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

10 In the Matter of the Accusation Against:

Case No. 5773

11 **MISHNIK PHARMACY SERVICES INC.,**
12 **dba GOLDEN LIFE PHARMACY;**
13 **MOHSEN ABDEL AMGAD MASIH, aka**
AMGAD MOHSEN MASIH
14 **President and Owner**
1960 Sequoia Ave., #5
Simi Valley, CA 93063

A C C U S A T I O N

15 **Original Permit No. PHY 48911**

16 **And**

17 **AMGAD MOHSEN MASIH, aka**
18 **MOHSEN ABDEL AMGAD MASIH**
1089 Currier Avenue
19 **Simi Valley, CA 93065**

20 **Original Pharmacist License No. RPH 57887**

21 Respondents.

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 January 8, 2008, the Board of Pharmacy issued Pharmacy Permit
28 Number PHY 48911 to Mishnik Pharmacy Services Inc., dba Golden Life Pharmacy; Mohsen

1 Abdel Amgad Masih, aka Amgad Mohsen Masih, President and Owner of 100% of the
2 outstanding shares (Respondent Golden Life Pharmacy). The Pharmacy Permit was in full force
3 and effect at all times relevant to the charges brought herein and will expire on January 1, 2018,
4 unless renewed.

5 3. On or about November 23, 2005, the Board issued Pharmacist License No. RPH
6 57887 to Amgad Mohsen Masih, aka Mohsen Abdel Amgad Masih (Respondent Masih). The
7 Pharmacist License was in full force and effect at all times relevant to the charges brought herein
8 and will expire on March 31, 2017, unless renewed.

9 **JURISDICTION**

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

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

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

18 7. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration,
19 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
20 disciplinary action during the period within which the license may be renewed, restored, reissued
21 or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not
22 renewed within three years following its expiration may not be renewed, restored, or reinstated
23 and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of
24 the Code provides that any other license issued by the Board may be canceled by the Board if not
25 renewed within 60 days after its expiration, and any license canceled in this fashion may not be
26 reissued but will instead require a new application to seek reissuance.

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13. Section 4115, subdivision (h) of the Code states:

“The pharmacist on duty shall be directly responsible for the conduct of a pharmacy technician supervised by that pharmacist.”

14. Section 4301 of the Code provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of “unprofessional conduct,” defined to include, but not be limited to, any of the following:

....

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

....

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

....

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to 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

1 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
2 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
3 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
4 indictment.

5

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

10 15. Section 4307 of the Code states:

11 (a) Any person who has been denied a license or whose license has been revoked or is
12 under suspension, or who has failed to renew his or her license while it was under suspension, or
13 who has been a manager, administrator, owner, member, officer, director, associate, partner, or
14 any other person with management or control of any partnership, corporation, trust, firm, or
15 association whose application for a license has been denied or revoked, is under suspension or has
16 been placed on probation, and while acting as the manager, administrator, owner, member,
17 officer, director, associate, partner, or any other person with management or control had
18 knowledge of or knowingly participated in any conduct for which the license was denied,
19 revoked, suspended, or placed on probation, shall be prohibited from serving as a manager,
20 administrator, owner, member, officer, director, associate, partner, or in any other position with
21 management or control of a licensee as follows:

22 (1) Where a probationary license is issued or where an existing license is placed on
23 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 the license is
25 issued or reinstated.

26 (b) "Manager, administrator, owner, member, officer, director, associate, partner, or any
27 other person with management or control of a license" as used in this section and Section 4308,
28 may refer to a pharmacist or to any other person who serves in such capacity in or for a licensee.

1 (c) The provisions of subdivision (a) may be alleged in any pleading filed pursuant to
2 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code.
3 However, no order may be issued in that case except as to a person who is named in the caption,
4 as to whom the pleading alleges the applicability of this section, and where the person has been
5 given notice of the proceeding as required by Chapter 5 (commencing with Section 11500) of Part
6 1 of Division 3 of the Government Code. The authority to proceed as provided by this subdivision
7 shall be in addition to the board's authority to proceed under Section 4339 or any other provision
8 of law.

9 California Code of Regulations, title 16, section 1714, subdivision (b) provides that each
10 pharmacy licensed by the board shall maintain its facilities, space, fixtures, and equipment so that
11 drugs are safely and properly prepared, maintained, secured and distributed.

12 16. California Code of Regulations, title 16, section 1714, subdivision (d) provides that
13 each pharmacist licensed by the board shall be responsible for the security of the prescription
14 department, including provisions for effective control against theft or diversion of dangerous
15 drugs and devices, and records for such drugs and devices, and that possession of a key to the
16 pharmacy where dangerous drugs and controlled substances are stored shall be restricted to a
17 pharmacist.

18 17. California Code of Regulations, title 16, section 1718, states:

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

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

24 18. Code of Federal Regulations, title 21, section 1304.11 state in pertinent part:

25 (a) *General requirements.* Each inventory shall contain a complete and
26 accurate record of all controlled substances on hand on the date the inventory is
27 taken, and shall be maintained in written, typewritten, or printed form at the
28 registered location . . .

