

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

In the Matter of the Accusation Against:

**RAFAEL VELAZQUEZ dba MERCED
DRUG
35 E. 16th Street
Merced, CA 95340**

Original Permit Number No. PHY 43562

and

**RAFAEL VELAZQUEZ
35 E. 16th Street
Merced, CA 95340**

Original Pharmacist License No. RPH 40303

Case No. 5606

OAH No. 2016030987

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER [RAFAEL
VELAZQUEZ dba MERCED DRUG
ONLY]**

Respondents.

DECISION AND ORDER

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

This Decision shall become effective at 5:00 p.m. on September 9, 2016.

It is so ORDERED on August 10, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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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. 5606

12 **RAFAEL VELAZQUEZ dba MERCED**
13 **DRUG**

OAH No. 2016030987

14 35 E. 16th Street
Merced, CA 95340

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER [MERCED
DRUG ONLY]**

15 Original Permit Number No. PHY 43562

16 and

17 **RAFAEL VELAZQUEZ**
18 35 E. 16th Street
Merced, CA 95340

19 Original Pharmacist License No. RPH 40303

20 Respondents.
21

22 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
23 entitled proceedings that the following matters are true:
24

25 **PARTIES**

26 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
27 She brought this action solely in her official capacity and is represented in this matter by Kamala
28

1 D. Harris, Attorney General of the State of California, by Phillip L. Arthur, Deputy Attorney
2 General.

3 2. Respondent Rafael Velazquez dba Merced Drug ("Respondent Merced Drug") and
4 Respondent Rafael Velazquez ("Respondent Velazquez") are represented in this proceeding by
5 attorney Ivan Petrzelka, whose address is: CALIFORNIA PHARMACY LAWYERS, 2855
6 Michelle Drive, Suite 180, Irvine, CA 92606.

7 3. On or about April 1, 1998, the Board of Pharmacy issued Original Permit Number
8 PHY 43562 to Respondent Merced Drug. Rafael Velazquez is and has been the Pharmacist-in-
9 Charge at Respondent Merced Drug since April 1, 1998. The Original Permit was in full force
10 and effect at all times relevant to the charges brought herein and will expire on April 1, 2017,
11 unless renewed.

12 4. On or about August 22, 1986, the Board of Pharmacy issued Original Pharmacist
13 License Number RPH 40303 to Respondent Velazquez. The Original Pharmacist License was in
14 full force and effect at all times relevant to the charges brought herein and will expire on August
15 31, 2016, unless renewed.

16 JURISDICTION

17 5. Accusation No. 5606 was filed before the Board of Pharmacy (Board), Department of
18 Consumer Affairs, and is currently pending against Respondents. The Accusation and all other
19 statutorily required documents were properly served on Respondents on March 10, 2016.
20 Respondents timely filed their Notices of Defense contesting the Accusation.

21 6. A copy of Accusation No. 5606 is attached as Exhibit A and incorporated herein by
22 reference.

23 ADVISEMENT AND WAIVERS

24 7. Respondent Merced Drug has carefully read, fully discussed with counsel, and
25 understands the charges and allegations in Accusation No. 5606. Respondent Merced Drug has
26 also carefully read, fully discussed with counsel, and understands the effects of this Stipulated
27 Settlement and Disciplinary Order.

28 ///

8. Respondent Merced Drug is fully aware of its legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against them; the right to present evidence and testify on their own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

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

CULPABILITY

10. Respondent Merced Drug admits that at hearing Complainant could establish a factual basis for charges and allegations in Accusation No. 5606, and that those charges and allegations are cause for discipline. Respondent Merced Drug hereby gives up their right to contest those charges and allegations.

11. Respondent Merced Drug agrees that its Original Permit is subject to discipline and agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

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

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

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

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

13 **DISCIPLINARY ORDER**

14 IT IS HEREBY ORDERED that Original Permit Number PHY 43562 issued to Respondent
15 Rafael Velazquez dba Merced Drug is revoked. However, the revocation is stayed and
16 Respondent Merced Drug is placed on probation for three (3) years on the following terms and
17 conditions.

