



California State Board of Pharmacy

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www.pharmacy.ca.gov

BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY

DEPARTMENT OF CONSUMER AFFAIRS

GOVERNOR EDMUND G. BROWN JR.

APPLICATION FOR VOLUNTARY SURRENDER OF PHARMACIST / INTERN LICENSE

PLEASE PRINT IN BLACK OR BLUE INK OR TYPE YOUR RESPONSES

| | |
|---|-------------------------|
| Name: <u>IJEOMA N. ESOMONU</u> | Case No. <u>AC 4579</u> |
| Address of Record: <u>16 MINARET ROAD</u> <u>OAKLEY CA. 94561</u> | |

Pursuant to the terms and conditions of my probation with the California State Board of Pharmacy (Board) in Case No. AC 4579, I hereby request to surrender my license, License No. 53516. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, I will no longer be subject to the terms and conditions of probation. I understand that this surrender constitutes a record of discipline and shall become a part of my license history with the Board.

Upon the acceptance of the surrender, I shall relinquish my pocket and wall license to the Board within ten (10) days of notification by the Board that the surrender is accepted. I understand that I may not reapply for any license from the board for three (3) years from the effective date of the surrender. I further understand that I shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board, including any outstanding costs.

PLEASE BE ADVISED THAT YOU ARE NOT RELIEVED OF THE REQUIREMENTS OF YOUR PROBATION UNLESS THE BOARD NOTIFIES YOU THAT YOUR REQUEST TO SURRENDER YOUR LICENSE HAS BEEN ACCEPTED.

Ijeoma Esomonu
Applicant's Signature

July 31, 2017
Date

Virginia Head
Executive Officer's Approval

7/31/17
Date

All items on this application are mandatory in accordance with your probationary order and the Board's Disciplinary Guidelines as authorized by Title 16, California Code of Regulations section 1760. Failure to provide any of the requested information or providing unreadable information will result in the application being rejected as incomplete. The information provided on this form will be used to determine eligibility for surrender. The official responsible for information maintenance is the Executive Officer, telephone (916) 574-7900.

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

In the Matter of the Amended Accusation Against:

**FRUITVALE AVENUE PHARMACY INC.
2693 Fruitvale Avenue
Oakland, CA 94601**

Pharmacy License No. PHY 50064,

**IJEOMA NWAYIOCHA ESOMONU
FRUITVALE AVENUE PHARMACY INC.
16 Minaret Road
Oakley, CA 94561**

Pharmacist License No. RPH 53516,

and

**IROEGBU CLIFFORD ESOMONU
FRUITVALE AVENUE PHARMACY INC.
6726 Corte Santa Maria
Pleasanton, CA 94566**

Pharmacist No. RPH 53445

Respondents.

Case No. 4579

OAH No. 2014061007

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO
RESPONDENT IJEOMA NWAYIOCHA
ESOMONU ONLY**

DECISION AND ORDER

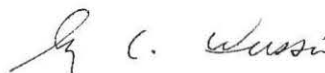
The attached Stipulated Settlement and Disciplinary Order are hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on April 8, 2015.

It is so ORDERED on April 1, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STAN C. WEISSER, Board President

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 TIMOTHY J. McDONOUGH
Deputy Attorney General
4 State Bar No. 235850
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Attorneys for Complainant

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

11 In the Matter of the Amended Accusation
12 Against:

13 **FRUITVALE AVENUE PHARMACY INC.**
2693 Fruitvale Avenue
14 Oakland, CA 94601

15 **Pharmacy License No. PHY 50064,**

16 **IJEOMA NWAYIOCHA ESOMONU**
FRUITVALE AVENUE PHARMACY INC.
17 16 Minaret Road
Oakley, CA 94561

18 **Pharmacist License No. RPH 53516,**

19 **and**

20 **IROEGBU CLIFFORD ESOMONU**
21 **FRUITVALE AVENUE PHARMACY INC.**
6726 Corte Santa Maria
22 Pleasanton, CA 94566

23 **Pharmacist No. RPH 53445**

24 Respondents.

Case No. 4579

OAH No. 2014061007

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO
RESPONDENT IJEOMA NWAYIOCHA
ESOMONU ONLY**

1 IT IS HEREBY STIPULATED AND AGREED by and between Complainant and
2 Respondent Ijeoma Nwayiocha Esomonu to the above-entitled proceedings that the following
3 matters are true:

4 PARTIES

5 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
6 She brought this action solely in her official capacity and is represented in this matter by Kamala
7 D. Harris, Attorney General of the State of California, by Timothy J. McDonough, Deputy
8 Attorney General.

9 2. Respondent Ijeoma Nwanyiocha Esomonu (Respondent) is represented in this
proceeding by attorney Mitchell Green, whose address is:

10 Nossaman LLP
11 50 California Street, 34th Floor
San Francisco, CA 94111

12 3. On or about April 23, 2002, the Board of Pharmacy issued Pharmacist License No.
13 53516 to Ijeoma Nwanyiocha Esomonu (Respondent). The Pharmacist License was in full force
14 and effect at all times relevant to the charges brought in Amended Accusation No. 4579 and will
15 expire on April 30, 2015, unless renewed.

16 JURISDICTION

17 4. Amended Accusation No. 4579 was filed before the Board of Pharmacy (Board) ,
18 Department of Consumer Affairs, and is currently pending against Respondent. The Amended
19 Accusation and all other statutorily required documents were properly served on Respondent on
20 January 2, 2014. Respondent timely filed her Notice of Defense contesting the Accusation.

21 5. A copy of Accusation No. 4579 is attached as exhibit A and incorporated by
22 reference.

23 ADVISEMENT AND WAIVERS

24 6. Respondent has carefully read, fully discussed with counsel, and understands the
25 charges and allegations in Amended Accusation No. 4579. Respondent has also carefully read,
26 fully discussed with counsel, and understands the effects of this Stipulated Settlement and
27 Disciplinary Order.

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1 7. Respondent is fully aware of her legal rights in this matter, including the right to a
2 hearing on the charges and allegations in the Amended Accusation; the right to be represented by
3 counsel at her own expense; the right to confront and cross-examine the witnesses against her; the
4 right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas
5 to compel the attendance of witnesses and the production of documents; the right to
6 reconsideration and court review of an adverse decision; and all other rights accorded by the
7 California Administrative Procedure Act and other applicable laws.

8 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
9 every right set forth above.

10 CULPABILITY

11 9. Respondent admits the truth of each and every charge and allegation in Amended
12 Accusation No. 4579.

13 10. Respondent agrees that her Pharmacist License is subject to discipline and she agrees
14 to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

15 RESERVATION

16 11. The admissions made by Respondent in this Stipulation are only for the purposes of
17 this proceeding, or any other proceedings in which the Board of Pharmacy or other professional
18 licensing agency is involved, and shall not be admissible in any other criminal or civil
19 proceeding.

20 CONTINGENCY

21 12. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent
22 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may
23 communicate directly with the Board regarding this stipulation and settlement, without notice to
24 or participation by Respondent or her counsel. By signing the stipulation, Respondent
25 understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation
26 prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation
27 as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or
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1 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,
2 and the Board shall not be disqualified from further action by having considered this matter.

3 13. The parties understand and agree that Portable Document Format (PDF) and facsimile
4 copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format
5 (PDF) and facsimile signatures, shall have the same force and effect as the originals.

6 14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
7 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
8 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
9 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
10 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
11 writing executed by an authorized representative of each of the parties.

12 15. In consideration of the foregoing admissions and stipulations, the parties agree that
13 the Board may, without further notice or formal proceeding, issue and enter the following
14 Disciplinary Order:

15 **DISCIPLINARY ORDER**

16 IT IS HEREBY ORDERED that Pharmacist License No. 53516 issued to Respondent
17 Ijeoma Nwanyiocha Esomonu (Respondent) is revoked. However, the revocation is stayed, and
18 Respondent is placed on probation for five (5) years on the following terms and conditions.

19 **1. Obey All Laws**

20 Respondent shall obey all state and federal laws and regulations.

21 Respondent shall report any of the following occurrences to the board, in writing, within
22 seventy-two (72) hours of such occurrence:

- 23 • an arrest or issuance of a criminal complaint for violation of any provision of the
24 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
25 substances laws
- 26 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
27 criminal complaint, information or indictment
- 28 • a conviction of any crime

- 1 • discipline, citation, or other administrative action filed by any state or federal agency
2 which involves respondent's pharmacist license or which is related to the practice of
3 pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging
4 for any drug, device or controlled substance.

