

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 JEFFREY M. PHILLIPS
Deputy Attorney General
4 State Bar No. 154990
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-6292
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5488

12 **CEDAR PHARMACY AND MEDICAL**
13 **SUPPLIES, INC.**
14 **PETER NNAMDI ONWUMERE,**
15 **PRESIDENT/PHARMACIST-IN-CHARGE**
16 **6767 N. Cedar Avenue**
17 **Fresno, CA 93710**

ACCUSATION

18 **Pharmacy Permit No. PHY 50262**

19 **and**

20 **PETER NNAMDI ONWUMERE**
21 **6767 N. Cedar Avenue**
22 **Fresno, CA 93710**

23 **Pharmacist License No. RPH 53590**

24 Respondents.

25 Complainant alleges:

26 **PARTIES**

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

1. On or about June 1, 2010, the Board issued Pharmacy Permit Number PHY 50262 to
Cedar Pharmacy and Medical Supplies, Inc. ("Respondent Cedar Pharmacy"), with Peter Nnamdi
Onwumere ("Respondent Onwumere") as president and pharmacist-in-charge. The pharmacy

1 permit was in full force and effect at all times relevant to the charges brought herein and will
2 expire on June 1, 2016, unless renewed.

3 3. On or about October 7, 2002, the Board issued Pharmacist License Number RPH
4 53590 to Respondent Onwumere. The pharmacist license was in full force and effect at all times
5 relevant to the charges brought herein and will expire on November 30, 2015, unless renewed.

6 **JURISDICTION**

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

9 5. Section 4300 states, in pertinent part:

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

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

13 (1) Suspending judgment.

14 (2) Placing him or her upon probation.

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

17 (4) Revoking his or her license.

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

19 6. Section 4300.1 states:

20 The expiration, cancellation, forfeiture, or suspension of a board-issued
21 license by operation of law or by order or decision of the board or a court of law, the
22 placement of a license on a retired status, or the voluntary surrender of a license by a
23 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.

24 7. Section 4301 states, in pertinent part:

25 The board shall take action against any holder of a license who is guilty
26 of unprofessional conduct. . . Unprofessional conduct shall include, but is not limited
to, any of the following. . .

27 (b) Incompetence

28 (c) Gross Negligence

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

2 ...

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

5 ...

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

9 8. Section 4075 of the Code states:

10 No prescription for a controlled substance transmitted by means of an oral or
11 electronically transmitted order shall be furnished to any person unknown and
unable to properly establish his or her identity. The board may by regulation
12 establish procedures to prevent unauthorized persons from receiving prescription
drugs furnished to a patient or a representative of the patient.

13 9. Section 4113 of the Code states:

14 (c) The pharmacist-in-charge shall be responsible for a pharmacy's
15 compliance with all state and federal laws and regulations pertaining to the practice of
pharmacy.

16 10. Section 4307(a) of the Code states that:

17 Any person who has been denied a license or whose license has been revoked or
18 is under suspension, or who has failed to renew his or her license while it was under
suspension, or who has been a manager, administrator, owner member, officer,
19 director, associate, or partner of any partnership, corporation, firm, or association
whose application for a license has been denied or revoked, is under suspension or
20 has been placed on probation, and while acting as the manger, administrator, owner,
member, officer, director, associate, or partner had knowledge or knowingly
21 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:

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

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

26 //

27 //

28 //

1 11. Title 21, Code of Federal Regulations, Section 1306.04, subsection (a), states:

2 A prescription for a controlled substance to be effective must be issued for a
3 legitimate medical purpose by an individual practitioner acting in the usual course
4 of his professional practice. The responsibility for the proper prescribing and
5 dispensing of controlled substances is upon the prescribing practitioner, but a
6 corresponding responsibility rests with the pharmacist who fills the prescription. An
7 order purporting to be a prescription issued not in the usual course of professional
8 treatment or in legitimate and authorized research is not a prescription within the
9 meaning and intent of section 309 of the Act (21 U.S.C. 829) and the person
10 knowingly filling such a purported prescription, as well as the person issuing it,
11 shall be subject to the penalties provided for violations of the provisions of law
12 relating to controlled substances.

