Code of Regulations, section 1769 states:

4

5 (b) When considering the suspension or revocation of a facility or a
6 personal license on the ground that the licensee or the registrant has been convicted of
7 a crime, the board, in evaluating the rehabilitation of such person and his present
8 eligibility for a license will consider the following criteria:

9 (1) Nature and severity of the act(s) or offenses(s).

10 (2) Total criminal record.

11 (3) The time that has elapsed since commission of the act(s) or offense(s).

12 (4) Whether the licensee has complied with all terms of parole, probation,
13 restitution or any other sanctions lawfully imposed against the licensee.

14 (5) Evidence, if any, of rehabilitation submitted by the licensee.

15 24. Title 16, California Code of Regulations, section 1770 states:

16 For the purpose of denial, suspension, or revocation of a personal or
17 facility license pursuant to Division 1.5 (commencing with Section 475) of the
18 Business and Professions Code, a crime or act shall be considered substantially
19 related to the qualifications, functions or duties of a licensee or registrant if to a
20 substantial degree it evidences present or potential unfitness of a licensee or registrant
21 to perform the functions authorized by his license or registration in a manner
22 consistent with the public health, safety, or welfare.

23 COST RECOVERY

24 25. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
25 administrative law judge to direct a licentiate found to have committed a violation or violations of
26 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
27 enforcement of the case.

28 FACTUAL ALLEGATIONS

29 26. At all times referenced herein, Respondent Maher Idriss was the Designated
30 Representative-in-Charge (DRIC) of Respondent Oberlin Medical Supply & Service Corp.
31 Respondent Maher Idriss held one hundred (100) percent of the corporate stock of Respondent
32 Oberlin Medical Supply & Service Corp. and was the Chief Executive Officer of Respondent
33 Oberlin Medical Supply & Service Corp.

1 27. On or about October 21, 2013, in a criminal proceeding entitled *United States v.*
2 *Maher Idriss, et al.*, in United States District Court for the Central District of California, case
3 number 12CR1775-WQH, Respondent Maher Idriss was convicted on his plea of guilty, of
4 conspiracy to import merchandise contrary to law in violation of Title 18, United States Code,
5 section 371 (Count 1 of the Information.)

6 28. As a result of the conviction, on or about October 21, 2013, Respondent Maher Idriss
7 was granted three years supervised probation, ordered to be monitored for a period of eight
8 months in his residence (home detention) and ordered among other conditions, not to engage in
9 any "employment involving the sales or shipment of medication." Respondent Maher Idriss was
10 further ordered to pay all applicable fees and fines.

11 29. The facts that led to the conviction were that from May 1, 2006 to May 5, 2011,
12 Respondent Maher Idriss knowingly combined, conspired and agreed with others to knowingly
13 and willfully import merchandise, namely oncology drugs not approved for or intended for sale in
14 the United States. Internet pharmacies received orders for oncology drugs valued at more than \$7
15 million dollars, ordered those drugs from manufacturers in Turkey, Pakistan, India and the United
16 Kingdom and shipped them to Oberlin Medical Supply & Service Corp. Respondent Maher Idriss
17 then stored the foreign oncology drugs and shipped them to physicians within the United States,
18 with an invoice from Respondent Oberlin Medical Supply & Service Corp. providing the
19 appearance that the foreign oncology drugs were approved for use in the United States. After
20 receiving payment from the physicians, Respondent Maher Idriss wire transferred funds to the
21 foreign source of the drug supply in payment for the drugs and wire transferred funds to the
22 internet pharmacies, while keeping a portion of the proceeds for himself.

23 30. Respondent Oberlin Medical Supply & Service Corp. terminated its business
24 operations but did not file a Discontinuation of Business Form with the Board and did not notify
25 the Board within thirty days of the termination of the employment of the designated
26 representative-in-charge, Respondent Maher Idriss. Similarly, Respondent Maher Idriss did not
27 notify the Board within thirty days of the termination of his employment with Respondent Oberlin
28 Medical Supply & Service Corp.

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FIRST CAUSE FOR DISCIPLINE

(October 21, 2013 Conviction for Conspiracy to Import Merchandise Contrary to Law)

31. Respondents are subject to disciplinary action under sections 490, 4301(l) and 4302 of the Code in that Respondent Maher Idriss was convicted of a crime that is substantially related to the qualifications, duties and functions of a designated representative, as set forth in paragraphs 26 through 30, which are incorporated herein by reference.

SECOND CAUSE FOR DISCIPLINE

(Sold Misbranded Drugs)

32. Respondents are subject to disciplinary action under Code sections 4301(j) and 4302, for violating statutes regulating controlled substances and dangerous drugs, in that Respondent Maher Idriss sold misbranded drugs, as defined by Health & Safety Code sections 111330 and 111430 in violation of Health and Safety Code section 111440, as set forth in paragraphs 26 through 30, which are incorporated herein by reference.

THIRD CAUSE FOR DISCIPLINE

(Delivered or Proffered for Delivery Misbranded Drugs)

33. Respondents are subject to disciplinary action under Code sections 4301(j) and 4302, for violating statutes regulating controlled substances and dangerous drugs, in that Respondent Maher Idriss delivered or proffered for delivery misbranded drugs, as defined by Health & Safety Code sections 111330 and 111430 in violation of Health and Safety Code section 111450, as set forth in paragraphs 26 through 30, which are incorporated herein by reference.

