

1 XAVIER BECERRA
Attorney General of California
2 ARMANDO ZAMBRANO
Supervising Deputy Attorney General
3 NANCY A. KAISER
Deputy Attorney General
4 State Bar No. 192083
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-5794
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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

11 In the Matter of the Accusation Against:

Case No. 5701

12 **EL SAYED B. A. HAMOUDA,**
13 **AKA EL SAYED AHMED HAMOUDA**
DBA ROSAMOND PHARMACY
14 1415 Rosamond Blvd. Ste. 22
Rosamond, CA 93560
15 **Pharmacy Permit License No. PHY 46967**

A C C U S A T I O N

16 and

17 **El Sayed B. A. Hamouda,**
18 **aka El Sayed Ahmed Hamouda**
41916 Cabo Court
19 Quartz Hill, CA 93551
20 **Pharmacist License Number RPH 45022**

21 Respondents.

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 November 5, 2004, the Board of Pharmacy issued Pharmacy Permit
27 License Number PHY 46967 to El Sayed B. A. Hamouda, aka El Sayed Ahmed Hamouda dba
28 Rosamond Pharmacy (Respondent Pharmacy). El Sayed B. A. Hamouda, aka El Sayed Ahmed

1 Hamouda is and has been the Pharmacist-in-Charge and the Individual Licensed Owner since
2 November 5, 2004. The Pharmacy Permit License was in full force and effect at all times relevant
3 to the charges brought herein and will expire on November 1, 2017, unless renewed.

4 3. On or about March 5, 1992, the Board of Pharmacy issued Pharmacist License
5 Number RPH 45022 to El Sayed B. A. Hamouda, aka El Sayed Ahmed Hamouda (Respondent
6 Hamouda). The Pharmacist License was in full force and effect at all times relevant to the
7 charges brought herein and will expire on January 31, 2018, unless renewed.

8 **JURISDICTION**

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

12 5. Section 4300 of the Code provides, in part, that every license issued by the Board
13 is subject to discipline, including suspension or revocation.

14 6. Section 4302 of the Code states:

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

19 7. Section 4113 of the Code states, in part:

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

22 8. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
23 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
24 disciplinary action during the period within which the license may be renewed, restored, reissued
25 or reinstated.

26 ///

27 ///

28 ///

STATUTORY AUTHORITY

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

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

...

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

...

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

...

"(o) Violating or attempting to violate, directly or indirectly, or assisting in 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 pharmacy, including regulations established by the board or by any other state or federal regulatory agency."

10. Section 4306.5 of the Code states:

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

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

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

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

///

1 "(d) Acts or omissions that involve, in whole or in part, the failure to fully maintain and
2 retain appropriate patient-specific information pertaining to the performance of any pharmacy
3 function."

4 12. Section 4307, subdivision (a), of the Code states that:

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

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

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

18 **STATE REGULATORY AUTHORITY**

19 11. California Code of Regulations, title 16, section 1707.3 states:

20 "Prior to consultation as set forth in section 1707.2, a pharmacist shall review a patient's
21 drug therapy and medication record before each prescription drug is delivered. The review shall
22 include screening for severe potential drug therapy problems."

23 12. California Code of Regulations, title 16, section 1718 states:

24 "'Current Inventory' as used in Sections 4081 and 4332 of the Business and Professions
25 Code shall be considered to include complete accountability for all dangerous drugs handled by
26 every licensee enumerated in Sections 4081 and 4332.

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

1 13. California Code of Regulations, title 16, section 1761 states, in part:

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

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

9 **HEALTH AND SAFETY CODES**

10 14. Health and Safety Code section 11153 states, in part:

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

21 15. Health and Safety Code Section 11162.1 states, in part:

22 “(a) The prescription forms for controlled substances shall be printed with the following
23 features: . . . (2) A watermark shall be printed on the backside of the prescription blank; the
24 watermark shall consist of the words "California Security Prescription." . . .(4) A feature printed
25 in thermochromic ink . . . (6) A description of the security features included on each prescription
26 form. . . (8) Prescription blanks shall contain a statement printed on the bottom of the
27 prescription blank that the "Prescription is void if the number of drugs prescribed is not noted" . .
28 . (13) An identifying number assigned to the approved security printer by the Department of

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

4 16. Health and Safety Code Section 11164 states, in part:

5 “[N]o person shall prescribe a controlled substance, nor shall any person fill, compound, or
6 dispense a prescription for a controlled substance, unless it complies with the requirements of this
7 section. (a) Each prescription for a controlled substance . . . shall be made on a controlled
8 substance prescription form as specified in Section 11162.1.”