13 12. Health and Safety Code section 11153, subdivision (a), states, in pertinent part:

14 A prescription for a controlled substance shall only be issued for a
15 legitimate medical purpose by an individual practitioner acting in the usual course of
16 his or her professional practice. The responsibility for the proper prescribing and
17 dispensing of controlled substances is upon the prescribing practitioner, but a
18 corresponding responsibility rests with the pharmacist who fills the prescription . . .

19 13. California Code of Regulations, title 16, section 1761, subdivision (b), states that
20 “[e]ven after conferring with the prescriber, a pharmacist shall not compound or dispense a
21 controlled substance prescription where the pharmacist knows or has objective reason to know
22 that said prescription was not issued for a legitimate medical purpose.”

23 COST RECOVERY

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

28 CONTROLLED SUBSTANCES AND DANGEROUS DRUGS

15 Oxycodone is a semisynthetic narcotic analgesic with multiple actions qualitatively
16 similar to those of morphine. It is a dangerous drug as defined in Business and Professions Code
17 section 4022, a schedule II controlled substance and narcotic as defined by section 11055,
18 subdivision (b)(1)(M) of the Health and Safety Code, and a Schedule II controlled substance as
19 defined by Section 1308.12 (b)(1) of Title 21 of the Code of Federal Regulations.

20 Hydrocodone, also known as hydrocodone bitartrate, is semisynthetic narcotic
21 analgesic and a Schedule III controlled substance as designated by Health and Safety Code

1 section 11056(e)(4). It is also sold under brand names Vicodin®, Norco®, Lortab®, and Lorcet®
2 that contains a combination of a narcotic pain reliever (hydrocodone) and a non-narcotic pain
3 reliever (acetaminophen).

4 17. Carisoprodol (brand name "Soma") is a dangerous drug within the meaning of
5 Business and Professions Code section 4022 and in 2012 became a Schedule IV controlled
6 substance under 21 Code of Federal Regulations, section 1308.14(c)(6)).

7 **STATEMENT OF FACTS**

8 18. On or about April 18, 2013, a Supervising Inspector of the Board and Board Inspector
9 R. P., performed an inspection of Respondent Cedar Pharmacy, accompanied by investigators
10 with the Drug Enforcement Administration ("DEA"). The DEA had previously identified
11 Respondent Cedar Pharmacy as having a high volume of controlled drug purchases. The Board
12 subsequently opened an audit investigation of the Respondent Cedar Pharmacy.

13 19. On or about September 27, 2013, the DEA provided R. P. with copies of two Cedar
14 Pharmacy register receipts, one dated February 24, 2012, and the other dated February 25, 2012.
15 The receipts were obtained by the Clovis Police Department during a traffic stop of D.B., a
16 known drug offender on probation. D.B. was found to be in possession of \$9,000 in cash and 34
17 prescription receipts, including two receipts from Respondent Cedar Pharmacy, identified above.
18 The receipt dated February 24, 2012, was incomplete (it was cut off at the bottom). The partial
19 receipt showed that 68 prescriptions had been purchased for 23 different patients in a single
20 transaction at a cost in excess of \$10,000. The second receipt dated February 25, 2012 showed 36
21 prescriptions for 12 different patients at a cost of \$5,863.70.

22 20. Board Inspector R. P. used the two register receipts from Respondent Cedar
23 Pharmacy to selected 32 patients to perform an audit. On or about October 21, 2013, R. P. sent a
24 letter to Respondent Onwumere, requesting patient profiles, original hardcopy prescriptions, and
25 a patient questionnaire to be filled out for each of the 32 patients identified in the Cedar Pharmacy
26 receipts.

27 21. On or about October 28, 2013, R. P. received the requested documents from
28 Respondent Onwumere's legal representative. The patient profiles did not contain the method of

1 payment.¹ R. P. noted in reviewing the patient profiles that Dr. Flores had prescribed oxycodone
2 30 mg, hydrocodone/APAP 10/325 mg (Norco), and carisoprodol 350 mg (Soma) in combination
3 for all of the patients.