5 Failure to timely report such occurrence shall be considered a violation of probation.

6 **2. Report to the Board**

7 Respondent shall report to the board quarterly, on a schedule as directed by the board or its
8 designee. The report shall be made either in person or in writing, as directed. Among other
9 requirements, respondent shall state in each report under penalty of perjury whether there has
10 been compliance with all the terms and conditions of probation. Failure to submit timely reports
11 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency
12 in submission of reports as directed may be added to the total period of probation. Moreover, if
13 the final probation report is not made as directed, probation shall be automatically extended until
14 such time as the final report is made and accepted by the board.

15 **3. Interview with the Board**

16 Upon receipt of reasonable prior notice, respondent shall appear in person for interviews
17 with the board or its designee, at such intervals and locations as are determined by the board or its
18 designee. Failure to appear for any scheduled interview without prior notification to board staff,
19 or failure to appear for two (2) or more scheduled interviews with the board or its designee during
20 the period of probation, shall be considered a violation of probation.

21 **4. Cooperate with Board Staff**

22 Respondent shall cooperate with the board's inspection program and with the board's
23 monitoring and investigation of respondent's compliance with the terms and conditions of her
24 probation. Failure to cooperate shall be considered a violation of probation.

25 **5. Continuing Education**

26 Respondent shall provide evidence of efforts to maintain skill and knowledge as a
27 pharmacist as directed by the board or its designee.

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1 **6. Notice to Employers**

2 During the period of probation, respondent shall notify all present and prospective
3 employers of the decision in case number 4579 and the terms, conditions and restrictions imposed
4 on respondent by the decision, as follows:

5 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
6 respondent undertaking any new employment, respondent shall cause her direct supervisor,
7 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's
8 tenure of employment) and owner to report to the board in writing acknowledging that the listed
9 individual(s) has/have read the decision in case number 4579, and terms and conditions imposed
10 thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or supervisor(s)
11 submit timely acknowledgment(s) to the board.

12 If respondent works for or is employed by or through a pharmacy employment service,
13 respondent must notify her direct supervisor, pharmacist-in-charge, and owner at every entity
14 licensed by the board of the terms and conditions of the decision in case number 4579 in advance
15 of the respondent commencing work at each licensed entity. A record of this notification must be
16 provided to the board upon request.

17 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
18 (15) days of respondent undertaking any new employment by or through a pharmacy employment
19 service, respondent shall cause her direct supervisor with the pharmacy employment service to
20 report to the board in writing acknowledging that she has read the decision in case number 4579
21 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure
22 that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

23 Failure to timely notify present or prospective employer(s) or to cause that/those
24 employer(s) to submit timely acknowledgments to the board shall be considered a violation of
25 probation.

26 "Employment" within the meaning of this provision shall include any full-time,
27 part-time, temporary, relief or pharmacy management service as a pharmacist or any
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1 position for which a pharmacist license is a requirement or criterion for employment,
2 whether the respondent is an employee, independent contractor or volunteer.

3 **7. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as**
4 **Designated Representative-in-Charge, or Serving as a Consultant**

5 During the period of probation, respondent shall not supervise any intern pharmacist, be the
6 pharmacist-in-charge or designated representative-in-charge of any entity licensed by the board
7 nor serve as a consultant unless otherwise specified in this order. Assumption of any such
8 unauthorized supervision responsibilities shall be considered a violation of probation.

9 **8. Reimbursement of Board Costs**

10 As a condition precedent to successful completion of probation, respondent shall pay to the
11 board its costs of investigation and prosecution in the amount of \$12,500. Respondent shall make
12 payments as follows: Respondent will pay at least \$208.33 each month for which she is on
13 probation until the amount is paid in full.

14 There shall be no deviation from this schedule absent prior written approval by the board or
15 its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of
16 probation.

17 The filing of bankruptcy by respondent shall not relieve respondent of her responsibility to
18 reimburse the board its costs of investigation and prosecution.

19 **9. Probation Monitoring Costs**

20 Respondent shall pay any costs associated with probation monitoring as determined by the
21 board each and every year of probation. Such costs shall be payable to the board on a schedule as
22 directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall
23 be considered a violation of probation.

24 **10. Status of License**

25 Respondent shall, at all times while on probation, maintain an active, current license with
26 the board, including any period during which suspension or probation is tolled. Failure to
27 maintain an active, current license shall be considered a violation of probation.

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1 If Respondent's license expires or is cancelled by operation of law or otherwise at any time
2 during the period of probation, including any extensions thereof due to tolling or otherwise, upon
3 renewal or reapplication respondent's license shall be subject to all terms and conditions of this
4 probation not previously satisfied.

5 **11. License Surrender While on Probation/Suspension**

6 Following the effective date of this decision, should respondent cease practice due to
7 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
8 respondent may tender her license to the board for surrender. The board or its designee shall have
9 the discretion whether to grant the request for surrender or take any other action it deems
10 appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent
11 will no longer be subject to the terms and conditions of probation. This surrender constitutes a
12 record of discipline and shall become a part of the respondent's license history with the board.

13 Upon acceptance of the surrender, respondent shall relinquish her pocket and wall license to
14 the board within ten (10) days of notification by the board that the surrender is accepted.
15 Respondent may not reapply for any license from the board for three (3) years from the effective
16 date of the surrender. Respondent shall meet all requirements applicable to the license sought as
17 of the date the application for that license is submitted to the board, including any outstanding
18 costs.

19 **12. Notification of a Change in Name, Residence Address, Mailing Address or**
20 **Employment**

21 Respondent shall notify the board in writing within ten (10) days of any change of
22 employment. Said notification shall include the reasons for leaving, the address of the new
23 employer, the name of the supervisor and owner, and the work schedule if known. Respondent
24 shall further notify the board in writing within ten (10) days of a change in name, residence
25 address, mailing address, or phone number.

26 Failure to timely notify the board of any change in employer(s), name(s), address(es), or
27 phone number(s) shall be considered a violation of probation.

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1 **13. Tolling of Probation**

2 Except during periods of suspension, respondent shall, at all times while on probation, be
3 employed as a pharmacist in California for a minimum of 40 hours per calendar month. Any
4 month during which this minimum is not met shall toll the period of probation, i.e., the period of
5 probation shall be extended by one month for each month during which this minimum is not met.
6 During any such period of tolling of probation, respondent must nonetheless comply with all
7 terms and conditions of probation.

8 Should respondent, regardless of residency, for any reason (including vacation) cease
9 practicing as a pharmacist for a minimum of 40 hours per calendar month in California,
10 respondent must notify the board in writing within ten (10) days of the cessation of practice, and
11 must further notify the board in writing within ten (10) days of the resumption of practice. Any
12 failure to provide such notification(s) shall be considered a violation of probation.

13 It is a violation of probation for respondent's probation to remain tolled pursuant to the
14 provisions of this condition for a total period, counting consecutive and non-consecutive months,
15 exceeding thirty-six (36) months.

16 "Cessation of practice" means any calendar month during which respondent is
17 not practicing as a pharmacist for at least 40 hours, as defined by Business and
18 Professions Code section 4000 et seq. "Resumption of practice" means any calendar
19 month during which respondent is practicing as a pharmacist for at least 40 hours as a
20 pharmacist as defined by Business and Professions Code section 4000 et seq.

21 **14. Violation of Probation**

22 If Respondent has not complied with any term or condition of probation, the board shall
23 have continuing jurisdiction over respondent, and probation shall automatically be extended, until
24 all terms and conditions have been satisfied or the board has taken other action as deemed
25 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and
26 to impose the penalty that was stayed.

27 If Respondent violates probation in any respect, the board, after giving respondent notice
28 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that

1 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a
2 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If
3 a petition to revoke probation or an accusation is filed against respondent during probation, the
4 board shall have continuing jurisdiction and the period of probation shall be automatically
5 extended until the petition to revoke probation or accusation is heard and decided.

6 **15. Completion of Probation**

7 Upon written notice by the board or its designee indicating successful completion of
8 probation, respondent's license will be fully restored.

9 **16. Community Services Program**

10 Within sixty (60) days of the effective date of this decision, Respondent shall submit to the
11 board or its designee, for prior approval, a community service program in which respondent shall
12 provide free health-care related services on a regular basis to a community or charitable facility or
13 agency for at least 120 hours. Within thirty (30) days of board approval thereof, Respondent shall
14 submit documentation to the board demonstrating commencement of the community service
15 program. A record of this notification must be provided to the board upon request. Respondent
16 shall report on progress with the community service program in the quarterly reports. Failure to
17 timely submit, commence, or comply with the program shall be considered a violation of
18 probation.

19 **17. Remedial Education**

20 Within ninety (90) days of the effective date of this decision, Respondent shall submit to
21 the board or its designee, for prior approval, an appropriate program of remedial education related
22 to pharmacy operations management and prescription drug abuse prevention. The program of
23 remedial education shall consist of at least 10 hours, which shall be completed within one year at
24 Respondent's own expense. All remedial education shall be in addition to, and shall not be
25 credited toward, continuing education (CE) courses used for license renewal purposes.