9 **FEDERAL REGULATIONS**

10 17. Code of Federal Regulations, title 21, section 1304.11, states, in pertinent part:

11 “b. Initial inventory date. Every person required to keep records shall take an inventory of
12 all stocks of controlled substances on hand on the date he/she first engages in the manufacture,
13 distribution, or dispensing of controlled substances, in accordance with paragraph (e) of this
14 section as applicable. In the event a person commences business with no controlled substances on
15 hand, he/she shall record this fact as the initial inventory.

16 “c. Biennial inventory date. After the initial inventory is taken, the registrant shall take a
17 new inventory of all stocks of controlled substances on hand at least every two years. The biennial
18 inventory may be taken on any date which is within two years of the previous biennial inventory
19 date.”

20 **COST RECOVERY**

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

25 ///

26 ///

27 ///

28 ///

19. DRUG CLASSIFICATIONS

Brand Name(s)	Generic Name	Dangerous Drug Per Bus. & Prof. Code § 4022	Scheduled Drug per Health & Safety Code (HSC)	Indications For Use
Norco 10 mg/325mg	Hydrocodone/acetaminophen 10mg/325mg (APAP)	Yes	Schedule III HSC § 11056(e)(4) and Schedule II per 21 CFR 1308 as of 10/6/14	Pain
Roxicodone 30mg	Oxycodone	Yes	Schedule II HSC § 11055(b)(l)(M)	Pain
Phenergan with Codeine Syrup	Promethazine with codeine syrup	Yes	Schedule V per HSC 11058(c)(1)	Cough
Valium 10 mg	Diazepam 10 mg (non-barbiturate, benzodiazepine sedative hypnotic)	Yes	Schedule IV HSC § 1057(d)(9)	Anxiety
Xanax 2 mg	Alprazolam 2 mg (non-barbiturate, benzodiazepine sedative hypnotic)	Yes	Schedule IV HSC § 1057(d)(1)	Anxiety
Dilaudid 4 mg	Hydromorphone 4mg	Yes	Schedule II per HSC 11055(b)(1)(J)	Pain

FIRST CAUSE FOR DISCIPLINE

(Failure to Assume Corresponding Responsibility)

20. Respondent Pharmacy and Respondent Hamouda are subject to discipline pursuant to Code sections 4301, subdivision (d), (j) and (o), 4302, and 4113, on the grounds of unprofessional conduct, in that they failed to assume their corresponding responsibility to ensure that controlled substances are dispensed for a legitimate medical purpose, in violation of Code section 4306.5, Health and Safety Code section 11153, and California Code of Regulations, title 16, section 1761, subdivisions (a) and (b). Respondents failed to exercise their best professional judgment and evaluate the totality of the circumstances (information from the patient, physician and other sources) to determine a prescription's legitimate medical purpose, in connection with the prescribers' controlled substance prescriptions. Respondents ignored numerous warning signs or

1 red flags that should put a reasonable and prudent dispensing pharmacist on notice that a
2 prescription may not have been issued for a legitimate medical purpose. The red flags included,
3 but were not limited to the following:

4 21. Between January 1, 2012, and June 11, 2015, Respondent Pharmacy filled 5,405
5 prescriptions for 416 patients under the prescribing authority of Drs. Madhu Garg¹, H.A., H.F.,
6 R.G., E.H., D.H., S.J., C.O., C.P., H.P., S.S., and A.W., and Physician Assistant L.L. Objective
7 factors indicating the medical illegitimacy of the prescriptions of commonly abused controlled
8 substances attributed to these prescribers included the following:

9 a. Driving distances of approximately 70 to 90 miles between the prescribers' offices
10 and Respondent Pharmacy's facility for Drs. Garg, H.A., H.F., R.G., C.O., C.P., H.P., S.S., and
11 A.W., and PA L.L.