4 22. On or about April 16, 2014, in the disciplinary action entitled "In the Matter of the
5 First Amended Accusation Against: Jose Luis Flores, M. D.", Case No. 08-2012-221342, Dr.
6 Flores surrendered his physician's and surgeon's certificate to the Medical Board of California.

7 23. On or about February 19, 2015, R. P. sent a letter to Respondent Onwumere,
8 requesting complete patient profiles for the 32 patients as well as drug utilization reports for
9 oxycodone 30 mg, hydrocodone/APAP 10/325 mg, and carisoprodol 350 mg for the years 2011
10 through 2014.

11 24. On or about February 26, 2015, R. P. received the requested documents from
12 Respondent Onwumere's legal representative, including a copy of a Memorandum of Agreement
13 between Cedar Pharmacy and the United States of America. Respondent Onwumere's legal
14 representative advised R. P. in a letter dated February 26, 2015 that the pharmacy was in the
15 process of making penalty payments for violations of the Controlled Substances Act, and will
16 have paid a total of \$600,000 by the end of one calendar year.

17 25. On or about March 9, 2015, the Office of the United States Attorney issued a release,
18 reporting that Cedar Pharmacy had agreed to pay \$1 million to settle claims that it failed to
19 properly record hundreds of transactions involving controlled substances, failed to maintain
20 complete and accurate records, and failed to follow prescription issuance guidelines.

21 26. R. P. determined based on her audit of the documentation provided by Respondents
22 Cedar Pharmacy and Onwumere that:

23 a. Between January 1, 2011 and January 21, 2013, the pharmacy had dispensed
24 approximately 12,923 controlled substances. Approximately 25% of the controlled substances
25 were prescribed by Dr. Flores, and approximately 96% of the prescriptions prescribed by Dr.
26 Flores were paid for in cash. Approximately 84% of the oxycodone 30 mg, 56% of the

27 ¹ Board Inspector R. P. subsequently obtained this payment information from Respondent
28 on or about February 26, 2015.

1 hydrocodone/APAP 10/325 mg, and 67% of the carisoprodol 350 mg sold by the pharmacy were
2 prescribed by Dr. Flores.

3 b. Between January 1, 2011 and December 31, 2012, the pharmacy had a combined
4 profit margin for oxycodone 30 mg, hydrocodone/APAP 10/325 mg, and carisoprodol 350 mg of
5 over \$619,000.

6 c. The 32 patients listed on the cash register receipts of February 24, 2012 and February
7 25, 2012, had received a total of approximately 3,840 units of oxycodone 30 mg, 3,660 units of
8 carisoprodol 350 mg, and 4,470 units of hydrocodone/APAP 10/325 mg from the pharmacy. Dr.
9 Flores prescribed all of the prescriptions; all 32 patients received each of the three drugs, and all
10 of the prescriptions were paid for in cash. The pharmacy had been paid approximately
11 \$47,700.46 for the drugs.

12 d. As indicated on the patient questionnaires, Respondent Onwumere did not remember
13 any of the 32 patients or who dropped off or picked up the prescriptions, did not utilize CURES
14 data² to monitor the patients, did not know the diagnoses of any of the patients, did not keep
15 records of the patients' progress or monitor their pain medication usage and/or pain control, and
16 did not have contact with Dr. Flores.

17 e. Dr. Flores' prescription pad numbers were in sequence, and the prescription numbers
18 assigned by the pharmacy were also in sequence.

19 f. Approximately 78% of the 32 patients were first time customers on February 24,
20 2012 and February 25, 2012.

21 //

22 //

23 ² The California Department of Justice (DOJ) established a Prescription Drug Monitoring
24 Program, enabling healthcare providers who are registered with the DOJ, to access patient
25 controlled substance histories in a timely manner. The prescription information is submitted to a
26 database known as the Controlled Substance Utilization Review and Evaluation System
27 (CURES). Authorized prescribers and pharmacists can access this information online. A report
28 known as a Patient Activity Report can be reviewed for Schedule II through IV controlled
substances. The purpose of the program is to identify and prevent/deter drug abuse and diversion.
The information enters the database through weekly transmissions by all licensees who dispense
Schedule II through IV controlled substances, as required under Health and Safety Code section
11165, subdivision (d), and Business and Professions Code section 1170.