26 Failure to timely submit or complete the approved remedial education shall be considered a
27 violation of probation. The period of probation will be automatically extended until such
28 remedial education is successfully completed and written proof, in a form acceptable to the board,

1 is provided to the board or its designee.

2 Following the completion of each course, the board or its designee may require the
3 Respondent, at her own expense, to take an approved examination to test the Respondent's
4 knowledge of the course. If Respondent does not achieve a passing score on the examination, this
5 failure shall be considered a violation of probation. Any such examination failure shall require
6 respondent to take another course approved by the board in the same subject area.

7 **18. No Supervision of Ancillary Personnel**

8 During the period of probation, Respondent shall not supervise any ancillary personnel,
9 including, but not limited to, pharmacy technicians or designated representatives in any entity
10 licensed by the board. Respondent shall not work as the sole pharmacist on duty at any time.

11 Failure to comply with this provision shall be considered a violation of probation.

12 **19. No Ownership of Licensed Premises**

13 Respondent shall not own, have any legal or beneficial interest in, or serve as a manager,
14 administrator, member, officer, director, trustee, associate, or partner of any business, firm,
15 partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell
16 or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90)
17 days following the effective date of this decision and shall immediately thereafter provide written
18 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide
19 documentation thereof shall be considered a violation of probation.

20 **20. Ethics Course**

21 Within sixty (60) calendar days of the effective date of this decision, Respondent shall
22 enroll in a course in ethics, at Respondent's expense, approved in advance by the board or its
23 designee. Failure to initiate the course during the first year of probation, and complete it within
24 the second year of probation, is a violation of probation.

25 Respondent shall submit a certificate of completion to the board or its designee within five
26 days after completing the course.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Mitchell Green. I understand the stipulation and the effect it will have on my Pharmacist License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 2/15/2015 Ijeoma Nwanyiocha Esomonu
IJEOMA NWANYIOCHA ESOMONU
Respondent

I have read and fully discussed with Respondent Ijeoma Nwanyiocha Esomonu the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 2/16/2015 Mitchell Green
Mitchell Green
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy.

Dated: 2-17-2015

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
DIANN SOKOLOFF
Supervising Deputy Attorney General

Timothy L. McDonough
TIMOTHY L. MCDONOUGH
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Amended Accusation No. 4579

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KAMALA D. HARRIS
Attorney General of California
DIANN SOKOLOFF
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Attorneys for Complainant

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

In the Matter of the Accusation Against:

Case No. 4579

FRUITVALE AVENUE PHARMACY INC.
2693 Fruitvale Avenue
Oakland, CA 94601

AMENDED ACCUSATION

Pharmacy License No. PHY 50064,

IJEOMA NWAYIOCHA ESOMONU
FRUITVALE AVENUE PHARMACY INC.
16 Minaret Road
Oakley, CA 94561

Pharmacist License No. RPH 53516,

and

IROEGBU CLIFFORD ESOMONU
FRUITVALE AVENUE PHARMACY INC.
6726 Corte Santa Maria
Pleasanton, CA 94566

Pharmacist No. RPH 53445

Respondents.

1 Complainant alleges:

2 PARTIES

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

5 2. On or about October 21, 2009, the Board of Pharmacy issued Pharmacy License
6 Number PHY 50064 to Fruitvale Avenue Pharmacy Inc. (Respondent FAP). The Pharmacy
7 License was in full force and effect at all times relevant to the charges brought in this Accusation
8 and will expire on October 1, 2013, unless renewed.

9 3. On or about April 23, 2002, the Board of Pharmacy issued Pharmacist License
10 Number RPH 53516 to Ijeoma Nwanyiocha Esomonu (Respondent INE). The Pharmacist
11 License was in full force and effect at all times relevant to the charges brought in this Accusation
12 and will expire on April 30, 2015, unless renewed.

13 4. On or about March 28, 2002, the Board of Pharmacy issued Pharmacist Number RPH
14 53445 to Iroegbu Clifford Esomonu (Respondent ICE). The Pharmacist License was in full force
15 and effect at all times relevant to the charges brought in this Accusation and will expire on
16 September 30, 2013, unless renewed.

17 JURISDICTION

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

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

24 7. Section 4300 of the Code states:

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

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

- 1 “(1) Suspending judgment.
- 2 “(2) Placing him or her upon probation.
- 3 “(3) Suspending his or her right to practice for a period not exceeding one year.
- 4 “(4) Revoking his or her license.
- 5 “(5) Taking any other action in relation to disciplining him or her as the board in its
- 6 discretion may deem proper.

7 ...

8 “(e) The proceedings under this article shall be conducted in accordance with Chapter 5

9 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board

10 shall have all the powers granted therein. The action shall be final, except that the propriety of

11 the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of

12 Civil Procedure.”

13 8. Section 4300.1 of the Code provides that “[t]he expiration, cancellation, forfeiture, or

14 suspension of a board-issued license by operation of law or by order or decision of the board or a

15 court of law, the placement of a license on a retired status, or the voluntary surrender of a license

16 by a licensee shall not deprive the board of jurisdiction to commence or proceed with any

17 investigation of, or action or disciplinary proceeding against, the licensee or to render a decision

18 suspending or revoking the license.”

19 STATUTORY/REGULATORY PROVISIONS

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

21 “The board shall take action against any holder of a license who is guilty of unprofessional

22 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

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

- 24 “(a) Gross immortality.
- 25 ...
- 26 “(h) The administering to oneself, of any controlled substance, or the use of any dangerous
- 27 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
- 28 oneself, to a person holding a license under this chapter, or to any other person or to the public, or

1 to the extent that the use impairs the ability of the person to conduct with safety to the public the
2 practice authorized by the license.

3 ...

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

6 ...

7 “(l) The conviction of a crime substantially related to the qualifications, functions, and
8 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
9 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
10 substances or of a violation of the statutes of this state regulating controlled substances or
11 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
12 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
13 The board may inquire into the circumstances surrounding the commission of the crime, in order
14 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
15 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
16 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
17 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
18 of this provision. The board may take action when the time for appeal has elapsed, or the
19 judgment of conviction has been affirmed on appeal or when an order granting probation is made
20 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
21 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
22 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
23 indictment.

24 ...

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

1 10. Section 4113, subdivision (c), of the Code provides that “[t]he pharmacist-in-charge
2 shall be responsible for a pharmacy's compliance with all state and federal laws and regulations
3 pertaining to the practice of pharmacy.”

4 11. Section 490 of the Code provides, in relevant part, that the Board may suspend or
5 revoke a license when it finds that the licensee has been convicted of a crime substantially related
6 to the qualifications, functions or duties of the license.

7 12. Section 493 of the Code states:

8 “Notwithstanding any other provision of law, in a proceeding conducted by a board within
9 the department pursuant to law to deny an application for a license or to suspend or revoke a
10 license or otherwise take disciplinary action against a person who holds a license, upon the
11 ground that the applicant or the licensee has been convicted of a crime substantially related to the
12 qualifications, functions, and duties of the licensee in question, the record of conviction of the
13 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
14 and the board may inquire into the circumstances surrounding the commission of the crime in
15 order to fix the degree of discipline or to determine if the conviction is substantially related to the
16 qualifications, functions, and duties of the licensee in question.

17 “As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
18 'registration.’”

19 13. Health and Safety Code section 11165, subdivision (d), states:

20 “For each prescription for a Schedule II, Schedule III, or Schedule IV controlled substance, as
21 defined in the controlled substances schedules in federal law and regulations, specifically

22 Sections 1308.12, 1308.13, and 1308.14, respectively, of Title 21 of the Code of Federal
23 Regulations, the dispensing pharmacy or clinic shall provide the following information to the
24 Department of Justice on a weekly basis and in a format specified by the Department of Justice:

25 “(1) Full name, address, and the telephone number of the ultimate user or research subject,
26 or contact information as determined by the Secretary of the United States Department of Health
27 and Human Services, and the gender, and date of birth of the ultimate user.

28

1 “(2) The prescriber's category of licensure and license number; federal controlled
2 substance registration number; and the state medical license number of any prescriber using the
3 federal controlled substance registration number of a government-exempt facility.

4 “(3) Pharmacy prescription number, license number, and federal controlled substance
5 registration number.

6 “(4) NDC (National Drug Code) number of the controlled substance dispensed.

7 “(5) Quantity of the controlled substance dispensed.

8 “(6) ICD-9 (diagnosis code), if available.

9 “(7) Number of refills ordered.

10 “(8) Whether the drug was dispensed as a refill of a prescription or as a first-time request.

11 “(9) Date of origin of the prescription.

12 “(10) Date of dispensing of the prescription.”

