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

10 In the Matter of the Accusation Against:

Case No. 4397

11 **RITE AID 5985**  
12 **1029 E. Capitol Expressway**  
13 **San Jose, CA 95121**

**A C C U S A T I O N**

14 **Original Permit No. PHY 42795**

15 **And**

16 **RITE AID 5945**  
17 **2021 Solano Avenue**  
**Vallejo, CA 94590-6456**

18 **Original Permit No. PHY 42814**

19 Respondent.

20  
21 Complainant alleges:

22 **PARTIES**

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

25 2. On or about February 21, 1997, the Board of Pharmacy issued Original Permit  
26 Number PHY 42795 to Rite Aid 5985 (hereinafter "Respondent Rite Aid 5985"). The Original  
27 Permit was in full force and effect at all times relevant to the charges brought herein and will  
28 expire on April 1, 2014, unless renewed.

1           3.     On or about February 21, 1997, the Board of Pharmacy issued Original Permit  
2 Number PHY 42814 to Rite Aid 5945 (hereinafter "Respondent Rite Aid 5945"). The Original  
3 Permit was in full force and effect at all times relevant to the charges brought herein and will  
4 expire on April 1, 2014, unless renewed.

5                                   **JURISDICTION AND GENERAL AUTHORITY**

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

9           5.     Section **4300** of the Code states, in pertinent part:

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

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

14           (1) Suspending judgment.

15           (2) Placing him or her upon probation.

16           (3) Suspending his or her right to practice for a period not exceeding one year.

17           (4) Revoking his or her license.

18           (5) Taking any other action in relation to disciplining him or her as the board in its  
19 discretion may deem proper.

20                                   ...

21           6.     Section **4300.1** of the Code states:

22           The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation  
23 of law or by order or decision of the board or a court of law, the placement of a license on a  
24 retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of  
25 jurisdiction to commence or proceed with any investigation of, or action or disciplinary  
26 proceeding against, the licensee or to render a decision suspending or revoking the license.

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STATUTES AND REGULATIONS

7. Section **4081** of the Code states, in pertinent part:

(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

(b) The owner, officer, and partner of any pharmacy, wholesaler, or veterinary food-animal drug retailer shall be jointly responsible, with the pharmacist-in-charge or representative-in-charge, for maintaining the records and inventory described in this section.

(c) The pharmacist-in-charge or representative-in-charge shall not be criminally responsible for acts of the owner, officer, partner, or employee that violate this section and of which the pharmacist-in-charge or representative-in-charge had no knowledge, or in which he or she did not knowingly participate.

8. Section **4105** of the Code states:

(a) All records or other documentation of the acquisition and disposition of dangerous drugs and dangerous devices by any entity licensed by the board shall be retained on the licensed premises in a readily retrievable form.

(b) The licensee may remove the original records or documentation from the licensed premises on a temporary basis for license-related purposes. However, a duplicate set of those records or other documentation shall be retained on the licensed premises.

(c) The records required by this section shall be retained on the licensed premises for a period of three years from the date of making.

(d) Any records that are maintained electronically shall be maintained so that the

1 pharmacist-in-charge, the pharmacist on duty if the pharmacist-in-charge is not on duty, or, in the  
2 case of a veterinary food-animal drug retailer or wholesaler, the designated representative on  
3 duty, shall, at all times during which the licensed premises are open for business, be able to  
4 produce a hard copy and electronic copy of all records of acquisition or disposition or other drug  
5 or dispensing-related records maintained electronically.

6 (e)(1) Notwithstanding subdivisions (a), (b), and (c), the board, may upon written request,  
7 grant to a licensee a waiver of the requirements that the records described in subdivisions (a), (b),  
8 and (c) be kept on the licensed premises.

9 (2) A waiver granted pursuant to this subdivision shall not affect the board's authority  
10 under this section or any other provision of this chapter.

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

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

15 . . .

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

18 . . .

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

23 10. Section **4306** of the Code states:

24 It shall constitute unprofessional conduct and a violation of this chapter for any person  
25 licensed under this chapter to violate, attempt to violate, directly or indirectly, or assist in or abet  
26 the violation of, or conspire to violate, any provision or term of this article, the Moscone-Knox  
27 Professional Corporation Act, or any regulations duly adopted under those laws.

28 11. Section **4333** of the Code states, in pertinent part, that all prescriptions filled by a

1 pharmacy and all other records required by Section 4081 shall be maintained on the premises and  
2 available for inspection by authorized officers of the law for a period of at least three years. In  
3 cases where the pharmacy discontinues business, these records shall be maintained in a  
4 board-licensed facility for at least three years.

5 12. California Civil Code, section **56.10**, provides that no provider of health care may  
6 disclose medical information regarding a patient without authorization from the patient except  
7 under specified circumstances.

8 13. California Civil Code, section **56.101**, provides that health care providers who  
9 dispose of medical information shall do so in a manner that preserves the confidentiality of the  
10 information contained therein.

11 14. Code of Federal Regulations, Title 45, Parts **164 et seq.**, provides that no health care  
12 provider may disclose medical information regarding a patient without authorization from the  
13 patient except under specified circumstances.