18 **1. Obey All Laws**

19 Respondent Merced Drug's owner shall obey all state and federal laws and regulations.

20 Respondent Merced Drug's owner shall report any of the following occurrences to the
21 board, in writing, within seventy-two (72) hours of such occurrence:

- 22 ☐ an arrest or issuance of a criminal complaint for violation of any provision of the
23 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
24 substances laws
25 ☐ a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
26 criminal complaint, information or indictment
27 ☐ a conviction of any crime
28 ☐ discipline, citation, or other administrative action filed by any state or federal agency

1 which involves Respondent Merced Drug's original permit or which is related to the
2 practice of pharmacy or the manufacturing, obtaining, handling or distributing,
3 billing, or charging for any drug, device or controlled substance.

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

5 **2. Report to the Board**

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

15 **3. Interview with the Board**

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

22 **4. Cooperate with Board Staff**

23 Respondent Merced Drug's owner shall cooperate with the Board's inspection program and
24 with the Board's monitoring and investigation of Respondent Merced Drug's compliance with the
25 terms and conditions of their probation. Failure to cooperate shall be considered a violation of
26 probation.

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1 **5. Reimbursement of Board Costs**

2 As a condition precedent to successful completion of probation, Respondent Merced Drug's
3 owner shall pay to the Board its costs of investigation and prosecution in the amount of
4 \$4,403.75, jointly and severally with Respondent Velazquez. Respondent Merced Drug's owner
5 shall be permitted to pay these costs in a payment plan approved by the Board. There shall be no
6 deviation from this schedule absent prior written approval by the Board or its designee. Failure to
7 pay costs by the deadline(s) as directed shall be considered a violation of probation.

8 The filing of bankruptcy by Respondent Merced Drug's owner shall not relieve Respondent
9 Merced Drug of its responsibility to reimburse the Board its costs of investigation and
10 prosecution.

11 **6. Probation Monitoring Costs**

12 Respondent Merced Drug's owner shall pay any costs associated with probation monitoring
13 as determined by the Board each and every year of probation. Such costs shall be payable to the
14 Board on a schedule as directed by the Board or its designee. Failure to pay such costs by the
15 deadline(s) as directed shall be considered a violation of probation.

16 **7. Status of License**

17 Respondent Merced Drug's owner shall, at all times while on probation, maintain current
18 licensure with the Board. If Respondent Merced Drug's owner submits an application to the
19 Board, and the application is approved, for a change of location, change of permit, or change of
20 ownership, the Board shall retain continuing jurisdiction over the license, and Respondent
21 Merced Drug shall remain on probation as determined by the Board. Failure to maintain current
22 licensure shall be considered a violation of probation.

23 If Respondent Merced Drug's owner's license expires or is cancelled by operation of law or
24 otherwise at any time during the period of probation, including any extensions thereof or
25 otherwise, upon renewal or reapplication Respondent Merced Drug's owner's license shall be
26 subject to all terms and conditions of this probation not previously satisfied.

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1 8. **License Surrender While on Probation/Suspension**

2 Following the effective date of this Decision, should Respondent Merced Drug's owner
3 discontinue business, Respondent Merced Drug's owner may tender the original permit to the
4 Board for surrender. The Board or its designee shall have the discretion whether to grant the
5 request for surrender or take any other action it deems appropriate and reasonable. Upon formal
6 acceptance of the surrender of the original permit, Respondent Merced Drug will no longer be
7 subject to the terms and conditions of probation.

8 Upon acceptance of the surrender, Respondent Merced Drug's owner shall relinquish the
9 original permit and renewal license to the Board within ten (10) days of notification by the
10 Board that the surrender is accepted. Respondent Merced Drug's owner shall further submit a
11 completed Discontinuance of Business form according to Board guidelines and shall notify the
12 Board of the records inventory transfer.

13 Respondent Merced Drug's owner shall also, by the effective date of this Decision, arrange
14 for the continuation of care for ongoing patients of the pharmacy by, at minimum, providing a
15 written notice to ongoing patients that specifies the anticipated closing date of the pharmacy and
16 that identifies one or more area pharmacies capable of taking up the patients' care, and by
17 cooperating as may be necessary in the transfer of records or prescriptions for ongoing patients.
18 Within five days of its provision to the pharmacy's ongoing patients, Respondent Merced Drug's
19 owner shall provide a copy of the written notice to the Board. For the purposes of this provision,
20 "ongoing patients" means those patients for whom the pharmacy has on file a prescription with
21 one or more refills outstanding, or for whom the pharmacy has filled a prescription within the
22 preceding sixty (60) days.