13 14. Health and Safety Code section 11164 states, in relevant part:

14 “Except as provided in Section 11167, no person shall prescribe a controlled substance, nor shall
15 any person fill, compound, or dispense a prescription for a controlled substance, unless it
16 complies with the requirements of this section.”

17 “(a) Each prescription for a controlled substance classified in Schedule II, III, IV, or V,
18 except as authorized by subdivision (b), shall be made on a controlled substance prescription form
19 as specified in Section 11162.1”

20 15. Health and Safety Code section 11162.1 states, in relevant part:

21 “(a) The prescription forms for controlled substances shall be printed with the following features:

22 ...

23 “(7)(A) Six quantity check off boxes shall be printed on the form so that the prescriber
24 may indicate the quantity by checking the applicable box where the following quantities shall
25 appear:

- 26 ▪ 1-24
- 25-49
- 27 ▪ 50-74
- 75-100
- 101-150
- 28 ▪ 151 and over.

1 ...
2 “(8) Prescription blanks shall contain a statement printed on the bottom of the
3 prescription blank that the ‘Prescription is void if the number of drugs prescribed is not noted.’”
4 ...

5 “(b) Each batch of controlled substance prescription forms shall have the lot number printed on
6 the form and each form within that batch shall be numbered sequentially beginning with the
7 numeral one.”

8 16. Health and Safety Code section 11153, subdivision (a), states:

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

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

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

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

27 18. California Code of Regulations, title 16, section 1770, states:

28 “For the purpose of denial, suspension, or revocation of a personal or facility license

1 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
2 crime or act shall be considered substantially related to the qualifications, functions, or duties of a
3 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
4 licensee or registrant to perform the functions authorized by his license or registration in a manner
5 consistent with the public health, safety, or welfare.”

6 CONTROLLED SUBSTANCES

7 19. Section 4021 of the Code states:

8 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
9 11053) of Division 10 of the Health and Safety Code.”

10 20. Oxycodone is a Schedule II controlled substance as designated by Health and Safety
11 Code section 11055, subdivision (b)(1)(M).

12 21. Hydrocodone with acetaminophen is a Schedule III controlled substance as
13 designated by Health and Safety Code section 11056, subdivision (e)(4).

14 22. Alprazolam is a Schedule IV controlled substance as designated by Health and Safety
15 Code section 11057, subdivision (d)(1).

16 23. Promethazine with codeine is a Schedule V controlled substance as designated by
17 Health and Safety Code section 11058.

18 COST RECOVERY

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

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

25 FACTUAL BACKGROUND

26 25. From about October 21, 2009, to the present, Respondent Fruitvale Avenue Pharmacy
27 (FAP) has been operating as a pharmacy in Oakland, California. From on or about October 21,
28 2009, until May 19 2011, Respondent Ijeoma Nwanyiocha Esomonu (INE), the owner of FAP,

1 was also the pharmacist-in-charge (PIC) at FAP. From on or about October 21, 2009, until May
2 19, 2011, Respondent Iroegbu Clifford Esomonu (ICE) worked as a pharmacist at FAP. From
3 May 19, 2011, to the present, Respondent ICE took over as the PIC at FAP.

4 26. On May 17, 2011, a Board inspector (inspector) conducted an inspection at FAP
5 because the Board had identified FAP as a pharmacy that failed to report any Controlled
6 Substances Utilization Review and Evaluation System (CURES) data to the Department of
7 Justice (DOJ). During the inspection at FAP, the inspector observed several pharmacy law
8 violations. Specifically, the inspector noted that FAP had never transmitted any CURES data to
9 the DOJ.

10 27. While at FAP, the inspector looked into prescription documents from Bay Internal
11 Medicine (BIM). The prescriptions appeared legitimate but, upon further investigation, the
12 inspector found that none of prescribers' contact information on the prescriptions contained a
13 valid working phone number. The inspector asked Respondent ICE to verify the BIM prescribers
14 on the Medical Board of California's website. The web search revealed that none of the BIM
15 prescribers' listed addresses on the Medical Board's website matched the addresses on the
16 prescriptions. Significantly, Respondent ICE admitted to the inspector that he had never before
17 verified a prescriber using the Medical Board's website. In addition, the inspector observed
18 numerous other violations of pharmacy laws. At the conclusion of the inspection, the inspector
19 prepared an inspection report documenting various pharmacy law violations. The inspector gave
20 a copy of the report to Respondent ICE, and then had Respondent ICE review and sign off on it.
21 During his inspection, the inspector obtained certain documents including prescription

22 documents, dispensing detail reports, and Cardinal Health Narcotic Sales Reports. The inspector
23 also requested FAP to provide additional documents and explanations regarding pharmacy law
24 violations indicated in the report.

25 28. On or about May 30, 2011, the inspector received and reviewed faxed responses from
26 FAP. Subsequently, the inspector contacted 15 different prescribers listed as the supposed
27 prescriber on the prescription documents. The inspector sent each prescriber a list of
28 prescriptions from FAP to verify the legitimacy of the prescriptions. Each of the prescribers

1 responded with a written statement that they did not authorize the prescriptions from FAP. In
2 fact, one prescriber from Kaiser stated he did not authorize any of the prescriptions and that they
3 were written on prescriptions that were stolen from his locker at the hospital. Additionally, one
4 prescriber from BIM stated their practice had been closed since June 2009. All the BIM
5 prescription documents that the inspector sent to the BIM prescribers to review were dated and
6 filled by FAP in 2011.

7 29. Physician Assistant G. P.¹ (G. P.) was one of the 15 prescribers that the inspector
8 contacted to verify the legitimacy of the prescription documents he got from FAP. On or about
9 June 7, 2011, the inspector received a response from G. P., indicating that he did not authorize the
10 prescriptions and the documents were forgeries. In addition, G. P. noted that several of the
11 prescription documents were not written on proper controlled substances prescription forms.
12 Significantly, during the May 17, 2011 visit to FAP, the inspector had made the same observation
13 that FAP had improperly dispensed controlled substances on five invalid prescription documents.
14 These five prescription documents were invalid because they lacked several required security
15 features such as quantity check off boxes, the required statement of "Prescription is void if the
16 number of drugs prescribed is not noted," and the prescriptions were not sequentially numbered.

17 30. The inspector's investigation revealed that, from October 2009, to about April 2011,
18 FAP failed to transmit CURES data to the DOJ. The investigation further showed that, from
19 about July 2010, to May 2011, Respondent INE, and Respondent ICE had filled over 350
20 fraudulent prescriptions. Many of these prescription documents contained significant
21 irregularities that should have prompted Respondent INE and Respondent ICE to verify the

22 legitimacy of the prescription before dispensing the controlled substances. In addition, a review
23 of FAP's dispensing printouts obtained during the investigation showed Respondent Ice's initials
24 on most, if not all, of the printouts' "filled by" section. Furthermore, in a written statement,
25 Respondent ICE admitted that he was the pharmacist on duty everyday since the opening of FAP.

26 ///

27 _____
28 ¹ G. P. is used in this document rather than the actual name of the Physician Assistant.

1 **CAUSES OF DISCIPLINE AGAINST RESPONDENT FAP**

2 **FIRST CAUSE FOR DISCIPLINE**

3 **(Unprofessional Conduct-Failure to Transmit Dispensing Data to CURES)**
4 **(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11165, subd. (d))**

5 31. Respondent Fruitvale Avenue Pharmacy's (FAP) Pharmacy License is subject to
6 disciplinary action under Code section 4301, subdivision (j), because FAP violated Health and
7 Safety Code section 11165, subdivision (d), in that from on or about October 21, 2009, until
8 approximately April 2011, FAP failed to transmit dispensing data for Schedule II, Schedule III,
9 and Schedule IV controlled substances to the Department of Justice for the Controlled Substances
10 Utilization Review and Evaluation System (CURES) on a weekly basis. The circumstances are
11 further explained in paragraphs 25-30, above.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct-Filled Prescriptions with Significant Irregularity)**
14 **(Bus. & Prof. § 4301, subd. (o) and 16 CCR § 1761, subd. (a))**

15 32. Respondent FAP's Pharmacy License is subject to disciplinary action under Code
16 section 4301, subdivision (o), because FAP violated California Code of Regulations, title 16,
17 section 1761, subdivision (a), in that pharmacists and staff at FAP filled over 350 irregular
18 prescriptions. Many of these prescription documents order an unusually large amount of
19 controlled substances for "as-needed" purposes. The circumstances are further explained in
20 paragraphs 25-30, above.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Unprofessional Conduct-Failure to Verify Legitimacy of Prescriptions for Controlled Substances)**
23 **(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11153, subd. (a))**

24 33. Respondent FAP's Pharmacy License is subject to disciplinary action under Code
25 section 4301, subdivision (j), because FAP violated Health and Safety Code section 11153,
26 subdivision (a), in that pharmacists and staff at FAP failed to uphold their corresponding
27 responsibility of verifying the patient's legitimate medical purposes for controlled substances.
28 The pharmacists and staff at FAP breached their corresponding responsibility by furnishing
unusually large quantities of controlled substances to patients without confirming with the
supposed prescribers the legitimacy of the prescriptions. In fact, the pharmacists and staff at FAP
filled approximately 350 fraudulent prescriptions, many of which were for unusually large

1 quantities of controlled substances. The circumstances are further explained in paragraphs 25-30,
2 above.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct-Dispensed Controlled Substances on Invalid Prescriptions)**
5 **(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11164)**

6 34. Respondent FAP's Pharmacy License is subject to disciplinary action under Code
7 section 4301, subdivision (j), because FAP violated Health and Safety Code section 11164, in that
8 the pharmacists and staff at FAP furnished controlled substances to patients based on invalid
9 controlled substances prescription forms. Specifically, during May 2011, FAP filled five
10 prescription documents that lacked several required security measures. The circumstances are
11 further explained in paragraphs 25-30, above.

