

**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 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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Attorney General of California
2 KENT D. HARRIS
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9 **BEFORE THE**
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10 **DEPARTMENT OF CONSUMER AFFAIRS**
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11 In the Matter of the Accusation Against:

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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 **PARTIES**

25 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
26 She brought this action solely in her official capacity and is represented in this matter by Kamala
27
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 Velazquez has carefully read, fully discussed with counsel, and
25 understands the charges and allegations in Accusation No. 5606. Respondent Velazquez has also
26 carefully read, fully discussed with counsel, and understands the effects of this Stipulated
27 Settlement and Disciplinary Order.

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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 Pharmacist License Number RPH 40303 issued
15 to Respondent Rafael Velazquez is revoked. However, the revocation is stayed and Respondent
16 Velazquez is placed on probation for three (3) years on the following terms and conditions.

17 1. **Obey All Laws**

18 Respondent Velazquez shall obey all state and federal laws and regulations.

19 Respondent Velazquez shall report any of the following occurrences to the Board, in
20 writing, within seventy-two (72) hours of such occurrence:

- 21 • an arrest or issuance of a criminal complaint for violation of any provision of the
22 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
23 substances laws
24 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
25 criminal complaint, information or indictment
26 • a conviction of any crime
27 • discipline, citation, or other administrative action filed by any state or federal agency
28 which involves Respondent Velazquez's original pharmacist license or which is

1 related to the practice of pharmacy or the manufacturing, obtaining, handling,
2 distributing, billing, or charging for any drug, device or controlled substance.

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

4 **2. Report to the Board**

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

13 **3. Interview with the Board**

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

19 **4. Cooperate with Board Staff**

20 Respondent Velazquez shall cooperate with the Board's inspection program and with the
21 Board's monitoring and investigation of Respondent Velazquez's compliance with the terms and
22 conditions of his probation. Failure to cooperate shall be considered a violation of probation.

23 **5. Continuing Education**

24 Respondent Velazquez shall provide evidence of efforts to maintain skill and knowledge as
25 a 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 Velazquez shall notify all present and
3 prospective employers of the Decision in case number 5606 and the terms, conditions, and
4 restrictions imposed 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 Velazquez undertaking any new employment, Respondent Velazquez shall cause his
7 direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed
8 during Respondent Velazquez's tenure of employment) and owner to report to the Board in
9 writing acknowledging that the listed individual(s) has/have read the decision in case number
10 5606, and terms and conditions imposed thereby. It shall be Respondent Velazquez's
11 responsibility to ensure that his employer(s) and/or supervisor(s) submit timely
12 acknowledgment(s) to the Board.

13 If Respondent Velazquez works for or is employed by or through a pharmacy employment
14 service, Respondent Velazquez must notify his direct supervisor, pharmacist-in-charge, and
15 owner at every entity licensed by the Board of the terms and conditions of the Decision in case
16 number 5606 in advance of Respondent Velazquez commencing work at each licensed entity. A
17 record of this notification must be provided to the Board upon request.

18 Furthermore, within thirty (30) days of the effective date of this Decision, and within fifteen
19 (15) days of Respondent Velazquez undertaking any new employment by or through a pharmacy
20 employment service, Respondent Velazquez shall cause his direct supervisor with the pharmacy
21 employment service to report to the Board in writing acknowledging that he has read the decision
22 in case number 5606 and the terms and conditions imposed thereby. It shall be Respondent
23 Velazquez's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely
24 acknowledgment(s) to the Board.

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

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

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

7 During the period of probation, Respondent Velazquez shall not supervise any intern
8 pharmacist, be the pharmacist-in-charge or designated representative-in-charge of any entity
9 licensed by the Board nor serve as a consultant unless otherwise specified in this Order.
10 Assumption of any such unauthorized supervision responsibilities shall be considered a violation
11 of probation.

12 **8. Reimbursement of Board Costs**

13 As a condition precedent to successful completion of probation, Respondent Velazquez
14 shall pay to the Board its costs of investigation and prosecution in the amount of \$4,403.75,
15 jointly and severally with Respondent Merced Drug. Respondent Velazquez shall be permitted to
16 pay these costs in a payment plan approved by the Board.

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

20 The filing of bankruptcy by Respondent Velazquez shall not relieve Respondent Velazquez
21 of his responsibility to reimburse the Board its costs of investigation and prosecution.