23 Respondent Merced Drug's owner may not apply for any new licensure from the Board for
24 three (3) years from the effective date of the surrender. Respondent Merced Drug's owner shall
25 meet all requirements applicable to the license sought as of the date the application for that
26 license is submitted to the Board.

27 Respondent Merced Drug's owner further stipulates that he shall reimburse the Board for
28 its costs of investigation and prosecution prior to the acceptance of the surrender.

1 **9. Notice to Employees**

2 Respondent Merced Drug's owner shall, upon or before the effective date of this Decision,
3 ensure that all employees involved in permit operations are made aware of all the terms and
4 conditions of probation, either by posting a notice of the terms and conditions, circulating such
5 notice, or both. If the notice required by this provision is posted, it shall be posted in a prominent
6 place and shall remain posted throughout the probation period. Respondent Merced Drug's
7 owner shall ensure that any employees hired or used after the effective date of this Decision are
8 made aware of the terms and conditions of probation by posting a notice, circulating a notice, or
9 both. Additionally, Respondent Merced Drug's owner shall submit written notification to the
10 Board, within fifteen (15) days of the effective date of this Decision, that this term has been
11 satisfied. Failure to submit such notification to the Board shall be considered a violation of
12 probation.

13 "Employees" as used in this provision includes all full-time, part-time,
14 volunteer, temporary and relief employees and independent contractors employed or
15 hired at any time during probation.

16 **10. Owners and Officers: Knowledge of the Law**

17 Respondent Merced Drug shall provide, within thirty (30) days after the effective date of
18 this Decision, signed and dated statements from its owners, including any owner or holder of ten
19 percent (10%) or more of the interest in Respondent Merced Drug or Respondent Merced Drug's
20 stock, and any officer, stating under penalty of perjury that said individuals have read and are
21 familiar with state and federal laws and regulations governing the practice of pharmacy. The
22 failure to timely provide said statements under penalty of perjury shall be considered a violation
23 of probation.

24 **11. Posted Notice of Probation**

25 Respondent Merced Drug's owner shall prominently post a probation notice provided by
26 the Board in a place conspicuous and readable to the public. The probation notice shall remain
27 posted during the entire period of probation.

28 Respondent Merced Drug's owner shall not, directly or indirectly, engage in any conduct or

1 make any statement which is intended to mislead or is likely to have the effect of misleading any
2 patient, customer, member of the public, or other person(s) as to the nature of and reason for the
3 probation of the licensed entity.

4 Failure to post such notice shall be considered a violation of probation.

5 **12. Violation of Probation**

6 If Respondent Merced Drug's owner has not complied with any term or condition of
7 probation, the Board shall have continuing jurisdiction over Respondent Merced Drug's original
8 permit, and probation shall be automatically extended until all terms and conditions have been
9 satisfied or the Board has taken other action as deemed appropriate to treat the failure to comply
10 as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

11 If Respondent Merced Drug's owner violates probation in any respect, the Board, after
12 giving Respondent Merced Drug's owner notice and an opportunity to be heard, may revoke
13 probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard
14 are not required for those provisions stating that a violation thereof may lead to automatic
15 termination of the stay and/or revocation of the original permit. If a petition to revoke probation
16 or an accusation is filed against Respondent Merced Drug during probation, the Board shall have
17 continuing jurisdiction and the period of probation shall be automatically extended until the
18 petition to revoke probation or accusation is heard and decided.

19 **13. Completion of Probation**

20 Upon written notice by the Board or its designee indicating successful completion of
21 probation, Respondent Merced Drug's original permit will be fully restored.

22 **14. Acknowledge and Maintain Proof of Submission of Controlled Substance** 23 **Utilization Review and Evaluation System (CURES) Data**


24 By signing this Stipulation, Respondent acknowledges that it must submit CURES data
25 weekly. Respondent further agrees to maintain proof of its weekly submission of CURES data,
26 and agrees that it will provide proof of its weekly submission of CURES data to the Board or its
27 designee, at any time during the term of probation, upon request by the Board or its designee.