12 **CAUSES OF DISCIPLINE AGAINST RESPONDENT INE**

13 **FIFTH CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct-Failure to Transmit Dispensing Data to CURES)**
15 **(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11165, subd. (d))**

16 35. Respondent Ijeoma Nwanyiocha Esomonu (INE), as Pharmacist-in-Charge of FAP,
17 has subjected her Pharmacist License to disciplinary action under Code section 4301, subdivision
18 (j), by violating Health and Safety Code sections 11165, subdivision (d), in that from on or about
19 October 21, 2009, until approximately April 2011, INE failed to insure that FAP transmit to the
20 Department of Justice for the Controlled Substances Utilization Review and Evaluation System
21 (CURES) dispensing data for Schedule II, Schedule III, and Schedule IV controlled substances on
22 a weekly basis. The circumstances are further explained in paragraphs 25-30, above.

23 **SIXTH CAUSE FOR DISCIPLINE**

24 **(Unprofessional Conduct-Filled Prescriptions with Significant Irregularity)**
25 **(Bus. & Prof. § 4301, subd. (o) and 16 CCR § 1761, subd. (a))**

26 36. Respondent INE, as Pharmacist-in-Charge of FAP, has subjected her Pharmacist
27 License to disciplinary action under Code section 4301, subdivision (o), because she violated
28 California Code of Regulations, title 16, section 1761, subdivision (a), in that pharmacists and
staff at FAP filled over 350 irregular prescriptions. Many of these prescription documents order
an unusually large amount of controlled substances for "as-needed" purposes. The circumstances
are further explained in paragraphs 25-30, above.

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SEVENTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Failure to Verify Legitimacy of Prescriptions for Controlled Substances)
(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11153, subd. (a))

37. Respondent INE, as Pharmacist-in-Charge of FAP, has subjected her Pharmacist License to disciplinary action under Code section 4301, subdivision (j), because she violated Health and Safety Code section 11153, subdivision (a), in that pharmacists and staff at FAP failed to uphold their corresponding responsibility of verifying the patient's legitimate medical purposes for controlled substances. The pharmacists and staff at FAP breached their corresponding responsibility by furnishing unusually large quantities of controlled substances to patients without confirming with the supposed prescribers the legitimacy of the prescriptions. In fact, the pharmacists and staff at FAP filled approximately 350 fraudulent prescriptions, many of which were for unusually large quantities of controlled substances. The circumstances are further explained in paragraphs 25-30, above.

EIGHTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Dispensed Controlled Substances on Invalid Prescriptions)
(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11164)

38. Respondent INE, as Pharmacist-in-Charge of FAP, has subjected her Pharmacist License to disciplinary action under Code section 4301, subdivision (j), because she violated Health and Safety Code section 11164, in that the pharmacists and staff at FAP furnished controlled substances to patients based on invalid controlled substances prescription forms. Specifically, during May 2011, FAP filled five prescription documents that lacked several required security measures. The circumstances are further explained in paragraphs 25-30, above.

CAUSES OF DISCIPLINE AGAINST RESPONDENT ICE

NINTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Filled Prescriptions with Significant Irregularity)
(Bus. & Prof. § 4301, subd. (o) and 16 CCR § 1761, subd. (a))

39. Respondent Iroegbu Clifford Esomonu (ICE), as a pharmacist of FAP, has subjected his Pharmacist License to disciplinary action under Code section 4301, subdivision (o), because he violated California Code of Regulations, title 16, section 1761, subdivision (a), in that Respondent ICE filled prescriptions with significant irregularity. Many of the prescriptions order unusually large quantities of controlled substances including oxycodone, hydrocodone with

1 acetaminophen, alprazolam and promethazine with codeine. The circumstances are further
2 explained in paragraphs 25-30, above.

3 **TENTH CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct-Failure to Verify Legitimacy of Prescriptions for Controlled Substances)**
5 **(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11153, subd. (a))**

6 40. Respondent ICE, as a pharmacist of FAP, has subjected his Pharmacist License to
7 disciplinary action under Code section 4301, subdivision (j), because he violated Health and
8 Safety Code section 11153, subdivision (a), in that, on numerous occasions, Respondent ICE
9 failed to verify the legitimate medical purpose for prescribing an unusually large quantity of
10 controlled substances. In fact, FAP's drug dispensing printouts show that Respondent ICE filled
11 approximately 350 fraudulent prescriptions, many which were for unusually large quantities of
12 controlled substances. The circumstances are further explained in paragraphs 25-30, above.

13 **ELEVENTH CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct-Dispensed Controlled Substances on Invalid Prescriptions)**
15 **(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11164)**

16 41. Respondent ICE, as a pharmacist of FAP, has subjected his Pharmacist License to
17 disciplinary action under Code section 4301, subdivision (j), in that Respondent ICE dispensed
18 controlled substances based on invalid prescription documents. Specifically, Respondent ICE's
19 initials were on the pharmacy dispensing printouts for those five invalid prescription documents.
20 The circumstances are further explained in paragraphs 25-30 above.

21 **TWELFTH CAUSE FOR DISCIPLINE**

22 **(Unprofessional Conduct-Use of Alcohol in a Dangerous Manner)**
23 **(Bus. & Prof. § 4301, subd. (h))**

24 42. Respondent ICE has subjected his Pharmacist License to disciplinary action under
25 Code section 4301, subdivision (h), in that on or about April 23, 2012, Respondent ICE was
26 arrested by a San Leandro police officer for driving under the influence of alcohol. The
27 circumstances are as follows:

28 43. On or about 12:25 a.m. on April 23, 2012, a San Leandro police officer stopped
Respondent's vehicle for a violation of Vehicle Code section 21650 (a vehicle on the highway
must be driven on the right side of the road). The officer approached Respondent's vehicle and
observed symptoms of intoxication including red watery eyes, alcoholic odor emitting from

1 Respondent's breath and slurred speech. Respondent failed a series of field sobriety tests. Two
2 breath tests from Respondent at approximately 1:19 a.m. and 1:22 a.m. revealed a blood alcohol
3 concentration (BAC) of .13.

4 **THIRTEENTH CAUSE FOR DISCIPLINE**
5 **(Unprofessional Conduct-Conviction)**
6 **(Bus. & Prof. §§ 490 & 4301, subd. (l))**

7 44. Respondent ICE has subjected his Pharmacist License to disciplinary action under
8 Code section 4301, subdivision (l), and section 490, in that Respondent ICE was convicted of a
9 crime substantially related to the qualifications, functions and duties of a pharmacist. The
10 circumstances are as follows:

11 45. On or about December 13, 2012, in a criminal matter entitled *People of the State of*
12 *California v. Iroegbu Clifford Esomonu*, in the Alameda County Superior Court, Respondent ICE
13 was convicted upon plea of no contest to the violation of Vehicle Code section 23152,
14 subdivision (b) (driving with a blood alcohol level of .08 or more), a misdemeanor. Respondent
15 ICE was ordered to serve 15 days in county jail. Respondent was placed on probation for 3 years
16 with various conditions including completing a Drinking Driver Program and paying various fees
17 and fines.

18 **DISCIPLINE CONSIDERATIONS**

19 46. To determine the degree of discipline, if any, to be imposed on Respondent ICE,
20 Complainant alleges that on or about December 28, 2010, in a prior action, the Board of
21 Pharmacy issued Citation Number CI 2010 45230 and ordered Respondent ICE to pay a \$2,500
22 fine for violating sections 4301, subdivisions (h) and (l) [arrest for driving under the influence
23 and conviction on the lesser charge of wet/reckless]. That Citation is now final and is
24 incorporated by reference as if fully set forth.