1 **FIRST CAUSE FOR DISCIPLINE**

2 (Clearly Excessive Furnishing of Controlled Substances)

3 27. Respondent Onwumere is subject to disciplinary action under section 4301(d), based
4 on the clearly excessive furnishing of controlled substances without verifying a legitimate
5 medical purpose in violation of Health and Safety Code 11153(a), as alleged in paragraphs 18
6 through 26.

7 **SECOND CAUSE FOR DISCIPLINE**

8 (Violation Of Statute Or Regulation Governing Controlled Substances And Dangerous Drugs)

9 28. Respondent Onwumere is subject to disciplinary action under section 4301(j), based
10 on the clearly excessive furnishing of controlled substances without verifying a legitimate
11 medical purpose in violation of Code section 4075, and/or Health and Safety Code 11153(a)
12 and/or Title 21, Code of Federal Regulations, Section 1306.04, subsection (a), as alleged in
13 paragraphs 18 through 26.

14 **THIRD CAUSE FOR DISCIPLINE**

15 (Gross Negligence and/or Incompetence)

16 29. Respondent Onwumere is subject to disciplinary action under section 4301,
17 subsection (b) and/or (c), based on the excessive furnishing of controlled substances, as alleged in
18 paragraphs 18 through 26.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 (General Unprofessional Conduct)

21 30. Respondent Onwumere is subject to disciplinary action under section 4301, for
22 general unprofessional conduct based on the excessive furnishing of controlled substances, as
23 alleged in paragraphs 18 through 26.

24 **FIFTH CAUSE FOR DISCIPLINE**

25 (Failure to Comply with State and Federal Laws)

26 31. Respondent Onwumere is subject to disciplinary action under section 4113,
27 subsection (c) for his failure to comply with all state and federal laws and regulations pertaining
28 to the practice of pharmacy based on the excessive furnishing of controlled substances, as alleged

1 in paragraphs 18 through 26.

2 **SIXTH CAUSE FOR DISCIPLINE**

3 (Clearly Excessive Furnishing of Controlled Substances)

4 32. Respondent Cedar Pharmacy is subject to disciplinary action under section 4301(d),
5 based on the clearly excessive furnishing of controlled substances without verifying a legitimate
6 medical purpose in violation of Health and Safety Code 11153(a), as alleged in paragraphs 18
7 through 26.

8 **SEVENTH CAUSE FOR DISCIPLINE**

9 (Violation Of Statute Or Regulation Governing Controlled Substances And Dangerous Drugs)

10 33. Respondent Cedar Pharmacy is subject to disciplinary action under section 4301(j),
11 based on the clearly excessive furnishing of controlled substances without verifying a legitimate
12 medical purpose in violation of Code section 4075, and/or Health and Safety Code 11153(a)
13 and/or Title 21, Code of Federal Regulations, Section 1306.04, subsection (a), as alleged in
14 paragraphs 18 through 26.

15 **EIGHTH CAUSE FOR DISCIPLINE**

16 (Gross Negligence and/or Incompetence)

17 34. Respondent Cedar Pharmacy is subject to disciplinary action under section 4301,
18 subsection (b) and/or (c), based on the excessive furnishing of controlled substances, as alleged in
19 paragraphs 18 through 26.

20 **NINTH CAUSE FOR DISCIPLINE**

21 (General Unprofessional Conduct)

22 35. Respondent Cedar Pharmacy is subject to disciplinary action under section 4301, for
23 general unprofessional conduct based on the excessive furnishing of controlled substances, as
24 alleged in paragraphs 18 through 26.

25 **TENTH CAUSE FOR DISCIPLINE**

26 (Failure to Comply with State and Federal Laws)

27 36. Respondent Cedar Pharmacy is subject to disciplinary action under section
28 4113, subsection (c) for the failure to comply with all state and federal laws and regulations

1 pertaining to the practice of pharmacy based on the excessive furnishing of controlled substances,
2 as alleged in paragraphs 18 through 26.

