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

11 In the Matter of the Accusation Against:	Case No. 6185
12 <b>RAFA CORPORATION, DBA</b>	<b>A C C U S A T I O N</b>
13 <b>MURPHY'S PHARMACY</b>	
14 <b>172 N San Jacinto Street</b>	
15 <b>Hemet, CA 92543</b>	
16 <b>Pharmacy Permit No. PHY 39226</b>	
17 <b>RAFAEL JUAREZ</b>	
18 <b>28125 Vista Del Valle</b>	
19 <b>Hemet, CA 92544</b>	
20 <b>Pharmacist License No. RPH 39936</b>	
21 Respondents.	

22 Complainant alleges:

23 **PARTIES**

- 24 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
25 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 26 2. On or about April 13, 1993, the Board of Pharmacy issued Pharmacy Permit Number  
27 PHY 39226 to Rafa Corporation, doing business as Murphy's Pharmacy (Respondent Murphy's  
28 Pharmacy). The Pharmacy Permit was cancelled, effective May 1, 2017.



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10. Section 4113(c) of the Code states:

The pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy.

11. Section 4126.5(a)(5) of the Code states:

A pharmacy may furnish dangerous drugs only to the following:

...

A patient or to another pharmacy pursuant to a prescription or as otherwise authorized by law.

12. Section 4301 of the Code states in pertinent part:

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

...

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

...

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

...

13. Section 4307(a) of the Code states that:

Any person who has been denied a license or whose license has been revoked or is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a manager, administrator, owner member,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

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

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

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14. Health and Safety Code section 11153(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.

15. Health and Safety Code section 11162.1(a) states:

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

(1) A latent, repetitive 'void' pattern shall be printed across the entire front of the prescription blank; if a prescription is scanned or photocopied, the word "void" shall appear in a pattern across the entire front of the prescription.

(2) A watermark shall be printed on the backside of the prescription blank; the watermark shall consist of the words "California Security Prescription."

(3) A chemical void protection that prevents alteration by chemical washing.

(4) A feature printed in thermochromic ink.

(5) An area of opaque writing so that the writing disappears if the prescription is lightened.

(6) A description of the security features included on each prescription form.

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

1-24

25-49

50-74

75-100

101-150

151 and over.

(B) In conjunction with the quantity boxes, a space shall be provided to designate the units referenced in the quantity boxes when the drug is not in tablet or

capsule form.

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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  
4 not noted."

5 (9) The preprinted name, category of licensure, license number, federal  
6 controlled substance registration number, and address of the prescribing practitioner.

7 (10) Check boxes shall be printed on the form so that the prescriber may  
8 indicate the number of refills ordered.

9 (11) The date of origin of the prescription.

10 (12) A check box indicating the prescriber's order not to substitute.

11 (13) An identifying number assigned to the approved security printer by the  
12 Department of Justice.

13 (14) (A) A check box by the name of each prescriber when a prescription form  
14 lists multiple prescribers.

15 (B) Each prescriber who signs the prescription form shall identify himself or  
16 herself as the prescriber by checking the box by his or her name.

17 16. Health and Safety Code section 11164(a) states in pertinent part:

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

21 Each prescription for a controlled substance classified in Schedule II, III, IV, or  
22 V, except as authorized by subdivision (b), shall be made on a controlled substance  
23 prescription form as specified in Section 11162.1....

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

25 (a) No pharmacist shall compound or dispense any prescription which contains  
26 any significant error, omission, irregularity, uncertainty, ambiguity or alteration.  
27 Upon receipt of any such prescription, the pharmacist shall contact the prescriber to  
28 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. Section 1306.04(a) of title 21, Code of Federal Regulations states:

A prescription for a controlled substance to be effective must be issued for a  
legitimate medical purpose by an individual practitioner acting in the usual course of  
his 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. An order  
purporting to be a prescription issued not in the usual course of professional treatment  
or in legitimate and authorized research is not a prescription within the meaning and

1 intent of section 309 of the Act (21 U.S.C. 829) and the person knowingly filling such  
2 a purported prescription, as well as the person issuing it, shall be subject to the  
penalties provided for violations of the provisions of law relating to controlled  
substances.

### 3 COST RECOVERY

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

### 8 DRUGS

9 20. Norco is the brand name for hydrocodone/acetaminophen, a Schedule III controlled  
10 substance pursuant to Health and Safety Code section 11056(e)(5), a Schedule II controlled  
11 substance pursuant to title 21, Code of Federal Regulations, section 1308.12(b)(1)(vi), effective  
12 October 6, 2014 and a dangerous drug pursuant to Business and Professions Code section 4022.

13 21. Roxicodone is a brand name for oxycodone, a Schedule II controlled substance  
14 pursuant to Health and Safety Code section 11055(b)(1)(M) and a dangerous drug pursuant to  
15 Business and Professions Code section 4022.

16 22. Phenergan with Codeine is the brand name for promethazine with codeine, a Schedule  
17 V controlled substance pursuant to Health and Safety Code section 111058(c)(1) and is a  
18 dangerous drug pursuant to Business and Professions Code section 4022.

19 23. Soma is a brand name for carisoprodol, a Schedule IV controlled substance pursuant  
20 to title 21, Code of Federal Regulations, section 1308.14(c)(6) and is a dangerous drug pursuant to  
21 Business and Professions Code section 4022.

22 24. Xanax is the brand name for alprazolam, a Schedule IV controlled substance pursuant  
23 to Health and Safety Code section 11057(d)(1) and a dangerous drug pursuant to Business and  
24 Professions Code section 4022.

### 25 FACTUAL ALLEGATIONS

26 25. From April 1, 1993 through May 1, 2017, Respondent Rafael Juarez was the  
27 Pharmacist-in-Charge of Respondent Murphy's Pharmacy.