28 ///

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Ivan Petrzelka. I understand the stipulation and the effect it will have on my Original Permit. 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: 6/23/16


RAFAEL VELAZQUEZ dba MERCED DRUG
Respondent

I have read and fully discussed with Respondent Rafael Velazquez dba Merced Drug the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: June 23, 2016


IVAN PETRZELKA
Attorney for Respondent

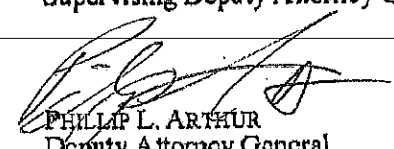
ENDORSEMENT

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

Dated: 6/23/16

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
KENT D. HARRIS
Supervising Deputy Attorney General


PHILLIP L. ARTHUR
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 5606

1 KAMALA D. HARRIS
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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 Accusation Against:

Case No. 5606

12 **RAFAEL VELAZQUEZ dba MERCED**
13 **DRUG**

14 35 E. 16th Street
Merced, CA 95340

ACCUSATION

15 **Original Permit Number No. PHY 43562**

16 **and**

17 **RAFAEL VELAZQUEZ**

18 35 E. 16th Street
Merced, CA 95340

19 **Original Pharmacist License No. RPH 40303**

20 Respondents.

21
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 1, 1998, the Board of Pharmacy issued Original Permit Number
27 PHY 43562 to Rafael Velazquez dba Merced Drug (Respondent Merced Drug). Rafael
28

1 Velazquez is and has been the Pharmacist-in-Charge at Respondent Merced Drug since April 1,
2 1998. The Original Permit was in full force and effect at all times relevant to the charges brought
3 herein and will expire on April 1, 2016, unless renewed.

4 3. On or about August 28, 1986, the Board of Pharmacy issued Original Pharmacist
5 License Number RPH 40303 to Rafael Velazquez (Respondent Velazquez). The Original
6 Pharmacist License was in full force and effect at all times relevant to the charges brought herein
7 and will expire on August 31, 2016, unless renewed.

8 **JURISDICTION**

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

12 5. Code section 4300.1 states:

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

17 **BUSINESS AND PROFESSIONS CODE**

18 6. Code section 4081 states, in pertinent part:

19 (a) All records of manufacture and of sale, acquisition, receipt, shipment,
20 or disposition of dangerous drugs or dangerous devices shall be at all times during
21 business hours open to inspection by authorized officers of the law, and shall be
22 preserved for at least three years from the date of making. A current inventory shall
23 be kept by every manufacturer, wholesaler, third-party logistics provider, pharmacy,
24 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.

25 (b) The owner, officer, and partner of a pharmacy, wholesaler, third-party
26 logistics provider, or veterinary food-animal drug retailer shall be jointly responsible,
with the pharmacist-in-charge, responsible manager, or designated representative-in-
charge, for maintaining the records and inventory described in this section. . . .

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1 7. Code section 4332 states, "Any person who fails, neglects, or refuses to maintain the
2 records required by Section 4081 or who, when called upon by an authorized officer or a member
3 of the board, fails, neglects, or refuses to produce or provide the records within a reasonable time,
4 or who willfully produces or furnishes records that are false, is guilty of a misdemeanor."

5 **HEALTH AND SAFETY CODE**

6 8. Health and Safety Code section 11165(d) states:

7 For each prescription for a Schedule II, Schedule III, or Schedule IV
8 controlled substance, as defined in the controlled substances schedules in federal law
9 and regulations, specifically Sections 1308.12, 1308.13, and 1308.14, respectively, of
10 Title 21 of the Code of Federal Regulations, the dispensing pharmacy, clinic, or other
dispenser shall report the following information to the Department of Justice as soon
as reasonably possible, but not more than seven days after the date a controlled
substance is dispensed, in a format specified by the Department of Justice:

11 (1) Full name, address, and, if available, telephone number of the
12 ultimate user or research subject, or contact information as determined by the
Secretary of the United States Department of Health and Human Services, and the
13 gender, and date of birth of the ultimate user.