22 **9. Probation Monitoring Costs**

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

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1 **10. Status of License**

2 Respondent Velazquez shall, at all times while on probation, maintain an active, current
3 license with the Board, including any period during which suspension or probation is tolled.
4 Failure to maintain an active, current license shall be considered a violation of probation.

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

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

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

18 Upon acceptance of the surrender, Respondent Velazquez shall relinquish his pocket and
19 wall license to the Board within ten (10) days of notification by the Board that the surrender is
20 accepted. Respondent Velazquez may not reapply for any license from the Board for three (3)
21 years from the effective date of the surrender. Respondent Velazquez shall meet all requirements
22 applicable to the license sought as of the date the application for that license is submitted to the
23 Board, including any outstanding costs.

24 **12. Notification of a Change in Name, Residence Address, Mailing Address, or**
25 **Employment**

26 Respondent Velazquez shall notify the Board in writing within ten (10) days of any change
27 of employment. Said notification shall include the reasons for leaving, the address of the new
28 employer, the name of the supervisor and owner, and the work schedule if known. Respondent

1 Velazquez shall further notify the Board in writing within ten (10) days of a change in name,
2 residence address, mailing address, or phone number.

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

5 **13. Tolling of Probation**

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

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

17 It is a violation of probation for Respondent Velazquez's probation to remain tolled
18 pursuant to the provisions of this condition for a total period, counting consecutive and non-
19 consecutive months, exceeding thirty-six (36) months.

20 "Cessation of practice" means any calendar month during which Respondent
21 Velazquez is not practicing as a pharmacist for at least 40 hours, as defined by

22 Business and Professions Code section 4000 et seq. "Resumption of practice" means
23 any calendar month during which Respondent Velazquez is practicing as a pharmacist
24 for at least 40 hours as a pharmacist as defined by Business and Professions Code
25 section 4000 et seq.

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1 **14. Violation of Probation**

2 If Respondent Velazquez has not complied with any term or condition of probation, the
3 Board shall have continuing jurisdiction over Respondent Velazquez, and probation shall
4 automatically be extended, until all terms and conditions have been satisfied or the Board has
5 taken other action as deemed appropriate to treat the failure to comply as a violation of probation,
6 to terminate probation, and to impose the penalty that was stayed.

7 If Respondent Velazquez violates probation in any respect, the Board, after giving
8 Respondent Velazquez notice and an opportunity to be heard, may revoke probation and carry out
9 the disciplinary order that was stayed. Notice and opportunity to be heard are not required for
10 those provisions stating that a violation thereof may lead to automatic termination of the stay
11 and/or revocation of the license. If a petition to revoke probation or an accusation is filed against
12 Respondent Velazquez during probation, the Board shall have continuing jurisdiction and the
13 period of probation shall be automatically extended until the petition to revoke probation or
14 accusation is heard and decided.

15 **15. Completion of Probation**

16 Upon written notice by the Board or its designee indicating successful completion of
17 probation, Respondent Velazquez's license will be fully restored.

18 **16. No New Ownership of Licensed Premises**

19 Respondent Velazquez shall not acquire any new ownership, legal or beneficial interest nor
20 serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any
21 additional business, firm, partnership, or corporation licensed by the Board. If Respondent
22 Velazquez currently owns or has any legal or beneficial interest in, or serves as a manager,
23 administrator, member, officer, director, trustee, associate, or partner of any business, firm,
24 partnership, or corporation currently or hereinafter licensed by the Board, Respondent Velazquez
25 may continue to serve in such capacity or hold that interest, but only to the extent of that position
26 or interest as of the effective date of this Decision. Violation of this restriction shall be
27 considered a violation of probation.

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1 **17. Consultant for Owner or Pharmacist-In-Charge**

2 During the period of probation, Respondent Velazquez shall not supervise any intern
3 pharmacist or serve as a consultant to any entity licensed by the Board. Respondent Velazquez
4 may be a pharmacist-in-charge. However, if during the period of probation Respondent
5 Velazquez serves as a pharmacist-in-charge, Respondent Velazquez shall retain an independent
6 consultant at his own expense who shall be responsible for reviewing pharmacy operations on a
7 quarterly basis for compliance by Respondent Velazquez with state and federal laws and
8 regulations governing the practice of pharmacy and for compliance by Respondent Velazquez
9 with the obligations of a pharmacist-in-charge for the first 18 months of probation. The
10 consultant shall be a pharmacist licensed by and not on probation with the Board and whose name
11 shall be submitted to the Board or its designee, for prior approval, within thirty (30) days of the
12 effective date of this Decision. Respondent Velazquez shall not be a pharmacist-in-charge at
13 more than one pharmacy or at any pharmacy of which he is not the sole owner. Failure to timely
14 retain, seek approval of, or ensure timely reporting by the consultant shall be considered a
15 violation of probation. After complying with this term for 18 months, the Board or its designee
16 may eliminate this requirement if the pharmacy where Respondent Velazquez serves as
17 pharmacist-in-charge is compliant with pharmacy law.