12 b. The prescribing profiles for the listed prescribers consisting almost entirely of
13 controlled substances.

14 c. The prescribing profiles for the listed prescribers consisting almost entirely of
15 prescriptions paid in cash, without the assistance of prescription insurance.

16 d. Irregularities on the prescription forms including:

17 i. Misspellings of the brand name Roxicodone

18 ii. Irregularly shaped prescription forms, i.e., not in the usual rectangular shape.

19 iii. Multiple prescription forms with the same form number

20 iv. Varying signatures on one prescriber's prescription forms

21 e. Prescribing patterns for some of the listed prescribers which were seemingly
22 incongruent with the physicians' specialty listed on BreEZe.² Examples included the following:

23 ¹ In or about January 2015, Dr. Madhu Garg was federally indicted for writing
24 prescriptions for controlled substances for patients without a medical need as part of an illegal
25 narcotics trafficking ring. In or about February 2016, Dr. Garg plead guilty to one count of
26 illegally distributing oxycodone and one count of money laundering for transferring the proceeds
27 of criminal activity to a Malaysian bank account. The Medical Board of California revoked
28 Garg's medical license in December 2013, due to her self-abuse of controlled substances. The
Board of Pharmacy initiated an investigation at Respondent Pharmacy due to an analysis of
CURES data, which showed Respondent Pharmacy filled a portion of Dr. Garg's prescriptions.

² BreEZe is the Department of Consumer Affairs' online licensing and enforcement
system.

1 i. Dr. R.G., a rheumatologist, prescribing promethazine/codeine cough syrup more
2 often than any other medication.

3 ii. Dr. H.A., an obstetrician/gynecologist, prescribing alprazolam 2 mg tablets
4 more than any other medication without prescribing oral contraceptives or vaginal antibiotics or
5 antifungals.

6 ii. Dr. H.P., a surgeon, prescribing alprazolam 2 mg tablets for all of his patients.

7 f. The prescribing profiles for the listed practitioners containing almost exclusively the
8 highest available doses of the medications. Drs. Garg, C.P., H.A., S.S., H.P., H.F., and S.J.
9 prescribed large quantities of alprazolam 2 mg tablets and oxycodone 30 mg tablets without
10 prescribing any lower strengths of alprazolam and oxycodone.

11 g. The dispensing histories of many patients consisting only of controlled substances,
12 purchased in cash, and written by prescribers from out of the pharmacy's normal trade area.

13 h. Respondent Pharmacy did not have any records of verification for the prescriptions
14 identified in the documents that were collected during the Board's inspection.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Required Forms for Controlled Substance Prescriptions)**

17 22. Respondent Pharmacy and Respondent Hamouda are subject to discipline pursuant to
18 Code sections 4301, subdivision (j) and (o), and 4113, on the grounds of unprofessional conduct,
19 by filling prescriptions that were not written on controlled substance prescription forms as
20 specified in Health and Safety Code Section 11162.1, in violation of Health and Safety Code
21 Section 11164. Specifically, between January 24, 2013, and May 11, 2015, Respondent
22 Pharmacy filled at least 53 prescriptions under the prescribing authority of Drs. R.G., H.A., A.W.,
23 E.H., C.P., C.O., D.H., and PA L.L. pursuant to prescriptions written on forms that did not
24 comply with the requirements of Health and Safety Code Section 11162.1. The prescription
25 forms lacked a watermark consisting of the words "California Security Prescription", a feature
26 printed in thermochromic ink, and an identifying number assigned to the security printer by the
27 Department of Justice, and other requirements.