(b) *Initial inventory date.* Every person required to keep records shall take

1 an inventory of all stocks of controlled substances on hand on the date he/she first
engages in the manufacture, distribution, or dispensing of controlled substances . . .

2 (c) *Biennial inventory date.* After the initial inventory is taken, the
3 registrant shall take a new inventory of all stocks of controlled substances on hand at
4 least every two years. The biennial inventory may be taken on any date which is
within two years of the previous biennial inventory date.

5

6 19. Health and Safety Code section 11209, subdivision (a) states:

7 “No person shall deliver Schedule II, III, or IV controlled substances to a pharmacy or
8 pharmacy receiving area, nor shall any person receive controlled substances on behalf of a
9 pharmacy unless, at the time of delivery, a pharmacist or authorized receiving personnel signs a
10 receipt showing the type and quantity of the controlled substances received. Any discrepancy
11 between the receipt and the type or quantity of controlled substances actually received shall be
12 reported to the delivering wholesaler or manufacturer by the next business day after delivery to
the pharmacy.”

13 20. Health and Safety Code section 11350, subdivision (a) states:

14 “Except as otherwise provided in this division, every person who possesses (1) any
15 controlled substance specified in subdivision (b), (c), (e), or paragraph (1) of subdivision (f) of
16 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or
17 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section
18 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic
19 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian
20 licensed to practice in this state, shall be punished by imprisonment in a county jail for not more
21 than one year, except that such person shall instead be punished pursuant to subdivision (h) of
22 Section 1170 of the Penal Code if that person has one or more prior convictions for an offense
23 specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of
24 the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290
25 of the Penal Code.”

26 21. Health and Safety Code section 11351, states:

27 “Except as otherwise provided in this division, every person who possesses for sale or
28 purchases for purposes of sale (1) any controlled substance specified in subdivision (b), (c), or (e)

1 of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054,
2 or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section
3 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic
4 drug, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal
5 Code for two, three, or four years.”

6 COST RECOVERY

7 22. Business and Professions Code section 125.3 provides, in pertinent part, that the
8 Board may request the administrative law judge to direct a licentiate found to have committed a
9 violation of the licensing act to pay a sum not to exceed its reasonable costs of investigation and
10 enforcement.

11 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

12 23. Section 4021 of the Code states:

13 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
14 11053) of Division 10 of the Health and Safety Code.”

15 24. Section 4022 of the Code states, in pertinent part:

16 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,
17 except veterinary drugs that are labeled as such, and includes the following:

18 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without
19 prescription,’ ‘Rx only,’ or words of similar import.

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

22 25. **Promethazine/Codeine Syrup 10 mg – 6.25 mg/5 mL** (brand name
23 **Phenergan/Codeine Syrup 10 mg – 6.25 mg/5 mL**) is a Schedule V controlled substance as
24 designated by Health and Safety Code section 11058(c)(1) and a dangerous drug as designated by
25 Business and Professions Code section 4022. It is a cough suppressant.

26 SUMMARY OF FACTS

27 26. Pharmacy drug acquisition data analysis determined a need for inspection at
28 Respondent Golden Life Pharmacy located at 1960 Sequoia Avenue #5, Simi Valley, California

1 93063 to evaluate the pharmacy's dispensing practices regarding the controlled substance
2 promethazine with codeine. An inspection, collection of documents, and audit of the pharmacy's
3 acquisition and dispensing data substantiated a loss of over 700 pint sized bottles of promethazine
4 with codeine syrup from December 2012 to August 2015.

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(Failure to Maintain Complete Acquisition/Disposition Records)**

7 27. Respondents GOLDEN LIFE PHARMACY and AMGAD MASIH are subject to
8 disciplinary action under section 4300 for unprofessional conduct as defined in section 4301,
9 subdivisions (j) and (o), in conjunction with sections 4113, subdivision (c) and 4081, subdivision
10 (a), and California Code of Regulations, title 16, section 1718 for failure to maintain all records of
11 acquisition and disposition for three (3) years from date of making and to keep a current
12 inventory of dangerous drugs. During an inspection on August 24, 2015, Respondent Golden
13 Life Pharmacy was unable to provide any DEA biennial inventory conducted between December
14 17, 2012 and May 9, 2015, a period of more than two (2) years, as required by title 21 of the Code
15 of Federal Regulations section 1304.11(a)(b)(c). Complainant refers to, and by this reference
16 incorporates, the allegations set forth above in paragraph 26 as though set forth fully.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Failure to Maintain Security of Pharmacy)**

19 28. Respondent GOLDEN LIFE PHARMACY is subject to disciplinary action under
20 section 4300 for unprofessional conduct as defined in section 4301, subdivision (o), and/or 4113,
21 subdivision (c), in conjunction with California Code of Regulations, title 16, section 1714,
22 subdivision (b), for failing to maintain its facilities, space, fixtures, and/or equipment so that
23 drugs are safely and properly prepared, and secured to maintain effective controls to prevent theft
24 or diversion. Specifically, between December 16, 2012 and August 24, 2015, Respondent Golden
25 Life Pharmacy could not account for a loss of approximately 723 pints of promethazine with
26 codeine syrup. Complainant refers to, and by this reference incorporates, the allegations set forth
27 above in paragraph 26 as though set forth fully.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Failure to Maintain Security of Controlled Substances)**

