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

11 In the Matter of the Accusation Against:
12 **DANVILLE PHARMACY, INC. dba**
13 **DANVILLE SAN RAMON PHARMACY,**
14 **ALIREZA HADJIGHAFOURI, OWNER**
15 **905 San Ramon Valley Blvd. # 106**
16 **Danville, CA 94526**
17 **Pharmacy Permit No. PHY 50868**
18 **and**
19 **ALIREZA HADJIGHAFOURI**
20 **2880 Comistas Dr.**
21 **Walnut Creek, CA 94598**
22 **Pharmacist License No. RPH 42144**
23 Respondents.

Case No. 5940

A C C U S A T I O N

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 (Board), Department of Consumer Affairs.
- 26 2. On or about March 21, 2012, the Board issued Pharmacy Permit Number PHY 50868
27 to Danville Pharmacy, Inc. dba Danville San Ramon Pharmacy, Alireza Hadjighafouri, owner
28 (Respondent Danville). The Pharmacy Permit was in full force and effect at all times relevant to

1 the charges brought herein and will expire on March 1, 2017, unless renewed.

2 3. On or about August 23, 1988, the Board issued Original Pharmacist License Number
3 RPH 42144 to Alireza Hadjighafouri (Respondent Hadjighafouri). The Pharmacist License was
4 in full force and effect at all times relevant to the charges brought herein and will expire on July
5 31, 2018, 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 (Code) unless otherwise
9 indicated.

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

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

15 7. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or
16 suspension of a Board-issued license, the placement of a license on a retired status, or the
17 voluntary surrender of a license by a licensee, shall not deprive the Board of jurisdiction to
18 commence or proceed with any investigation of, or action or disciplinary proceeding against, the
19 licensee or to render a decision suspending or revoking the license.

20 STATUTORY PROVISIONS

21 8. Section 4301 of the Code provides, in relevant part:

22 "The board shall take action against any holder of a license who is guilty of unprofessional
23 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

24 Unprofessional conduct shall include, but is not limited to, any of the following:

25 ...

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

28 ...

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

5 ...”

6 9. Section 4021 of the Code provides that a “controlled substance” means any substance
7 listed in Schedules I through V contained in Health and Safety Code section 11053 et seq.

8 10. Section 4113, subdivision (c) of the Code states: “The pharmacist-in-charge shall be
9 responsible for a pharmacy’s compliance with all state and federal laws and regulations pertaining
10 to the practice of pharmacy.”

11 11. Section 4306.5 of the Code provides, in pertinent part:

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

13 ...

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

18 ...”

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

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

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

3 “(2) Where the license is denied or revoked, the prohibition shall continue until
4 the license is issued or reinstated.”

5 13. Section 11153, subdivision (a) of the Health and Safety Code states:

6 “A prescription for a controlled substance shall only be issued for a legitimate medical
7 purpose by an individual practitioner acting in the usual course of his or her professional practice.
8 The responsibility for the proper prescribing and dispensing of controlled substances is upon the
9 prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the
10 prescription. Except as authorized by this division, the following are not legal prescriptions:

11 (1) an order purporting to be a prescription which is issued not in the usual course of professional
12 treatment or in legitimate and authorized research; or (2) an order for an addict or habitual user of
13 controlled substances, which is issued not in the course of professional treatment or as part of an
14 authorized narcotic treatment program, for the purpose of providing the user with controlled
15 substances, sufficient to keep him or her comfortable by maintaining customary use.”

16 **REGULATORY PROVISIONS**

17 14. California Code of Regulations, title 16, section 1761 states:

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

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

25 **COSTS**

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

1 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
2 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
3 included in a stipulated settlement.

4 **FACTUAL BACKGROUND**

5 16. Between approximately September 2012 and July 2015, Respondents filled sixteen
6 (16) zaleplon 10 mg prescriptions for K.F.¹, a patient of prescriber J.T. Zaleplon is a Schedule IV
7 controlled substance as designated by Health and Safety Code section 11057, subdivision (d)(31)
8 and a dangerous drug as designated by Business and Professions Code section 4022. There were
9 warning signs or “red flags” indicating that those prescriptions may not have been issued for a
10 legitimate medical purpose. Those red flags include the following:

- 11 a. K.F. paid cash for all of the zaleplon prescriptions.
- 12 b. K.F. requested eleven (11) early fills of her zaleplon prescriptions.
- 13 c. K.F. lived a long distance from the prescriber’s practice, which was a long distance
14 from Respondents’ pharmacy.

15 17. Between approximately July 2012 and April 2013, Respondents filled numerous
16 prescriptions for patients of prescriber T.B., including prescriptions for oxycodone,
17 hydrocodone/acetaminophen, methadone, and alprazolam, among others. Oxycodone is a
18 Schedule II controlled substance as designated by Health and Safety Code section 11055,
19 subdivision (b)(1)(M) and a dangerous drug as designated by Business and Professions Code
20 section 4022. Hydrocodone/acetaminophen is a Schedule III controlled substance as designated
21 by Health and Safety Code section 11056, subdivision (e)(5) and a dangerous drug as designated
22 by Business and Professions Code section 4022. Methadone is a Schedule II controlled substance
23 as designated by Health and Safety Code section 11055, subdivision (c)(14) and a dangerous drug
24 as designated by Business and Professions Code section 4022. Alprazolam is a Schedule IV
25 controlled substance as designated by Health and Safety Code section 11057, subdivision (d)(1)
26 and a dangerous drug as designated by Business and Professions Code section 4022. There were

27 ¹ Initials are used herein for privacy purposes. The names of individuals identified with
28 initials will be disclosed pursuant to a proper discovery request.

