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

In the Matter of the Accusation and Petition to Revoke Probation Against: **CAL-MEX SPECIAL SERVICES, INC., DBA CAL-MEX PHARMACY** **337 Paulin Avenue, Suite 1A** **Calexico, CA 92231** **Pharmacy Permit No. PHY 50374** **and** **OLUGBENGA SOLOMON ODUYALE** **2209 E. 27th Street** **Yuma, AZ 85365** **Pharmacist License No. RPH 42719** Respondents.	Case No. 4724 **ACCUSATION AND PETITION TO REVOKE PROBATION**

Complainant alleges:

PARTIES

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

2. On or about August 19, 2011, the Board of Pharmacy issued Pharmacy Permit Number PHY 50374 to Cal-Mex Special Services, Inc., doing business as Cal-Mex Pharmacy with Olugbenga Solomon Oduyale as President and Pharmacist-in-Charge (PIC) (Respondent). The Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein and will expire on August 1, 2013, unless renewed.

3. In a disciplinary action entitled "In the Matter of the Statement of Issues Against Calmex Special Services, Inc., dba Cal-Mex Pharmacy," Case No. 4009, the Board of Pharmacy issued a Decision and Order effective July 20, 2011, in which Respondent's Pharmacy Permit was revoked. However, the revocation was stayed and Respondent's Pharmacy Permit was placed on probation for thirty-five (35) months with certain terms and conditions. A copy of that Decision and Order is attached as Exhibit A and is incorporated by reference.

4. On or about August 8, 1989, the Board of Pharmacy issued Pharmacist License Number 42719 to Olugbenga Solomon Oduyale (Respondent). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2014, unless renewed.

JURISDICTION AND STATUTORY PROVISIONS FOR ACCUSATION

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

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

7. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.

8. Section 4300.1 of the Code states:

> The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a 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.

STATUTORY PROVISIONS

9. Section 4022 of the Code states:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a ____," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

10. Section 4063 of the Code states:

No prescription for any dangerous drug or dangerous device may be refilled except upon authorization of the prescriber. The authorization may be given orally or at the time of giving the original prescription. No prescription for any dangerous drug that is a controlled substance may be designated refillable as needed.

11. Section 4073 of the Code states in pertinent part:

(a) A pharmacist filling a prescription order for a drug product prescribed by its trade or brand name may select another drug product with the same active chemical ingredients of the same strength, quantity, and dosage form, and of the same generic drug name as determined by the United States Adopted Names (USAN) and accepted by the federal Food and Drug Administration (FDA), of those drug products having the same active chemical ingredients.

. . . .

(d) This section shall apply to all prescriptions, including those presented by or on behalf of persons receiving assistance from the federal government or pursuant to the California Medical Assistance Program set forth in Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code.

. . . .

12. Section 4081 of the Code states:

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

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

13. Section 4169 of the Code states in pertinent part:

(a) A person or entity may not do any of the following:

(1) Purchase, trade, sell, or transfer dangerous drugs or dangerous devices at wholesale with a person or entity that is not licensed with the board as a wholesaler or pharmacy.

(2) Purchase, trade, sell, or transfer dangerous drugs that the person knew or reasonably should have known were adulterated, as set forth in Article 2 (commencing with Section 111250) of Chapter 6 of Part 5 of Division 104 of the Health and Safety Code.

(3) Purchase, trade, sell, or transfer dangerous drugs that the person knew or reasonably should have known were misbranded, as defined in Section 111335 of the Health and Safety Code.

(4) Purchase, trade, sell, or transfer dangerous drugs or dangerous devices after the beyond use date on the label.

(5) Fail to maintain records of the acquisition or disposition of dangerous drugs or dangerous devices for at least three years.

. . . .

14. 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 procured by fraud or

misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

. . . .

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

. . . .

(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 by any other state or federal regulatory agency.

. . . .

15. Section 4306.5 of the Code states in pertinent part:

Unprofessional conduct for a pharmacist may include any of the following:

(a) Acts or omissions that involve, in whole or in part, the inappropriate exercise of his or her education, training, or experience as a pharmacist, whether or not the act or omission arises in the course of the practice of pharmacy or the ownership, management, administration, or operation of a pharmacy or other entity licensed by the board.

(b) Acts or omissions that involve, in whole or in part, the failure to exercise or implement his or her best professional judgment or corresponding responsibility with regard to the dispensing or furnishing of controlled substances, dangerous drugs, or dangerous devices, or with regard to the provision of services.

(c) Acts or omissions that involve, in whole or in part, the failure to consult appropriate patient, prescription, and other records pertaining to the performance of any pharmacy function.

(d) Acts or omissions that involve, in whole or in part, the failure to fully maintain and retain appropriate patient-specific information pertaining to the performance of any pharmacy function.