3 29. Respondent AMGAD MASIH is subject to disciplinary action under section 4300 for
4 unprofessional conduct as defined in section 4301, subdivision (o), and/or 4113, subdivision (c),
5 in conjunction with section 4115, subdivision (h) and California Code of Regulations, title 16,
6 section 1714, subdivision (d), for failing to secure the prescription department and provide
7 effective controls to prevent theft or diversion. From approximately December 16, 2012 to May
8 9, 2015, a time period which RPH AMGAD MASIH was Pharmacist-in-Charge, Respondent
9 Golden Life Pharmacy could not account for approximately 700 pints of promethazine with
10 codeine syrup (96.7% of the total loss). Complainant refers to, and by this reference incorporates,
11 the allegations set forth above in paragraph 26 as though set forth fully.

12 **OTHER MATTERS**

13 30. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number
14 PHY 48911 issued to Mishnik Pharmacy Services Inc., dba Golden Life Pharmacy, Respondent
15 Golden Life Pharmacy shall be prohibited from serving as a manager, administrator, owner,
16 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit
17 Number PHY 48911 is placed on probation or until Pharmacy Permit Number PHY 48911 is
18 reinstated if it is revoked.

19 31. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit
20 Number PHY 48911 issued to Mishnik Pharmacy Services Inc., dba Golden Life Pharmacy,
21 while Mohsen Abdel Amgad Masih, aka Amgad Mohsen Masih has been an officer and owner
22 and had knowledge of or knowingly participated in any conduct for which the licensee was
23 disciplined, Mohsen Abdel Amgad Masih, aka Amgad Mohsen Masih shall be prohibited from
24 serving as a manager, administrator, owner, member, officer, director, associate, or partner of a
25 licensee for five years if Pharmacy Permit Number PHY 48911 is placed on probation or until
26 Pharmacy Permit Number PHY 48911 is reinstated if it is revoked.

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1 **DISCIPLINARY CONSIDERATIONS**

2 32. To determine the degree of discipline, if any, to be imposed on Respondent,
3 Complainant alleges, as follows:

4 a. On or about January 13, 2014, Respondents GOLDEN LIFE PHARMACY and
5 AMGAD MASIH were issued Citation Numbers CI 2012 55974 and CI 2013 59108,
6 respectively, for violating Business and Professions Code section 4116 subdivision (a). The
7 Citation and Fine were \$1,500.00 each to Respondent Golden Life Pharmacy and Amgad Masih,
8 which has been paid and is now final.

9 b. On or about October 25, 2013, Respondent AMGAD MASIH was issued Citation
10 Number CI 2013 58403 for violating Business and Professions Code section 4116 subdivision (a).
11 The Citation and Fine was \$1,000.00, which has been paid and is now final.

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 Pharmacist License Number PHY 48911, issued to Mishnik
16 Pharmacy Services Inc., dba Golden Life Pharmacy;

17 2. Revoking or suspending Pharmacist License Number RPH 57887, issued to Amgad
18 Mohsen Masih, aka Mohsen Abdel Amgad Masih;

19 3. Prohibiting Mishnik Pharmacy Services Inc., dba Golden Life Pharmacy from serving
20 as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee
21 for five years if Pharmacy Permit Number PHY 48911 is placed on probation or until Pharmacy
22 Permit Number PHY 48911 is reinstated if Pharmacy Permit Number 48911 issued to Mishnik
23 Pharmacy Services Inc., dba Golden Life Pharmacy is revoked;

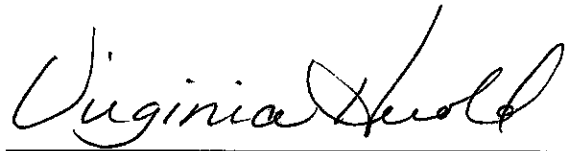
24 4. Prohibiting Mohsen Abdel Amgad Masih, aka Amgad Mohsen Masih from serving as
25 a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for
26 five years if Pharmacy Permit Number PHY 48911 is placed on probation or until Pharmacy
27 Permit Number PHY 48911 is reinstated if Pharmacy Permit Number 48911 issued to Mishnik
28 Pharmacy Services Inc., dba Golden Life Pharmacy is revoked;

1 5. Ordering Mishnik Pharmacy Services Inc., dba Golden Life Pharmacy and Amgad
2 Mohsen Masih, aka Mohsen Abdel Amgad Masih to pay the Board of Pharmacy the reasonable
3 costs of the investigation and enforcement of this case, pursuant to Business and Professions
4 Code section 125.3;

5 6. Taking such other and further action as deemed necessary and proper.
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8
9 DATED: _____

2/13/17



10 **VIRGINIA HEROLD**
11 Executive Officer
12 Board of Pharmacy
13 Department of Consumer Affairs
14 State of California
15 *Complainant*

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