14 (2) The prescriber's category of licensure, license number, national
15 provider identifier (NPI) number, if applicable, the federal controlled substance
16 registration number, and the state medical license number of any prescriber using the
federal controlled substance registration number of a government-exempt facility.

17 (3) Pharmacy prescription number, license number, NPI number, and
18 federal controlled substance registration number.

19 (4) National Drug Code (NDC) number of the controlled substance
20 dispensed.

21 (5) Quantity of the controlled substance dispensed.

22 (6) International Statistical Classification of Diseases, 9th revision
(ICD-9) or 10th revision (ICD-10) Code, if available.

23 (7) Number of refills ordered.

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

26 (9) Date of origin of the prescription.

27 (10) Date of dispensing of the prescription.

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1 CODE OF FEDERAL REGULATIONS

2 9. Code of Federal Regulations, title 21, section 1304.11 states, in pertinent part:

3 (a) General requirements. Each inventory shall contain a complete and
4 accurate record of all controlled substances on hand on the date the inventory is
5 taken, and shall be maintained in written, typewritten, or printed form at the
6 registered location. An inventory taken by use of an oral recording device must be
7 promptly transcribed. Controlled substances shall be deemed to be "on hand" if they
8 are in the possession of or under the control of the registrant, including substances
9 returned by a customer, ordered by a customer but not yet invoiced, stored in a
10 warehouse on behalf of the registrant, and substances in the possession of employees
11 of the registrant and intended for distribution as complimentary samples. A separate
12 inventory shall be made for each registered location and each independent activity
13 registered, except as provided in paragraph (e)(4) of this section. In the event
14 controlled substances in the possession or under the control of the registrant are
15 stored at a location for which he/she is not registered, the substances shall be included
16 in the inventory of the registered location to which they are subject to control or to
17 which the person possessing the substance is responsible. The inventory may be
18 taken either as of opening of business or as of the close of business on the inventory
19 date and it shall be indicated on the inventory.

20 ...
21 (c) Biennial inventory date. After the initial inventory is taken, the
22 registrant shall take a new inventory of all stocks of controlled substances on hand at
23 least every two years. The biennial inventory may be taken on any date which is
24 within two years of the previous biennial inventory date. ...

25 CALIFORNIA CODE OF REGULATIONS

26 10. California Code of Regulations, title 16, section 1707.5 states, in pertinent part:

27 (a) Labels on drug containers dispensed to patients in California shall
28 conform to the following format:

(1) Each of the following items, and only these four items, shall be
clustered into one area of the label that comprises at least 50 percent of the label.
Each item shall be printed in at least a 12-point sans serif typeface, and listed in the
following order:

(A) Name of the patient

(B) Name of the drug and strength of the drug. For the purposes of
this section; "name of the drug" means either the manufacturer's trade name of the
drug, or the generic name and the name of the manufacturer.

(C) The directions for the use of the drug.

(D) The condition or purpose for which the drug was prescribed if
the condition or purpose is indicated on the prescription. ...

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1 **COST RECOVERY**

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

6 **BACKGROUND**

7 12. On or about December 15, 2014, Board Inspectors J. F. and A. H. conducted a routine
8 inspection of Respondent Merced Drug.

9 13. During the December 15, 2014 inspection of Respondent Merced Drug, Board
10 Inspector J. F. asked Respondent Velazquez to provide him with the pharmacy's most recent
11 DEA Biennial Inventory. Velazquez provided J. F. with a DEA Biennial Inventory document
12 dated June 22, 2009. Velazquez informed J. F. that he had not conducted a DEA Biennial
13 Inventory since June 22, 2009.

14 14. During the December 15, 2014 inspection of Respondent Merced Drug, Board
15 Inspector J. F. checked the most recent data table for Merced Drug's CURES transmission,
16 however no data was found. Respondent Velazquez informed J. F. that Merced Drug was not
17 transmitting data to CURES. Approximately two weeks later, on or about December 30, 2014,
18 Velazquez informed J. F. that Merced Drug's last Controlled Substance Utilization Review and
19 Evaluation System (CURES)¹ transmission occurred on July 28, 2009.