FOURTH CAUSE FOR DISCIPLINE

(Failed to File Discontinuation of Business)

34. Respondents are subject to disciplinary action under Code section 4301(o), for violating California Code of Regulations, title 16, section 1708.2, in that they failed to file a Notice of Discontinuation of Business, as set forth in paragraphs 26 through 30 above, which are incorporated herein by reference.

1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Failed to Notify Board of Termination of Employment of DRIC)**

3 35. Respondent Oberlin Medical Supply & Service Corp. is subject to disciplinary action
4 under Code section 4301(o), for violating Business & Professions Code Section 4305.5(a), in that
5 it failed to notify the Board within thirty days of the termination of employment of the designated
6 representative-in-charge, as set forth in paragraphs 26 through 30 above, which are incorporated
7 herein by reference.

8 **SIXTH CAUSE FOR DISCIPLINE**

9 **(Failed to Notify Board of Termination of Employment)**

10 36. Respondent Maher Idriss is subject to disciplinary action under Code section 4301(o),
11 for violating Business & Professions Code Section 4305.5(c), in that he failed to notify the Board
12 within thirty days of the termination of his employment at Respondent Oberlin Medical Supply &
13 Service Corp., as set forth in paragraphs 26 through 30 above, which are incorporated herein by
14 reference.

15 **OTHER MATTERS**

16 37. Pursuant to Code section 4307, if discipline is imposed on Wholesaler Permit
17 Number WLS 3600, issued to Respondent Oberlin Medical Supply & Service Corp. and
18 Respondent Maher Idriss while acting as the manager, administrator, owner, member, officer,
19 director, associate, or partner of Respondent Oberlin Medical Supply & Service Corp. had
20 knowledge of or knowingly participated in any conduct for which Wholesaler Permit Number
21 WLS 3600 was revoked, suspended or placed on probation, Respondent Maher Idriss shall be
22 prohibited from serving as a manager, administrator, owner, member, officer, director, associate,
23 or partner of a licensee for five years if Wholesaler Permit Number WLS 3600 is placed on
24 probation or until Wholesaler Permit Number WLS 3600 is reinstated if it is revoked.

25 38. Pursuant to Code section 4307, if discipline is imposed on Designated
26 Representative License No. EXC 15125 issued to Respondent Maher D. Idriss, Respondent
27 Maher Idriss shall be prohibited from serving as a manager, administrator, owner, member,
28 officer, director, associate, or partner of a licensee for five years if Designated Representative

1 License Number EXC 15125 is placed on probation or until Designated Representative License
2 Number EXC 115125 is reinstated if it is revoked.

3 39. Pursuant to Code section 4307, if discipline is imposed on Wholesaler Permit
4 License No. WLS 3600 issued to Respondent Oberlin Medical Supply & Service Corp.,
5 Respondent Oberlin Medical Supply & Service Corp. shall be prohibited from serving as a
6 manager, administrator, owner, member, officer, director, associate, or partner of a licensee for
7 five years if Wholesaler Permit Number WLS 3600 is placed on probation or until Wholesaler
8 Permit Number WLS 3600 is reinstated if it is revoked.

9 **PRAYER**

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

12 1. Revoking or suspending Wholesaler Permit Number WLS 3600, issued to Oberlin
13 Medical Supply & Service Corp.;

14 2. Revoking or suspending Designated Representative License Number EXC 15125 to
15 Maher D. Idriss;

16 3. Prohibiting Maher D. Idriss from serving as a manager, administrator, owner,
17 member, officer, director, associate, or partner of a licensee for five years if Wholesaler Permit
18 Number WLS 3600 is placed on probation or until Wholesaler Permit Number WLS 3600 is
19 reinstated if Wholesaler Permit Number WLS 3600 issued to Oberlin Medical Supply & Service
20 Corp. is revoked;

21 4. Prohibiting Maher D. Idriss from serving as a manager, administrator, owner,
22 member, officer, director, associate, or partner of a licensee for five years if Designated
23 Representative License Number EXC 15125 is placed on probation or until Designated
24 Representative License Number EXC 15125 is reinstated if Designated Representative License
25 Number EXC 15125 issued to Maher D. Idriss is revoked;

26 5. Prohibiting Oberlin Medical Supply & Service Corp. from serving as a manager,
27 administrator, owner, member, officer, director, associate, or partner of a licensee for five years if
28 Wholesaler Permit Number WLS 3600 is placed on probation or until Wholesaler Permit

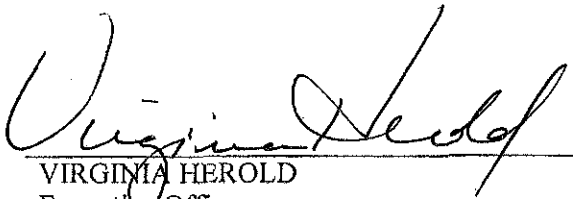
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Number WLS 3600 is reinstated if Wholesaler Permit Number WLS 3600 issued to Oberlin Medical Supply & Service Corp. is revoked;

6. Ordering Oberlin Medical Supply & Service Corp. and Maher D. Idriss 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;

7. Taking such other and further action as deemed necessary and proper.

DATED: 11/4/14



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

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