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Failure to Conduct DEA Biennial Inventory)**

3 23. Respondent Pharmacy and Respondent Hamouda are subject to discipline pursuant to
4 Code sections 4301, subdivision (o), and 4113, on the grounds of unprofessional conduct, in that
5 they violated Code of Federal Regulations, title 21, section 1304.11 and California Code of
6 Regulations, title 16, section 1718, by failing to conduct the Drug Enforcement Administration
7 (DEA) biennial inventory of controlled substances as required. Specifically, on or about June 12,
8 2015, during a Board inspection of Respondent Pharmacy's facility, located at 1415 Rosamond
9 Boulevard, Suite 22, Rosamond, California, the Board inspector found that the most recent DEA
10 biennial inventory of controlled substances completed by Respondent Hamouda was in January
11 2013.

12 **FOURTH CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct)**

14 24. Respondent Pharmacy and Respondent Hamouda are subject to discipline pursuant
15 to Code sections 4301 and 4113, in that Respondents committed unprofessional conduct, as more
16 fully discussed in paragraphs 20 through 23, above.

17 **OTHER MATTERS**

18 25. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number
19 PHY 46967 issued to El Sayed B. A. Hamouda, aka El Sayed Ahmed Hamouda dba Rosamond
20 Pharmacy, while El Sayed B. A. Hamouda, aka El Sayed Ahmed Hamouda has been an officer
21 and owner and had knowledge of or knowingly participated in any conduct for which the licensee
22 was disciplined, El Sayed B. A. Hamouda, aka El Sayed Ahmed Hamouda shall be prohibited
23 from serving as a manager, administrator, owner, member, officer, director, associate, or partner
24 of a licensee for five years if Pharmacy Permit Number PHY 46967 is placed on probation or
25 until Pharmacy Permit Number PHY 46967 is reinstated if it is revoked.

26 ///

27 ///

28 ///

DISCIPLINE CONSIDERATIONS

1
2 26. To determine the degree of discipline, if any, to be imposed on Respondent Pharmacy,
3 Complainant alleges that on or about November 2, 2011, in a prior action, the Board of Pharmacy
4 issued Citation Number CI 2009 44516 to Respondent Pharmacy and ordered it to pay a fine of
5 \$3,350, for violating Code section 4125 and California Code of Regulations, title 16, sections
6 1715, subdivision (a), 1793.7, subdivision (c), 1793.7, subdivision (a), 1716, and 1711,
7 subdivisions (d) and (e) and 21 Code of Federal Regulations section 1306.22, subdivision (b).
8 That Citation is now final and is incorporated by reference as if fully set forth. The Citation has
9 been paid in full.

10 27. To determine the degree of discipline, if any, to be imposed on Respondent Hamouda,
11 Complainant alleges that on or about November 2, 2011, in a prior action, the Board of Pharmacy
12 issued Citation Number CI 20011 49809 to Respondent Hamouda and ordered him to pay a fine
13 of \$5,250, for violating Code section 4125 and California Code of Regulations, title 16, sections
14 1715, subdivision (a), 1793.7, subdivision (c), 1793.7, subdivision (a), 1716, and 1711,
15 subdivisions (d) and (e) and 21 Code of Federal Regulations section 1306.22, subdivision (b).
16 That Citation is now final and is incorporated by reference as if fully set forth. The Citation has
17 been paid in full.

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

PRAYER

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

1. Revoking or suspending Pharmacy Permit License Number PHY 46967, issued to El Sayed B. A. Hamouda, aka El Sayed Ahmed Hamouda dba Rosamond Pharmacy;
2. Revoking or suspending Pharmacist License Number RPH 45022, issued to El Sayed B. A. Hamouda, aka El Sayed Ahmed Hamouda;
3. Prohibiting El Sayed B. A. Hamouda, aka El Sayed Ahmed Hamouda from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 46967 is placed on probation or until Pharmacy Permit Number PHY 46967 is reinstated if Pharmacy Permit Number 50434 issued to El Sayed B. A. Hamouda, aka El Sayed Ahmed Hamouda dba Rosamond Pharmacy is revoked;
4. Ordering El Sayed Ahmed Hamouda 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: _____

7/7/17



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

LA2016500232
51991497_3.doc