

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

In the Matter of the Accusation Against:

Case No. 2685

ELLIOTTS PHARMACY INC
dba MAX CARE
4825 El Camino Real
Atascadero, CA 93422
KIRK A. PEARSON, President
MARY PEARSON, Secretary

Original Pharmacy Permit No. PHY 44530

And

ASHRAF WAHBA
2131 Moreno Dr.
Los Angeles, CA 90039
Pharmacist-in-Charge

Original Pharmacy License No. RPH 32060

Respondents.

WITHDRAWAL OF ACCUSATION

Patricia F. Harris, Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, State of California, hereby withdraws the Accusation filed on February 2, 2004 against Elliotts Pharmacy Inc, dba Max Care and Ashraf Wahba in the above referenced matter.

Dated: September 27, 2005



PATRICIA F. HARRIS
Executive Officer
Board of Pharmacy

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A C C U S A T I O N

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Respondents.

Complainant alleges:

PARTIES

1. Patricia F. Harris (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).

2. On or about November 22, 1999, the Board issued Original Pharmacy Permit No. 44530 to Elliotts Pharmacy Inc., to do business as, Max Care Pharmacy (Respondent

1 Elliotts Pharmacy). The corporate officers, from November 11, 1999 through March 14, 2003,
2 are shown as Kirk A. Pearson, President and Mary Pearson, Secretary. The Original Pharmacy
3 Permit was in full force and effect at all times relevant to the charges brought herein and was
4 canceled on or about March 14, 2003, when a change of ownership occurred.

5 3. On or about August 2, 1978, the Board issued Original Pharmacist License
6 No. RPH 32060 to Ashraf Wahba (Respondent Wahba). The Pharmacist License was in full
7 force and effect at all times relevant to the charges brought herein and will expire on August 31,
8 2004, unless renewed.

9 JURISDICTION

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

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

15 6. Section 4301 of the Code states:

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

20 [¶] . . . [¶]

21 (b) Incompetence.

22 (c) Gross Negligence.

23 [¶] . . . [¶]

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

26 [¶] . . . [¶]

27 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
28 abetting the violation of or conspiring to violate any provision or term of this chapter or

1 of the applicable federal and state laws and regulations governing pharmacy, including
2 regulations established by the board."

3 7. Section 4052 of the Code states:

4 "(a) Notwithstanding any other provision of law, a pharmacist
5 may:

6 [¶] . . . [¶]

7 (5) (A) Perform the following procedures or functions as part of the care
8 provided by a health care facility, a licensed home health agency, a licensed clinic in
9 which there is a physician oversight, a provider who contracts with a licensed health care
10 service plan with regard to the care or services provided to the enrollees of that health
11 care service plan, or a physician, in accordance, as applicable, with policies, procedures,
12 or protocols of that facility, the home health agency, the licensed clinic, the health care
13 service plan, or that physician, in accordance with subparagraph (C):

14 (i) Ordering or performing routine drug therapy-related patient assessment
15 procedures including temperature, pulse, and respiration.

16 (ii) Ordering drug therapy-related laboratory tests.

17 (iii) Administering drugs and biologicals by injection pursuant to a prescriber's
18 order (the administration of immunizations under the supervision of a prescriber may also
19 be performed outside of a licensed health care facility).

20 (iv) Initiating or adjusting the drug regimen of a patient pursuant to a specific
21 written order or authorization made by the patient's prescriber for the individual patient,
22 and in accordance with the policies, procedures, or protocols of the health care facility,
23 home health agency, licensed clinic, health care service plan, or physician. Adjusting the
24 drug regimen does not include substituting or selecting a different drug, except as
25 authorized by the protocol. The pharmacist shall provide written notification to the
26 patient's prescriber, or enter the appropriate information in an electronic patient record
27 system shared by the prescriber, of any drug regimen initiated pursuant to this clause
28 within 24 hours."

8. California Code of Regulations, section 1716, states, in pertinent part:

"Pharmacists shall not deviate from the requirements of a prescription except upon the prior consent of the prescriber or to select the drug product in accordance with Section 4073 of the Business and Professions Code."

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

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

FIRST CAUSE FOR DISCIPLINE

(Acts Involving Incompetence or Gross Negligence)

11. Respondents Elliotts Pharmacy and Wahba are subject to disciplinary action under sections 4300, 4301, subdivisions (b) and (c) as it relates to section 4052, subdivision (a)(5)(A) for unprofessional conduct, in that on or about December 7, 2002, Respondent Wahba displayed incompetence and/or gross negligence, as follows:

A. Accepted and initiated a Total Parenteral Nutrition Order (TPN) for patient D.B. at home, outside a health care facility or licensed home health agency, and without established pharmacy TPN protocols, deviating from the standards of practice.

B. Failed to follow the physician's order for a TPN 1000 calories in 1 liter over an 8 hour period, and, instead, administered patient D.B. a TPN 2000 calories in 2 liters over a 12 hour period.

C. Patient D.B., expired on or about December 8, 2003.

SECOND CAUSE FOR DISCIPLINE

(Violation of Laws and Regulations)

12. Respondents Elliotts Pharmacy and Wahba are subject to disciplinary


1 action under sections 4300, 4301, subdivisions (j) and (o), for violating California Code of
2 Regulations, section 1716, for unprofessional conduct, in that on or about December 7, 2002,
3 Respondent Wahba violated the law and pharmacy rules and regulations, by filling a TPN order
4 for a 1000 calorie formula, with a 2000 calorie formula, as more fully set forth in paragraph 11
5 above.

6 PRAYER

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

- 9 1. Revoking or suspending Original Pharmacy Permit No. PHY 44530 issued
10 to Elliotts Pharmacy Inc., to do business as, Max Care Pharmacy;
11 2. Revoking or suspending Pharmacist License No. RPH 32060, issued to
12 Ashraf Wahba;
13 3. Ordering Respondents Elliotts Pharmacy and Wahba to pay the Board of
14 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to
15 Business and Professions Code section 125.3;
16 4. Taking such other and further action as deemed necessary and proper.

17 DATED: 2/2/04

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19 PATRICIA F. HARRIS
20 Executive Officer
21 Board of Pharmacy
22 Department of Consumer Affairs
23 State of California
24 Complainant

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