25 **PRAYER**

26 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
27 Accusation, and that following the hearing, the Board of Pharmacy issue a decision:

28 1. Revoking or suspending Pharmacy License Number PHY 50064, issued to
Fruitvale Avenue Pharmacy Inc.;

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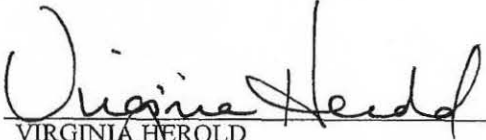
2. Revoking or suspending Pharmacist License Number RPH 53516, issued to Ijeoma Nwanyiocha Esomonu, Fruitvale Avenue Pharmacy Inc.;

3. Revoking or suspending Pharmacist License Number RPH 53445, issued to Iroegbu Clifford Esomonu, Fruitvale Avenue Pharmacy Inc.;

4. Ordering Fruitvale Avenue Pharmacy Inc., Ijeoma Nwanyiocha Esomonu and Iroegbu Clifford Esomonu 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: 12/17/13



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

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

11 In the Matter of the Accusation Against:

Case No. 4579

12 **FRUITVALE AVENUE PHARMACY INC.**
13 **2693 Fruitvale Avenue**
14 **Oakland, CA 94601**

ACCUSATION

15 **Pharmacy License No. PHY 50064,**

16 **IJEOMA NWAYIOCHA ESOMONU**
17 **FRUITVALE AVENUE PHARMACY INC.**
18 **16 Minaret Road**
19 **Oakley, CA 94561**

20 **Pharmacist License No. RPH 53516,**

21 **and**

22 **IROEGBU CLIFFORD ESOMONU**
23 **FRUITVALE AVENUE PHARMACY INC.**
24 **6726 Corte Santa Maria**
25 **Pleasanton, CA 94566**

26 **Pharmacist No. RPH 53445**

27 Respondents.

1 Complainant alleges:

2 PARTIES

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

5 2. On or about October 21, 2009, the Board of Pharmacy issued Pharmacy License
6 Number PHY 50064 to Fruitvale Avenue Pharmacy Inc. (Respondent FAP). The Pharmacy
7 License was in full force and effect at all times relevant to the charges brought in this Accusation
8 and will expire on October 1, 2013, unless renewed.

9 3. On or about April 23, 2002, the Board of Pharmacy issued Pharmacist License
10 Number RPH 53516 to Ijeoma Nwanyiocha Esomonu (Respondent INE). The Pharmacist
11 License was in full force and effect at all times relevant to the charges brought in this Accusation
12 and will expire on April 30, 2015, unless renewed.

13 4. On or about March 28, 2002, the Board of Pharmacy issued Pharmacist Number RPH
14 53445 to Iroegbu Clifford Esomonu (Respondent ICE). The Pharmacist License was in full force
15 and effect at all times relevant to the charges brought in this Accusation and will expire on
16 September 30, 2013, unless renewed.

17 JURISDICTION

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

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

24 7. Section 4300 of the Code states:

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

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

- 1 “(1) Suspending judgment.
- 2 “(2) Placing him or her upon probation.
- 3 “(3) Suspending his or her right to practice for a period not exceeding one year.
- 4 “(4) Revoking his or her license.
- 5 “(5) Taking any other action in relation to disciplining him or her as the board in its
- 6 discretion may deem proper.

7 ...

8 “(e) The proceedings under this article shall be conducted in accordance with Chapter 5
9 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board
10 shall have all the powers granted therein. The action shall be final, except that the propriety of
11 the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of
12 Civil Procedure.”

13 8. Section 4300.1 of the Code provides that “[t]he expiration, cancellation, forfeiture, or
14 suspension of a board-issued license by operation of law or by order or decision of the board or a
15 court of law, the placement of a license on a retired status, or the voluntary surrender of a license
16 by a licensee shall not deprive the board of jurisdiction to commence or proceed with any
17 investigation of, or action or disciplinary proceeding against, the licensee or to render a decision
18 suspending or revoking the license.”

19 STATUTORY/REGULATORY PROVISIONS

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

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

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

24 “(a) Gross immortality.

25 ...

26 “(h) The administering to oneself, of any controlled substance, or the use of any dangerous
27 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
28 oneself, to a person holding a license under this chapter, or to any other person or to the public, or

1 to the extent that the use impairs the ability of the person to conduct with safety to the public the
2 practice authorized by the license.

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

6 ...
7 “(l) The conviction of a crime substantially related to the qualifications, functions, and
8 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
9 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
10 substances or of a violation of the statutes of this state regulating controlled substances or
11 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
12 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
13 The board may inquire into the circumstances surrounding the commission of the crime, in order
14 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
15 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
16 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
17 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
18 of this provision. The board may take action when the time for appeal has elapsed, or the
19 judgment of conviction has been affirmed on appeal or when an order granting probation is made
20 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
21 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
22 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
23 indictment.

24 ...
25 “(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
26 violation of or conspiring to violate any provision or term of this chapter or of the applicable
27 federal and state laws and regulations governing pharmacy, including regulations established by
28 the board or by any other state or federal regulatory agency.”

1 10. Section 4113, subdivision (c), of the Code provides that "[t]he pharmacist-in-charge
2 shall be responsible for a pharmacy's compliance with all state and federal laws and regulations
3 pertaining to the practice of pharmacy."

4 11. Section 490 of the Code provides, in relevant part, that the Board may suspend or
5 revoke a license when it finds that the licensee has been convicted of a crime substantially related
6 to the qualifications, functions or duties of the license.

7 12. Section 493 of the Code states:

8 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
9 the department pursuant to law to deny an application for a license or to suspend or revoke a
10 license or otherwise take disciplinary action against a person who holds a license, upon the
11 ground that the applicant or the licensee has been convicted of a crime substantially related to the
12 qualifications, functions, and duties of the licensee in question, the record of conviction of the
13 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
14 and the board may inquire into the circumstances surrounding the commission of the crime in
15 order to fix the degree of discipline or to determine if the conviction is substantially related to the
16 qualifications, functions, and duties of the licensee in question.

17 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
18 'registration.'"

19 13. Health and Safety Code section 11165, subdivision (d), states:

20 "For each prescription for a Schedule II, Schedule III, or Schedule IV controlled substance, as
21 defined in the controlled substances schedules in federal law and regulations, specifically
22 Sections 1308.12, 1308.13, and 1308.14, respectively, of Title 21 of the Code of Federal
23 Regulations, the dispensing pharmacy or clinic shall provide the following information to the
24 Department of Justice on a weekly basis and in a format specified by the Department of Justice:

25 "(1) Full name, address, and the telephone number of the ultimate user or research subject,
26 or contact information as determined by the Secretary of the United States Department of Health
27 and Human Services, and the gender, and date of birth of the ultimate user.
28

1 “(2) The prescriber's category of licensure and license number; federal controlled
2 substance registration number; and the state medical license number of any prescriber using the
3 federal controlled substance registration number of a government-exempt facility.

4 “(3) Pharmacy prescription number, license number, and federal controlled substance
5 registration number.

6 “(4) NDC (National Drug Code) number of the controlled substance dispensed.

7 “(5) Quantity of the controlled substance dispensed.

8 “(6) ICD-9 (diagnosis code), if available.

9 “(7) Number of refills ordered.

10 “(8) Whether the drug was dispensed as a refill of a prescription or as a first-time request.

11 “(9) Date of origin of the prescription.

12 “(10) Date of dispensing of the prescription.”

13 14. Health and Safety Code section 11164 states, in relevant part:

14 “Except as provided in Section 11167, no person shall prescribe a controlled substance, nor shall
15 any person fill, compound, or dispense a prescription for a controlled substance, unless it
16 complies with the requirements of this section.”

17 “(a) Each prescription for a controlled substance classified in Schedule II, III, IV, or V,
18 except as authorized by subdivision (b), shall be made on a controlled substance prescription form
19 as specified in Section 11162.1”

20 15. Health and Safety Code section 11162.1 states, in relevant part:

21 “(a) The prescription forms for controlled substances shall be printed with the following features:

22 ...

23 “(7)(A) Six quantity check off boxes shall be printed on the form so that the prescriber
24 may indicate the quantity by checking the applicable box where the following quantities shall
25 appear:

- 26 ▪ 1-24
- 25-49
- 27 ▪ 50-74
- 75-100
- 101-150
- 28 ▪ 151 and over.

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...
“(8) Prescription blanks shall contain a statement printed on the bottom of the prescription blank that the ‘Prescription is void if the number of drugs prescribed is not noted.’”
...

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

16. Health and Safety Code section 11153, subdivision (a), states:

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

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

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

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

18. California Code of Regulations, title 16, section 1770, states:

“For the purpose of denial, suspension, or revocation of a personal or facility license

1 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
2 crime or act shall be considered substantially related to the qualifications, functions, or duties of a
3 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
4 licensee or registrant to perform the functions authorized by his license or registration in a manner
5 consistent with the public health, safety, or welfare.”