3
4 **MATTERS IN AGGRAVATION**

5 37. To determine the degree of discipline to be assessed against Respondents Cedar
6 Pharmacy and Onwumere, if any, Complainant alleges as follows:

7 a. On or about June 16, 2014, the Board issued Citation and Fine No. CI 2013 58637
8 against Respondent Cedar Pharmacy for violating California Code of Regulations, title 16,
9 section 1717, subdivision (e) (no licensee shall participate in any arrangement or agreement
10 whereby prescriptions or prescription medications may be left at, picked up from, accepted by, or
11 delivered to any place not licensed as a retail pharmacy). The Board ordered Respondent to pay a
12 fine of \$250 by July 16, 2014. Respondent paid the citation on or about June 27, 2014.

13 b. On or about June 16, 2014, the Board issued Citation and Fine No. CI 2013 61490
14 against Respondent Onwumere for violating California Code of Regulations, title 16, section
15 1717, subdivision (e) (no licensee shall participate in any arrangement or agreement whereby
16 prescriptions or prescription medications may be left at, picked up from, accepted by, or delivered
17 to any place not licensed as a retail pharmacy). The Board ordered Respondent to pay a fine of
18 \$250 by July 16, 2014. Respondent paid the citation on or about June 27, 2014.

19
20 **OTHER MATTERS**

21 38. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number
22 PHY 50262 issued to Cedar Pharmacy and Medical Supplies, Inc., then Cedar Pharmacy and
23 Medical Supplies, Inc., shall be prohibited from serving as a manger, administrator, owner,
24 member, officer, director, associate, or partner of a licensee for a period not to exceed five years
25 if Pharmacy Permit Number PHY 50262 is placed on probation or until Pharmacy Permit
26 Number PHY 50262 is reinstated, if the permit is revoked.

27 39. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number
28 PHY 50262 issued to Cedar Pharmacy and Medical Supplies, Inc., or if discipline is imposed on

1 Pharmacist License No. RPH 53590 issued to Peter Nnamdi Onwumere, for violations during the
2 time that Peter Nnamdi Onwumere acted as a manger, administrator, owner, member, officer,
3 director, associate, or partner and Peter Nnamdi Onwumere had knowledge or knowingly
4 participated in any conduct for which the permit or license was disciplined, then Peter Nnamdi
5 Onwumere shall be prohibited from serving as a manger, administrator, owner, member, officer,
6 director, associate, or partner on a license or permit issued by the Board for a period not to exceed
7 five years if discipline results in probation or until the license or permit is reinstated, if the license
8 or permit is revoked.

9
10 **PRAYER**

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

- 13 1. Revoking or suspending Pharmacy Permit Number PHY 50262, issued to Cedar
14 Pharmacy and Medical Supplies, Inc.;
- 15 2. Revoking or suspending Pharmacist License Number RPH 53590, issued to Peter
16 Nnamdi Onwumere;
- 17 3. Prohibiting Cedar Pharmacy and Medical Supplies, Inc from serving as a manager,
18 administrator, owner, member, officer, director, associate, or partner of a licensee for five years if
19 Pharmacy Permit Number PHY 50262 is placed on probation or until Pharmacy Permit Number
20 PHY 50262 is reinstated if the Pharmacy Permit is revoked;
- 21 4. Prohibiting Peter Nnamdi Onwumere from serving as a manager, administrator, owner,
22 member, officer, director, associate, or partner of a licensee for five years if either Pharmacy
23 Permit Number PHY 50262 or Pharmacist License Number RPH 53590 is placed on probation;
- 24 5. Prohibiting Peter Nnamdi Onwumere from serving as a manager, administrator, owner,
25 member, officer, director, associate, or partner of a licensee if either Pharmacy Permit Number
26 PHY 50262 or Pharmacist License Number RPH 53590 is revoked, until Pharmacy Permit
27 Number PHY 50262 or Pharmacist License Number RPH 53590 is reinstated;

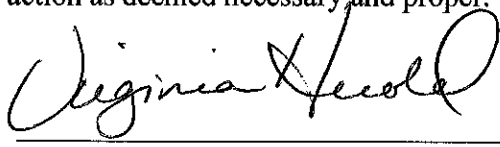
28 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

6 Ordering Cedar Pharmacy and Medical Supplies, Inc. and Peter Nnamdi Onwumere 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; and

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

DATED: 7/30/16



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

SA2015103855