18 **18. Board's E-Mail List**

19 Respondent must join and maintain registration with the Board's e-mail list during the
20 entire term of probation. Respondent shall coordinate with the Board or its designee regarding
21 the procedure for joining and maintaining registration with the Board's e-mail list.

22 **19. Inventory Reconciliation Report**

23 Respondent Velazquez, as pharmacist-in-charge of Merced Drug Pharmacy, shall compile
24 an Inventory Reconciliation Report of all Schedule II controlled substances at least every three
25 months. This compilation shall require:

- 26 1. A physical count, not an estimate, of all quantities of federal Schedule II
27 controlled substances in the pharmacy. The biennial inventory of controlled substances required
28 by federal law may serve as one of the mandated inventories under this section in the year where

1 the federal biennial inventory is performed, provided the biennial inventory was taken no more
2 than three months from the last inventory required by this section.

3 2. A review of all acquisitions and dispositions of Schedule II controlled
4 substances since the last Inventory Reconciliation Report.

5 3. Comparison of items 1 and 2 to determine if there are any variances.

6 4. All records used to compile each reconciliation shall be maintained in the
7 pharmacy for at least three years in a readily retrievable form.

8 Losses shall be identified in writing and reported to the Board and, when appropriate, to the
9 Drug Enforcement Administration. Likely causes of overages shall be identified in writing and
10 incorporated into the Inventory Reconciliation Report.

11 The Inventory Reconciliation Report shall be dated and signed by the individual(s)
12 performing the inventory, and countersigned by Respondent Velazquez, and be readily retrievable
13 in the pharmacy for three years.

14 Respondent Velazquez additionally shall review all inventory and inventory reconciliation
15 reports created by the pharmacy, as well as establish and maintain secure methods to prevent
16 losses of controlled drugs from or within the pharmacy. Respondent Velazquez as the
17 pharmacist-in-charge shall ensure written policies and procedures have been developed for
18 performing the inventory reconciliation reports required by this term.

19 Should Respondent Velazquez cease serving as the pharmacist-in-charge, he shall complete
20 the inventory required of Schedule II drugs as required above before leaving his position.
21 Additionally, the new pharmacist-in-charge of the pharmacy shall complete an inventory within
22 30 days of becoming pharmacist-in-charge.

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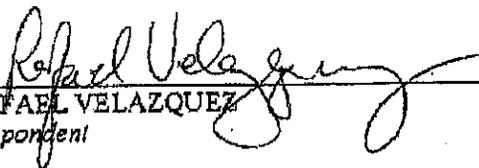
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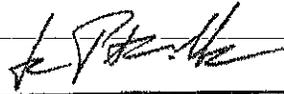
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ACCEPTANCE

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 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: 6/23/16 
RAFAEL VELAZQUEZ
Respondent

I have read and fully discussed with Respondent Rafael Velazquez 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
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 PHILLIP L. ARTHUR
Deputy Attorney General
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Attorneys for Complainant

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and

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

Original Pharmacist License No. RPH 40303

Respondents.

Complainant alleges:

PARTIES

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

2. On or about April 1, 1998, the Board of Pharmacy issued Original Permit Number PHY 43562 to Rafael Velazquez dba Merced Drug (Respondent Merced Drug). Rafael

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
registration number, and the state medical license number of any prescriber using the
16 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
23 (ICD-9) or 10th revision (ICD-10) Code, if available.

24 (7) Number of refills ordered.

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

27 (9) Date of origin of the prescription.

28 (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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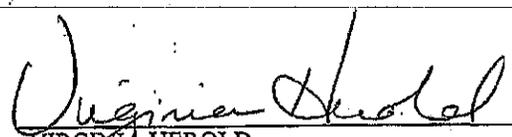
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PRAYER

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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