14 15. Code of Federal Regulations, Title 45, Part **164.530(c)(1)**, provides that health care  
15 providers shall have and enforce safeguards to protect the privacy of medical information.

16 16. California Code of Regulations, title 16, section **1764**, states:

17 No pharmacist shall exhibit, discuss, or reveal the contents of any prescription, the  
18 therapeutic effect thereof, the nature, extent, or degree of illness suffered by any patient or any  
19 medical information furnished by the prescriber with any person other than the patient or his or  
20 her authorized representative, the prescriber or other licensed practitioner then caring for the  
21 patient, another licensed pharmacist serving the patient, or a person duly authorized by law to  
22 receive such information.

23 17. California Code of Regulations, title 16, section **1770**, states:

24 For the purpose of denial, suspension, or revocation of a personal or facility license  
25 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a  
26 crime or act shall be considered substantially related to the qualifications, functions or duties of a  
27 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a  
28 licensee or registrant to perform the functions authorized by his license or registration in a manner

1 consistent with the public health, safety, or welfare.

2 **COSTS**

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

7 **FACTUAL SUMMARY**

8 **Rite Aid 5985:**

9 19. On or about April, 2011, Respondent Rite Aid 5985 relocated its pharmacy operation  
10 from its prior location in San Jose to a new location in San Jose. When it did so, Respondent Rite  
11 Aid 5985 failed to relocate, and left behind in its old premises, an unlocked filing cabinet which  
12 contained a large amount of original prescription documents regarding both controlled and non-  
13 controlled substances. The documents pertained to approximately 52,700 prescriptions, dating  
14 from October, 2009 through April, 2011. The contents of the filing cabinet were placed in a  
15 dumpster.

16 **Rite Aid 5945:**

17 20. On or about August, 2011, Respondent Rite Aid 5945 discovered that it was missing  
18 several boxes of original prescription records regarding both controlled and non-controlled  
19 substances. The documents pertained to prescriptions dating from July, 2007, to October, 2010.  
20 The records appear to have been misplaced when Respondent Rite Aid 5945 relocated from its  
21 prior location in Vallejo to its new Vallejo location.

22 **FIRST CAUSE FOR DISCIPLINE (Rite Aid 5985)**

23 (Unauthorized Disclosure Of Prescription Information)

24 21. Respondent Rite Aid 5985 is subject to disciplinary action under section 4301,  
25 subsections (j) and (o) and 4306 of the Code, and under California Code of Regulations, Title 16,  
26 section 1764, and pursuant to California Civil Code section 56.10, and pursuant to Code of  
27 Federal Regulations, Title 45, Part 164, et seq., in that it disclosed patient prescription records  
28 without patient authorization, as set forth above in paragraph 19.

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**SECOND CAUSE FOR DISCIPLINE (Rite Aid 5985)**

(Failure to Properly Maintain and/or Dispose of Pharmacy Records)

22. Respondent Rite Aid 5985 is subject to disciplinary action under section 4301, subsections (j) and (o) and 4306 of the Code, and pursuant to California Civil Code section 56.101, and pursuant to Code of Federal Regulations, Title 45, Part 164.530(c)(1), in that it failed to dispose of pharmacy records in a manner that would preserve patient confidentiality, as set forth above in paragraph 19.

**THIRD CAUSE FOR DISCIPLINE (Rite Aid 5945)**

(Failure to Properly Maintain and/or Dispose of Pharmacy Records)

23. Respondent Rite Aid 5945 is subject to disciplinary action under section 4301, subsections (j) and (o) and 4306 of the Code, and pursuant to California Civil Code section 56.101, and pursuant to Code of Federal Regulations, Title 45, Part 164.530(c)(1), in that it failed to maintain and/or dispose of pharmacy records in a manner that would preserve patient confidentiality, as set forth above in paragraph 20.

**DISCIPLINE CONSIDERATIONS**

24. To determine the degree of discipline, if any, to be imposed on Respondent Rite Aid 5985, Complainant alleges that on or about August 9, 2007, in a prior action entitled *In the Matter of the Citation and Fine Against Rite Aid #5985, PHY 42795*, before the Board of Pharmacy, Case Number CI 2006 32770, Respondent Rite Aid 5985 was cited for two separate violations of California Code of Regulations, Title 16, section 1707.2 (failure to provide patient consultation).

25. To determine the degree of discipline, if any, to be imposed on Respondent Rite Aid 5945, Complainant alleges that on or about May 28, 2009, in a prior action entitled *In the Matter of the Citation Against Rite Aid 5945, PHY 42814*, before the Board of Pharmacy, Case Number CI 2008 38144, Respondent Rite Aid 5945 was cited for violation of Business and Professions Code sections 4077(a) and 4076(a)(4) (violation of labeling requirements).

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**PRAYER**

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

1. Revoking or suspending Original Permit Number PHY 42795, issued to Rite Aid 5985;
2. Revoking or suspending Original Permit Number PHY 42814, issued to Rite Aid 5945;
3. Ordering Respondents 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;
4. Taking such other and further action as deemed necessary and proper.

DATED:

7/20/13

Virginia Herold

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