16. Health and Safety Code section 11153 provides in pertinent part:

(a) A prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. Except as authorized by this division, the following are not legal prescriptions: (1)

an order purporting to be a prescription which is issued not in the usual course of professional treatment or in legitimate and authorized research; or (2) an order for an addict or habitual user of controlled substances, which is issued not in the course of professional treatment or as part of an authorized narcotic treatment program, for the purpose of providing the user with controlled substances, sufficient to keep him or her comfortable by maintaining customary use.

17. Health and Safety Code section 11164 provides in pertinent part:

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

(a) Each prescription for a controlled substance classified in Schedule II, III, IV, or V, except as authorized by subdivision (b), shall be made on a controlled substance prescription form as specified in Section 11162.1 and shall meet the following requirements:

(1) The prescription shall be signed and dated by the prescriber in ink and shall contain the prescriber's address and telephone number; the name of the ultimate user or research subject, or contact information as determined by the Secretary of the United States Department of Health and Human Services; refill information, such as the number of refills ordered and whether the prescription is a first-time request or a refill; and the name, quantity, strength, and directions for use of the controlled substance prescribed.

(2) The prescription shall also contain the address of the person for whom the controlled substance is prescribed. If the prescriber does not specify this address on the prescription, the pharmacist filling the prescription or an employee acting under the direction of the pharmacist shall write or type the address on the prescription or maintain this information in a readily retrievable form in the pharmacy.

(b) (1) Notwithstanding paragraph (1) of subdivision (a) of Section 11162.1, any controlled substance classified in Schedule III, IV, or V may be dispensed upon an oral or electronically transmitted prescription, which shall be produced in hard copy form and signed and dated by the pharmacist filling the prescription or by any other person expressly authorized by provisions of the Business and Professions Code. Any person who transmits, maintains, or receives any electronically transmitted prescription shall ensure the security, integrity, authority, and confidentiality of the prescription.

(2) The date of issue of the prescription and all the information required for a written prescription by subdivision (a) shall be included in the written record of the prescription; the pharmacist need not include the address, telephone number, license classification, or federal registry number of the prescriber or the address of the patient on the hard copy, if that information is readily retrievable in the pharmacy.

(3) Pursuant to an authorization of the prescriber, any agent of the prescriber on behalf of the prescriber may orally or electronically transmit a prescription for a controlled substance classified in Schedule III, IV, or V, if in these cases the written record of the prescription required by this subdivision specifies the name of the agent of the prescriber transmitting the prescription.

(c) The use of commonly used abbreviations shall not invalidate an otherwise valid prescription.

(d) Notwithstanding any provision of subdivisions (a) and (b), prescriptions for a controlled substance classified in Schedule V may be for more than one person in the same family with the same medical need.

(e) This section shall become operative on January 1, 2005.

18. Health and Safety Code section 11165 provides in pertinent part:

. . . .

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

(1) Full name, address, and the telephone number of the 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 gender, and date of birth of the ultimate user.

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

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

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

(5) Quantity of the controlled substance dispensed.

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

(7) Number of refills ordered.

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

(9) Date of origin of the prescription.

(10) Date of dispensing of the prescription.

19. Health and Safety Code section 11172 provides that no person shall antedate or postdate a prescription.

STATE REGULATORY PROVISIONS

20. California Code of Regulations, title 16, section 1716 states:

Pharmacists shall not deviate from the requirements of a prescription except upon the prior consent of the prescriber or to select the drug product in accordance with Section 4073 of the Business and Professions Code.

Nothing in this regulation is intended to prohibit a pharmacist from exercising commonly-accepted pharmaceutical practice in the compounding or dispensing of a prescription.

21. California Code of Regulations, title 16, section 1717.3 states:

(a) No person shall dispense a controlled substance pursuant to a preprinted multiple check-off prescription blank.

(b) A person may dispense a dangerous drug, that is not a controlled substance, pursuant to a preprinted multiple checkoff prescription blank and may dispense more than one dangerous drug, that is not a controlled substance, pursuant to such a blank if the prescriber has indicated on the blank the number of dangerous drugs he or she has prescribed.

(c) "Preprinted multiple checkoff prescription blank," as used in this section means any form listing more than one dangerous drug where the intent is that a mark next to the name of a drug i.e., a "checkoff," indicates a prescription order for that drug.

22. California Code of Regulations, title 16, section 1718 states:

"Current Inventory" as used in Sections 4081 and 4332 of the Business and Professions Code shall be considered to include complete accountability for all dangerous drugs handled by every licensee enumerated in Sections 4081 and 4332.