1 warning signs or “red flags” indicating that those prescriptions may not have been issued for a
2 legitimate medical purpose. Those red flags include the following:

3 a. The majority (98%) of the prescriptions were paid for with cash.

4 b. Approximately 96% of the prescriptions written by T.B. and dispensed by
5 Respondent Danville were for controlled substances. This proportion of dispensed controlled
6 substance prescriptions is not consistent with Respondent Danville’s pattern of dispensing.

7 c. Nearly all patients prescribed oxycodone presented to Respondent Danville with
8 prescriptions for the highest tablet strength of oxycodone with no evidence of upward titration
9 from a lower dose. Most patients received doses of two (2) tablets of the highest tablet strength.

10 d. Two of T.B.’s patients were prescribed the highest strength tablets of alprazolam, and
11 there was no evidence of upward titration from a lower dose.

12 e. All of the patients lived long distances from T.B.’s practice and most of the patients
13 lived long distances from Respondents’ pharmacy. Also, T.B.’s practice is a long distance from
14 Respondents’ pharmacy.

15 f. Patients presented with prescriptions for controlled substances on the same day and
16 around the same time (in some cases within minutes of one another), and those prescriptions had
17 the same serial number and were either close in batch number or had sequential batch numbers.

18 g. In some cases patients who received prescriptions from T.B. on different days had
19 those prescriptions filled at Respondents’ pharmacy on the same day and around the same time.

20 h. Respondents filled several prescriptions weeks or months after they were written.

21 i. T.B.’s prescribing trends for the patients were not consistent with T.B.’s primary area
22 of practice.

23 CAUSE FOR DISCIPLINE

24 (Failure to Exercise Corresponding Responsibility When Dispensing Controlled Substances)

25 18. Respondents are subject to disciplinary action under sections 4301, subdivisions (j)
26 and/or (o), 4113, subdivision (c), and/or 4306.5, subdivision (b) of the Code, Health and Safety
27 Code section 11153, subdivision (a), and California Code of Regulations, title 16, section 1761,
28 subdivisions (a) and/or (b), in that Respondent Hadjighafouri failed to exercise his corresponding

1 responsibility when dispensing controlled substances and dangerous drugs. The circumstances of
2 this conduct are set forth above in paragraphs 15 and 16.

3 **OTHER MATTERS**

4 34. Pursuant to section 4307 of the Code, if discipline is imposed on Pharmacy Permit
5 Number PHY 50868 issued to Respondent Danville, Respondent Hadjighafouri shall be
6 prohibited from serving as a manager, administrator, owner, member, officer, director, associate,
7 or partner of a licensee for five years if Pharmacy Permit Number PHY 50868 is placed on
8 probation or until Pharmacy Permit Number PHY 50868 is reinstated if it is revoked.

9 35. Pursuant to section 4307 of the Code, if discipline is imposed on Pharmacy Permit
10 Number PHY 50868 issued to Respondent Danville while Respondent Hadjighafouri has been an
11 officer and owner and had knowledge of or knowingly participated in any conduct for which the
12 licensee was disciplined, Respondent Hadjighafouri shall be prohibited from serving as a
13 manager, administrator, owner, member, officer, director, associate, or partner of a licensee for
14 five years if Pharmacy Permit Number PHY 50868 is placed on probation or until Pharmacy
15 Permit Number PHY 50868 is reinstated if it is revoked.

16 **PRAYER**

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

19 1. Revoking or suspending Pharmacy Permit Number PHY 50868 issued to Danville
20 Pharmacy, Inc. dba Danville San Ramon Pharmacy, Alireza Hadjighafouri, owner (Respondent
21 Danville);

22 2. Revoking or suspending Original Pharmacist License Number RPH 42144 issued to
23 Alireza Hadjighafouri (Respondent Hadjighafouri);

24 3. Prohibiting Respondent Hadjighafouri from serving as a manager, administrator,
25 owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy
26 Permit Number PHY 50868 is placed on probation or until Pharmacy Permit Number PHY 50868
27 is reinstated if Pharmacy Permit Number 50868 issued to Respondent Danville is revoked;

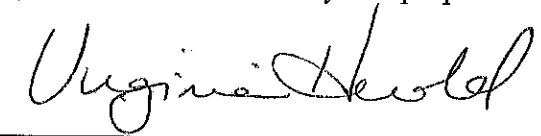
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4. Ordering Respondent Danville and Respondent Hadjighafouri to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case pursuant to Business and Professions Code section 125.3; and

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

DATED: 12/2/16



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

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