1           26. L.W.'s physician's and surgeon's certificate or certificate to practice medicine and  
2 surgery issued by the Medical Board of California expired on or about July 22, 2010. From May  
3 31, 2016 to September 12, 2016, Respondents filled 37 prescriptions issued on their face, by L.W.  
4 with his office address identified as being located in Van Nuys, California on the prescriptions.

5           27. From January 14, 2015 to December 11, 2016, Respondents filled 50 controlled  
6 substance prescriptions issued on their face, by Dr. R.G. who did not prescribe these medications  
7 to those patients.

8           28. From April 15, 2015 to April 6, 2016, Respondents filled 106 prescriptions issued on  
9 their face, by Dr. W.S. On December 18, 2014, an Accusation was filed against Dr. W.S.,  
10 alleging causes for discipline based on gross negligence, repeated negligent acts, prescribing  
11 controlled substances without an appropriate prior examination and/or medical indication,  
12 violations of state drug statutes or regulations, excessive prescribing or treatment of drugs, false  
13 representations on documents directly or indirectly related to the practice of medicine, dishonesty,  
14 failure to maintain accurate records, unprofessional conduct and violations of the Medical  
15 Practice Act, in connection with Dr. W.S.'s prescribing of controlled substances. On April 6,  
16 2016, the Medical Board of California ordered that the stipulated surrender of license and order  
17 entered into between Dr. W.S. and Complainant, be adopted as the Decision and Order of the  
18 Medical Board of California.

19           29. Respondents dispensed prescriptions for individuals who paid for the controlled  
20 substance prescriptions in cash and did not seek reimbursement from an insurance company or  
21 government agency.

22           30. Prescriptions were written for oxycodone 30mg, alprazolam 2mg, carisoprodol  
23 350mg, oxycodone 30mg and/or promethazine with codeine which are drugs of high abuse and  
24 diversion potential, particularly when prescribed in combination. Respondents dispensed these  
25 prescriptions written for those combinations or "cocktails" of controlled substances to individuals.

26           31. Respondents dispensed identical controlled substances, in the same strength and doses  
27 to individuals who had been prescribed controlled substances by multiple prescribers.

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**SECOND CAUSE FOR DISCIPLINE**

**(Dispensing Controlled Substance Prescriptions with Significant Errors, Omissions, Irregularities, Uncertainties, Ambiguities or Alterations)**

38. Respondents are subject to disciplinary action under Code section 4301(o), for violating title 16, California Code of Regulations, sections 1761(a) and (b), in that they dispensed prescriptions for controlled substances, which contained significant errors, omissions, irregularities, uncertainties, ambiguities or alterations, as set forth in paragraphs 25 through 36 above, which are incorporated herein by reference.

**THIRD CAUSE FOR DISCIPLINE**

**(Dispensing Controlled Substance Prescriptions Written on Unauthorized Forms)**

39. Respondents are subject to disciplinary action under Code section 4301(j), for violating Health and Safety Code sections 11162.1(a) and 11164(a), in that they dispensed prescriptions written on unauthorized forms, as set forth in paragraphs 25-36 above, which are incorporated herein by reference.

**FOURTH CAUSE FOR DISCIPLINE**

**(Furnishing Dangerous Drugs to Patients without Valid Prescriptions)**

40. Respondents are subject to disciplinary action under Code section 4301(o), for violating Code section 4126.5(a)(5), as prescriptions are defined by Code section 4040 and physicians are defined by Code section 4039, in that they dispensed furnished dangerous drugs to patients without valid prescriptions, as set forth in paragraphs 25-36 above, which are incorporated herein by reference.

**FIFTH CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct)**

41. Respondents are subject to disciplinary action under Code section 4301 for unprofessional conduct in that they engaged in the activities described in paragraphs 25 through 36 above, which are incorporated herein by reference.

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**OTHER MATTERS**

42. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number PHY 39226 issued to Rafa Corporation, doing business as Murphy's Pharmacy, Rafa Corporation, doing business as Murphy's Pharmacy shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 39226 is placed on probation or until Pharmacy Permit Number PHY 39226 is reinstated if it is revoked.

43. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number PHY 39226 issued to Rafa Corporation, doing business as Murphy's Pharmacy while Rafael Juarez has been an officer and owner and had knowledge of or knowingly participated in any conduct for which the licensee was disciplined, Rafael Juarez shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 39226 is placed on probation or until Pharmacy Permit Number PHY 39226 is reinstated if it is revoked.

44. Pursuant to Code section 4307, if discipline is imposed on Pharmacist License Number RPH 39936 issued to Rafael Juarez, Rafael Juarez shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacist License Number RPH 39936 is placed on probation or until Pharmacist License Number RPH 39936 is reinstated if it is revoked.

**DISCIPLINARY CONSIDERATIONS**

45. To determine the degree of discipline, if any, to be imposed on Respondents, Complainant alleges:

a. On November 9, 2015, the Board issued Modified Citation number CI 2011 49888 against Respondent Murphy's Pharmacy for violating Business and Professions Code section 4126.5(a)(4) for improperly furnishing drugs to a wholesaler. The Board issued a fine which Respondent Murphy's Pharmacy paid.



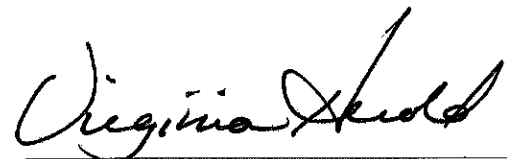
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6. Ordering Rafa Corporation, doing business as Murphy's Pharmacy and Rafael Juarez to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED:

7/16/17



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

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