The controlled substances inventories required by Title 21, CFR, Section 1304 shall be available for inspection upon request for at least 3 years after the date of the inventory.

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

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

(b) Even after conferring with the prescriber, a pharmacist shall not compound or dispense a controlled substance prescription where the pharmacist

knows or has objective reason to know that said prescription was not issued for a legitimate medical purpose.

COST RECOVERY

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

DRUGS

25. Ambien, is a brand name for zolpidem, a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022. It is a sedative used for the short-term treatment of insomnia.

26. Hydrocodone/acetaminophen, also known by the brand names Vicodin, Norco, Zydone, Maxidone, Lortab, Lorcet, Hydrocet, Co-Gesic, and Anexsia, is a narcotic Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4), and is a dangerous drug pursuant to Business and Professions Code section 4022. Hydrocodone is used as a narcotic analgesic in the relief of pain.

27. Lorazepam, is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022.

28. Oxycodone, is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions Code section 4022.

29. Temazepam, is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022.

FACTUAL ALLEGATIONS

30. On or about January 28, 2013, Board inspectors performed a routine inspection of Cal-Mex Pharmacy located at 337 Paulin Avenue, Ste. 1A, in Calexico, California. The President and Pharmacist-in-Charge (PIC) Oduyale was present during the inspection. During the inspection, the Board inspectors reviewed hundreds of prescriptions, invoices from wholesalers, and the quality assurance binder, among other items. Following the inspection, Board inspectors continued the investigation of Respondents by interviewing and obtaining statements from pharmacy personnel, including Respondent PIC Oduyale, and reviewing additional documentation provided by Respondents.

31. Respondent PIC Oduyale provided the Board inspector with an audit of the hydrocodone/acetaminophen 10mg/325mg inventory that was acquired and dispensed by Respondent Cal-Mex Pharmacy between May 1, 2012 and January 28, 2013. According to Respondent PIC Oduyale's audit, Respondent Cal-Mex Pharmacy's total acquisition of hydrocodone/acetaminophen 10mg/325mg was 8,040 tablets and it's total disposition of hydrocodone/acetaminophen 10mg/325mg was 8,073 tablets, (an overage of 33 tablets). However, the Board inspector's audit of the inventory and records showed Respondent Cal-Mex Pharmacy's total acquisition of hydrocodone/acetaminophen 10mg/325mg was 8,040 tablets and it's total disposition of hydrocodone/acetaminophen 10mg/325mg was 8,663 tablets of hydrocodone/acetaminophen 10mg/325mg during that time period, (an overage of 623 tablets) as follows:

Audit Performed By:	Total Acquisition	Total Disposition	Variance	Overage
PIC Oduyale	8,040 tablets	8,073 tablets	33	**33 tablets**
Board Inspector	8,040 tablets	8,663 tablets	623	**623 tablets**

Thus, the Board inspector discovered that Respondents dispensed 590 more tablets of hydrocodone/acetaminophen 10 mg/325mg than accounted for on Respondent PIC Oduyale's audit. Additionally, Respondent PIC Oduyale removed from the pharmacy's inventory 630 tablets on August 27, 2012 but was unable to provide an explanation for these removals to the Board inspector.

32. The Board inspector also discovered that Respondent Cal-Mex Pharmacy was purchasing drugs from River City Pharma located in Cincinnati, Ohio. River City Pharma did not hold an Out-of-State Wholesaler's license with the Board of Pharmacy between November 2012 and January 2013. Respondent Cal-Mex Pharmacy purchased the following drugs from River City Pharma during that time period:

Date	Invoice Number	Dangerous Drug	Amount
11/13/2012	1055611-IN	Nystatin topical	2
11/13/2012	1055611-IN	Valacyclovir HCL 500mg tabs	1
11/14/2012	1056190-IN	Ciprofloxacin HCI 500mg tabs	2
11/14/2012	1056190-IN	Nystatin topical powder	6
1/8/2013	1078725-IN	Nystatin topical powder	6
1/21/2013	1084697-IN	Novolin 70/30 100U inj.	4
1/21/2013	1084697-IN	Novolin R U100	4
1/21/2013	1084697-IN	Nystatin topical powder	5
1/21/2013	1084697-IN	Celebrex 200mg Caps	3
1/21/2013	1084697-IN	Fluticasone 50mcg spray	6
1/21/2013	1084697-IN	Gabapentin 600mg tabs	2
1/21/2013	1084697-IN	Gabapentin 800mg tabs	1

33. Board inspectors also discovered that Respondent Cal-Mex Pharmacy (who received its DEA registration on August 19, 2011) did not report to the Department of Justice any of its controlled substance dispensing from August 19, 2011 to April 19, 2012 and did not report weekly from April 19, 2012 to April 23, 2013.