20 15. During the December 15, 2014 inspection of Respondent Merced Drug, Board
21 Inspector A. H. conducted the Board of Pharmacy's "Survey of Pharmacies: Translation services
22 Available in pharmacies." During the survey, A. H. asked Respondent Velazquez to provide the
23 Board with example labels for the survey. A. H. requested two regular prescription labels (non-
24 translated) and two translated prescription labels (translated into Spanish). After inspection of the
25

26
27 ¹ CURES is a database containing information on Schedule II through IV controlled
28 substances dispensed in California. It is a valuable investigative, preventive, and educational tool
for the healthcare community, regulatory boards, and law enforcement.

1 prescription labels provided to A. H., it was discovered that Merced Drug's pharmacy
2 prescription labels were not in compliance with Patient Centered Labeling regulations.

3 **RESPONDENT MERCED DRUG**

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Biennial DEA Inventory Requirements)**

6 16. Respondent Merced Drug is subject to disciplinary action under sections 4081(a) and
7 4332 of the Code, by and through section 1304.11(a) and (c) of title 21 of the Code of Federal
8 Regulations, in that as of December 15, 2014, Merced Drug had not conducted a Biennial DEA
9 Inventory since June 22, 2009. The circumstances are described with more particularity in
10 paragraph 13.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Failure to Report to CURES)**

13 17. Respondent Merced Drug is subject to disciplinary action under sections 4081(a) and
14 4332 of the Code, by and through section 11165(d) of the Health and Safety Code, in that as of
15 December 15, 2014, Merced Drug had not reported the dispensing of controlled substance
16 prescriptions to the Department of Justice through CURES since July 28, 2009. The
17 circumstances are described with more particularity in paragraph 14.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Patient-Centered Labels for Prescription Drug Containers; Requirements)**

20 18. Respondent Merced Drug is subject to disciplinary action under section 1707.5(a)(1)
21 of Title 16 of the California Code of Regulations in that during a December 15, 2014 inspection
22 of Merced Drug, the pharmacy's prescription labels failed to comply with Patient Centered
23 Labeling regulations. The circumstances are described with more particularity in paragraph 15.

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RESPONDENT VELAZQUEZ

FOURTH CAUSE FOR DISCIPLINE

(Biennial-DEA Inventory Requirements)

19. Respondent Velazquez is subject to disciplinary action under sections 4081(b) and 4332 of the Code, by and through section 1304.11(a) and (c) of title 21 of the Code of Federal Regulations, in that as of December 15, 2014, Velazquez, as the pharmacist-in-charge of Respondent Merced Drug, had not conducted a Biennial DEA Inventory for Merced Drug since June 22, 2009. The circumstances are described with more particularity in paragraph 13.

FIFTH CAUSE FOR DISCIPLINE

(Failure to Report to CURES)

20. Respondent Velazquez is subject to disciplinary action under sections 4081(b) and 4332 of the Code, by and through section 11165(d) of the Health and Safety Code, in that as of December 15, 2014, Velazquez, as the pharmacist-in-charge of Respondent Merced Drug, had not reported the dispensing of controlled substance prescriptions to the Department of Justice through CURES since July 28, 2009. The circumstances are described with more particularity in paragraph 14.

SIXTH CAUSE FOR DISCIPLINE

(Patient-Centered Labels for Prescription Drug Containers; Requirements)

21. Respondent Velazquez is subject to disciplinary action under section 4081(b) of the Code, by and through section 1707.5(a)(1) of title 16 of the California Code of Regulations, in that on or about December 15, 2014, Velazquez, as the pharmacist-in-charge of Respondent Merced Drug, failed to ensure that the pharmacy's prescription labels complied with Patient Centered Labeling regulations. The circumstances are described with more particularity in paragraph 15.

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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:

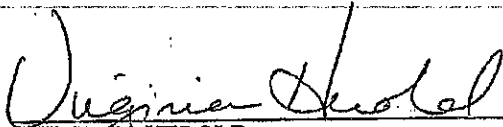
1. Revoking or suspending Original Permit Number PHY 43562, issued to Rafael Velazquez dba Merced Drug;

2. Revoking or suspending Original Pharmacist License Number RPH 40303, issued to Rafael Velazquez;

3. Ordering Rafael Velazquez dba Merced Drug, and Rafael Velazquez 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

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

DATED: 2/20/16


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

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