6 CONTROLLED SUBSTANCES

7 19. Section 4021 of the Code states:

8 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
9 11053) of Division 10 of the Health and Safety Code.”

10 20. Oxycodone is a Schedule II controlled substance as designated by Health and Safety
11 Code section 11055, subdivision (b)(1)(M).

12 21. Hydrocodone with acetaminophen is a Schedule III controlled substance as
13 designated by Health and Safety Code section 11056, subdivision (e)(4).

14 22. Alprazolam is a Schedule IV controlled substance as designated by Health and Safety
15 Code section 11057, subdivision (d)(1).

16 23. Promethazine with codeine is a Schedule V controlled substance as designated by
17 Health and Safety Code section 11058.

18 COST RECOVERY

19 24. Section 125.3 of the Code provides, in relevant part, that the Board may request the
20 administrative law judge to direct a licentiate found to have committed a violation or violations of
21 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
22 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
23 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
24 included in a stipulated settlement.

25 FACTUAL BACKGROUND

26 25. From about October 21, 2009, to the present, Respondent Fruitvale Avenue Pharmacy
27 (FAP) has been operating as a pharmacy in Oakland, California. From on or about October 21,
28 2009, until May 19 2011, Respondent Ijeoma Nwanyiocha Esomonu (INE), the owner of FAP,

1 was also the pharmacist-in-charge (PIC) at FAP. From on or about October 21, 2009, until May
2 19, 2011, Respondent Iroegbu Clifford Esomonu (ICE) worked as a pharmacist at FAP. From
3 May 19, 2011, to the present, Respondent ICE took over as the PIC at FAP.

4 26. On May 17, 2011, Board Inspector ██████ conducted an inspection at FAP
5 because the Board had identified FAP as a pharmacy that failed to report any Controlled
6 Substances Utilization Review and Evaluation System (CURES) data to the Department of
7 Justice (DOJ). During the inspection at FAP, Inspector ██████ observed several pharmacy law
8 violations. Specifically, Inspector ██████ noted that FAP had never transmitted any CURES
9 data to the DOJ.

10 27. While at FAP, Inspector ██████ looked into prescription documents from Bay
11 Internal Medicine (BIM). The prescriptions appeared legitimate but, upon further investigation,
12 Inspector ██████ found that none of prescribers' contact information on the prescriptions
13 contained a valid working phone number. Inspector ██████ asked Respondent ICE to verify the
14 BIM prescribers on the Medical Board of California's website. The web search revealed that
15 none of the BIM prescribers' listed addresses on the Medical Board's website matched the
16 addresses on the prescriptions. Significantly, Respondent ICE admitted to Inspector ██████ that
17 he had never before verified a prescriber using the Medical Board's website. In addition,
18 Inspector ██████ observed numerous other violations of pharmacy laws. At the conclusion of
19 the inspection, Inspector ██████ prepared an inspection report documenting various pharmacy
20 law violations. Inspector ██████ gave a copy of the report to Respondent ICE, and then had
21 Respondent ICE review and sign off on it. During his inspection, Inspector ██████ obtained
22 certain documents including prescription documents, dispensing detail reports, and Cardinal
23 Health Narcotic Sales Reports. Inspector ██████ also requested FAP to provide additional
24 documents and explanations regarding pharmacy law violations indicated in the report.

25 28. On or about May 30, 2011, Inspector ██████ received and reviewed faxed responses
26 from FAP. Subsequently, Inspector ██████ contacted 15 different prescribers listed as the
27 supposed prescriber on the prescription documents. Inspector ██████ sent each prescriber a list
28 of prescriptions from FAP to verify the legitimacy of the prescriptions. Each of the prescribers

1 responded with a written statement that they did not authorize the prescriptions from FAP. In
2 fact, one prescriber from Kaiser stated he did not authorize any of the prescriptions and that they
3 were written on prescriptions that were stolen from his locker at the hospital. Additionally, one
4 prescriber from BIM stated their practice had been closed since June 2009. All the BIM
5 prescription documents that Inspector ██████ sent to the BIM prescribers to review were dated
6 and filled by FAP in 2011.

7 29. Physician Assistant George Pearson was one of the 15 prescribers that Inspector
8 ██████ contacted to verify the legitimacy of the prescription documents he got from FAP. On or
9 about June 7, 2011, Inspector ██████ received a response from Mr. Pearson, indicating that he
10 did not authorize the prescriptions and the documents were forgeries. In addition, Mr. Pearson
11 noted that several of the prescription documents were not written on proper controlled substances
12 prescription forms. Significantly, during the May 17, 2011 visit to FAP, Inspector ██████ had
13 made the same observation that FAP had improperly dispensed controlled substances on five
14 invalid prescription documents. These five prescription documents were invalid because they
15 lacked several required security features such as quantity check off boxes, the required statement
16 of "Prescription is void if the number of drugs prescribed is not noted," and the prescriptions were
17 not sequentially numbered.

18 30. Inspector ██████'s investigation revealed that, from October 2009, to about April
19 2011, FAP failed to transmit CURES data to the DOJ. The investigation further showed that,
20 from about July 2010, to May 2011, Respondent INE, and Respondent ICE had filled over 350
21 fraudulent prescriptions. Many of these prescription documents contained significant
22 irregularities that should have prompted Respondent INE and Respondent ICE to verify the
23 legitimacy of the prescription before dispensing the controlled substances. In addition, a review
24 of FAP's dispensing printouts obtained during the investigation showed Respondent Ice's initials
25 on most, if not all, of the printouts' "filled by" section. Furthermore, in a written statement,
26 Respondent ICE admitted that he was the pharmacist on duty everyday since the opening of FAP.

27 ///

28 ///

1 **CAUSES OF DISCIPLINE AGAINST RESPONDENT FAP**

2 **FIRST CAUSE FOR DISCIPLINE**

3 **(Unprofessional Conduct-Failure to Transmit Dispensing Data to CURES)**
4 **(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11165, subd. (d))**

5 31. Respondent Fruitvale Avenue Pharmacy's (FAP) Pharmacy License is subject to
6 disciplinary action under Code section 4301, subdivision (j), because FAP violated Health and
7 Safety Code section 11165, subdivision (d), in that from on or about October 21, 2009, until
8 approximately April 2011, FAP failed to transmit dispensing data for Schedule II, Schedule III,
9 and Schedule IV controlled substances to the Department of Justice for the Controlled Substances
10 Utilization Review and Evaluation System (CURES) on a weekly basis. The circumstances are
11 further explained in paragraphs 25-30, above.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct-Filled Prescriptions with Significant Irregularity)**
14 **(Bus. & Prof. § 4301, subd. (o) and 16 CCR § 1761, subd. (a))**

15 32. Respondent FAP's Pharmacy License is subject to disciplinary action under Code
16 section 4301, subdivision (o), because FAP violated California Code of Regulations, title 16,
17 section 1761, subdivision (a), in that pharmacists and staff at FAP filled over 350 irregular
18 prescriptions. Many of these prescription documents order an unusually large amount of
19 controlled substances for "as-needed" purposes. The circumstances are further explained in
20 paragraphs 25-30, above.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Unprofessional Conduct-Failure to Verify Legitimacy of Prescriptions for Controlled Substances)**
23 **(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11153, subd. (a))**

24 33. Respondent FAP's Pharmacy License is subject to disciplinary action under Code
25 section 4301, subdivision (j), because FAP violated Health and Safety Code section 11153,
26 subdivision (a), in that pharmacists and staff at FAP failed to uphold their corresponding
27 responsibility of verifying the patient's legitimate medical purposes for controlled substances.
28 The pharmacists and staff at FAP breached their corresponding responsibility by furnishing
unusually large quantities of controlled substances to patients without confirming with the
supposed prescribers the legitimacy of the prescriptions. In fact, the pharmacists and staff at FAP
filled approximately 350 fraudulent prescriptions, many of which were for unusually large

1 quantities of controlled substances. The circumstances are further explained in paragraphs 25-30,
2 above.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct-Dispensed Controlled Substances on Invalid Prescriptions)**
5 **(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11164)**

6 34. Respondent FAP's Pharmacy License is subject to disciplinary action under Code
7 section 4301, subdivision (j), because FAP violated Health and Safety Code section 11164, in that
8 the pharmacists and staff at FAP furnished controlled substances to patients based on invalid
9 controlled substances prescription forms. Specifically, during May 2011, FAP filled five
10 prescription documents that lacked several required security measures. The circumstances are
11 further explained in paragraphs 25-30, above.

12 **CAUSES OF DISCIPLINE AGAINST RESPONDENT INE**

13 **FIFTH CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct-Failure to Transmit Dispensing Data to CURES)**
15 **(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11165, subd. (d))**

16 35. Respondent Ijeoma Nwanyiocha Esomonu (INE), as Pharmacist-in-Charge of FAP,
17 has subjected her Pharmacist License to disciplinary action under Code section 4301, subdivision
18 (j), by violating Health and Safety Code sections 11165, subdivision (d), in that from on or about
19 October 21, 2009, until approximately April 2011, INE failed to insure that FAP transmit to the
20 Department of Justice for the Controlled Substances Utilization Review and Evaluation System
21 (CURES) dispensing data for Schedule II, Schedule III, and Schedule IV controlled substances on
22 a weekly basis. The circumstances are further explained in paragraphs 25-30, above.

23 **SIXTH CAUSE FOR DISCIPLINE**

24 **(Unprofessional Conduct-Filled Prescriptions with Significant Irregularity)**
25 **(Bus. & Prof. § 4301, subd. (o) and 16 CCR § 1761, subd. (a))**

26 36. Respondent INE, as Pharmacist-in-Charge of FAP, has subjected her Pharmacist
27 License to disciplinary action under Code section 4301, subdivision (o), because she violated
28 California Code of Regulations, title 16, section 1761, subdivision (a), in that pharmacists and
staff at FAP filled over 350 irregular prescriptions. Many of these prescription documents order
an unusually large amount of controlled substances for "as-needed" purposes. The circumstances
are further explained in paragraphs 25-30, above.

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SEVENTH CAUSE FOR DISCIPLINE

**(Unprofessional Conduct-Failure to Verify Legitimacy of Prescriptions for Controlled Substances)
(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11153, subd. (a))**

37. Respondent INE, as Pharmacist-in-Charge of FAP, has subjected her Pharmacist License to disciplinary action under Code section 4301, subdivision (j), because she violated Health and Safety Code section 11153, subdivision (a), in that pharmacists and staff at FAP failed to uphold their corresponding responsibility of verifying the patient's legitimate medical purposes for controlled substances. The pharmacists and staff at FAP breached their corresponding responsibility by furnishing unusually large quantities of controlled substances to patients without confirming with the supposed prescribers the legitimacy of the prescriptions. In fact, the pharmacists and staff at FAP filled approximately 350 fraudulent prescriptions, many of which were for unusually large quantities of controlled-substances. The circumstances are further explained in paragraphs 25-30, above.

EIGHTH CAUSE FOR DISCIPLINE

**(Unprofessional Conduct-Dispensed Controlled Substances on Invalid Prescriptions)
(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11164)**

38. Respondent INE, as Pharmacist-in-Charge of FAP, has subjected her Pharmacist License to disciplinary action under Code section 4301, subdivision (j), because she violated Health and Safety Code section 11164, in that the pharmacists and staff at FAP furnished controlled substances to patients based on invalid controlled substances prescription forms. Specifically, during May 2011, FAP filled five prescription documents that lacked several required security measures. The circumstances are further explained in paragraphs 25-30, above.

CAUSES OF DISCIPLINE AGAINST RESPONDENT ICE

NINTH CAUSE FOR DISCIPLINE

**(Unprofessional Conduct-Filled Prescriptions with Significant Irregularity)
(Bus. & Prof. §.4301, subd. (o) and 16 CCR § 1761, subd. (a))**

39. Respondent Iroegbu Clifford Esomonu (ICE), as a pharmacist of FAP, has subjected his Pharmacist License to disciplinary action under Code section 4301, subdivision (o), because he violated California Code of Regulations, title 16, section 1761, subdivision (a), in that Respondent ICE filled prescriptions with significant irregularity. Many of the prescriptions order unusually large quantities of controlled substances including oxycodone, hydrocodone with

1 acetaminophen, alprazolam and promethazine with codeine. The circumstances are further
2 explained in paragraphs 25-30, above.

3 **TENTH CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct-Failure to Verify Legitimacy of Prescriptions for Controlled Substances)**
5 **(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11153, subd. (a))**

6 40. Respondent ICE, as a pharmacist of FAP, has subjected his Pharmacist License to
7 disciplinary action under Code section 4301, subdivision (j), because he violated Health and
8 Safety Code section 11153, subdivision (a), in that, on numerous occasions, Respondent ICE
9 failed to verify the legitimate medical purpose for prescribing an unusually large quantity of
10 controlled substances. In fact, FAP's drug dispensing printouts show that Respondent ICE filled
11 approximately 350 fraudulent prescriptions, many which were for unusually large quantities of
12 controlled substances. The circumstances are further explained in paragraphs 25-30, above.

13 **ELEVENTH CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct-Dispensed Controlled Substances on Invalid Prescriptions)**
15 **(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11164)**

16 41. Respondent ICE, as a pharmacist of FAP, has subjected his Pharmacist License to
17 disciplinary action under Code section 4301, subdivision (j), in that Respondent ICE dispensed
18 controlled substances based on invalid prescription documents. Specifically, Respondent ICE's
19 initials were on the pharmacy dispensing printouts for those five invalid prescription documents.
20 The circumstances are further explained in paragraphs 25-30 above.

21 **TWELFTH CAUSE FOR DISCIPLINE**

22 **(Unprofessional Conduct-Use of Alcohol in a Dangerous Manner)**
23 **(Bus. & Prof. § 4301, subd. (h))**

24 42. Respondent ICE has subjected his Pharmacist License to disciplinary action under
25 Code section 4301, subdivision (h), in that on or about April 23, 2012, Respondent ICE was
26 arrested by a San Leandro police officer for driving under the influence of alcohol. The
27 circumstances are as follows:

28 43. On or about 12:25 a.m. on April 23, 2012, a San Leandro police officer stopped
Respondent's vehicle for a violation of Vehicle Code section 21650 (a vehicle on the highway
must be driven on the right side of the road). The officer approached Respondent's vehicle and
observed symptoms of intoxication including red watery eyes, alcoholic odor emitting from

1 Respondent's breath and slurred speech. Respondent failed a series of field sobriety tests. Two
2 breath tests from Respondent at approximately 1:19 a.m. and 1:22 a.m. revealed a blood alcohol
3 concentration (BAC) of .13.

4 **THIRTEENTH CAUSE FOR DISCIPLINE**
5 **(Unprofessional Conduct-Conviction)**
6 **(Bus. & Prof. §§ 490 & 4301, subd. (l))**

7 44. Respondent ICE has subjected his Pharmacist License to disciplinary action under
8 Code section 4301, subdivision (l), and section 490, in that Respondent ICE was convicted of a
9 crime substantially related to the qualifications, functions and duties of a pharmacist. The
10 circumstances are as follows:

11 45. On or about December 13, 2012, in a criminal matter entitled *People of the State of*
12 *California v. Iroegbu Clifford Esomou*, in the Alameda County Superior Court, Respondent ICE
13 was convicted upon plea of no contest to the violation of Vehicle Code section 23152,
14 subdivision (b) (driving with a blood alcohol level of .08 or more), a misdemeanor. Respondent
15 ICE was ordered to serve 15 days in county jail. Respondent was placed on probation for 3 years
16 with various conditions including completing a Drinking Driver Program and paying various fees
17 and fines.

18 **DISCIPLINE CONSIDERATIONS**

19 46. To determine the degree of discipline, if any, to be imposed on Respondent ICE,
20 Complainant alleges that on or about December 28, 2010, in a prior action, the Board of
21 Pharmacy issued Citation Number CI 2010 45230 and ordered Respondent ICE to pay a \$2,500
22 fine for violating sections 4301, subdivisions (h) and (l) [arrest for driving under the influence
23 and conviction on the lesser charge of wet/reckless]. That Citation is now final and is
24 incorporated by reference as if fully set forth.

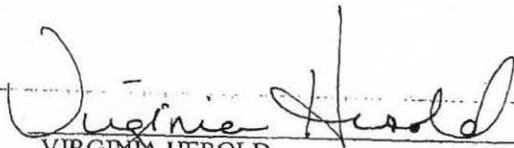
25 **PRAYER**

26 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
27 Accusation, and that following the hearing, the Board of Pharmacy issue a decision:

28 1. Revoking or suspending Pharmacy License Number PHY 50064, issued to
Fruitvale Avenue Pharmacy Inc.;

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2. Revoking or suspending Pharmacist License Number RPH 53516, issued to Ijeoma Nwanyiocha Esomonu, Fruitvale Avenue Pharmacy Inc.;
3. Revoking or suspending Pharmacist License Number RPH 53445, issued to Iroegbu Clifford Esomonu, Fruitvale Avenue Pharmacy Inc.;
4. Ordering Fruitvale Avenue Pharmacy Inc., Ijeoma Nwanyiocha Esomonu and Iroegbu Clifford Esomonu 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: 9/6/13 
VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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