34. After completing a review of prescriptions dispensed by Respondents, Board inspectors discovered that Respondent Cal-Mex Pharmacy did not dispense the correct quantity when substituting oxycodone 15mg number 200 for a prescription written for oxycodone 30mg number 120. The original prescription (RX No. 20013 written on August 8, 2012) provided

patient AS with 3,600 mg (a 30 day supply), however, it was dispensed for 3,000 mg (a 25 day supply) without notification or consent of the prescriber.

35. Additionally, Board inspectors discovered that Respondents deviated from requirements in filling four prescriptions without documentation of prior consent of the prescriber as follows:

RX #	Date Written	Date Filled	Patient	Drug Written For	Amount	Original/Rewrite Signature	Filled For
20013	8/8/12	8/9/12	AS	Oxycodone 30 mg	120	Oxycodone 30 mg number 120 (1 tab four times a day)	Oxycodone 15 mg number 200 (take 2 tabs four times a day)
40269	12/17/12	10/17/12	MF	Lorazepam 0.5mg	75	Every 8-12 hours	Every 8-12 hours **as needed** for pain
40270	10/17/12	10/17/12	EL	Hydrocodone/APAP 10/325mg	90	Rewrite: every 8 hours as **needed**	Every 8 hours
40416	12/5/12	12/5/12	EH	Ambien 5mg	50	Every night at bed for 7 weeks	Every night at bed as **needed** for sleep

36. Respondent Cal-Mex Pharmacy also dispensed twenty-four prescriptions for controlled substances not written on controlled substance forms. Respondent PIC Oduyale informed the Board inspector that prescriptions were brought in by patients on an 8.5x11" white paper, not a controlled substance form, which was preprinted multiple check-off prescription blanks. Respondent PIC Oduyale told the Board inspector that all prescriptions were verified; however, he did not provide the required hard copy forms. From September 10, 2012 to November 16, 2012, Respondents dispensed the following prescriptions using original prescriptions provided by the patients, which were not written on controlled substance forms:

	RX #	Date Written	Date Filled	Patient	Drug Written For	Amount
1.	40202	9/7/12	9/10/12	GN	Zolpidem 10 mg	60
2.	40203	9/7/12	9/10/12	RA	Hydrocodone/APAP 10/325	60
3.	40204	9/7/12	9/10/12	MM	Hydrocodone/APAP 10/325	60
4.	40205	Unknown	9/11/12	EC	Hydrocodone/APAP 10/325	60
5.	40207	9/7/12	9/11/12	AC	Zolpidem 10 mg	60
6.	40209	9/7/12	9/11/12	BR	Zolpidem 10 mg	60
7.	40210	9/7/12	9/11/12	SB	Zolpidem 10 mg	60
8.	40211	9/7/12	9/11/12	MM	Hydrocodone/APAP 10/325	60
9.	40212	9/7/12	9/11/12	JR	Hydrocodone/APAP 10/325	60
10.	40214	9/7/12	9/11/12	EL	Hydrocodone/APAP 10/325	60
11.	40215	9/7/12	9/11/12	EF	Hydrocodone/APAP 10/325	60
12.	40216	9/7/12	9/11/12	EF	Zolpidem 10 mg	60
13.	40324	11/16/12	11/16/12	RG	Hydrocodone/APAP 7.5/750	60

14.	40331	11/16/12	11/16/12	NM	Zolpidem 10 mg	60
15.	40356	11/16/12	11/16/12	AC	Hydrocodone/APAP 10/325	60
16.	40357	11/16/12	11/16/12	MM	Hydrocodone/APAP 10/325	60
17.	40358	11/16/12	11/16/12	MR	Hydrocodone/APAP 10/325	60
18.	40359	11/16/12	11/16/12	MR	Zolpidem 10 mg	60
19.	40364	11/16/12	11/16/12	JF	Hydrocodone/APAP 10/325	60
20.	40366	11/16/12	11/16/12	SB	Zolpidem 10 mg	60
21.	40367	11/16/12	11/16/12	EF	Hydrocodone/APAP 10/325	60
22.	40368	11/16/12	11/16/12	RN	Hydrocodone/APAP 10/325	60
23.	40369	11/16/12	11/16/12	MN	Hydrocodone/APAP 10/325	60
24.	40370	11/16/12	11/16/12	EC	Hydrocodone/APAP 10/325	60

37. A review of prescriptions also revealed to Board inspectors that two prescriptions were filled by Respondent Cal-Mex Pharmacy before the prescriber even wrote the prescription. Specifically, RX Number 40393 was filled by Respondent Cal-Mex Pharmacy on November 28, 2012 for patient DF for 1 box of Testim Gel 1%; however, the prescriber wrote the prescription on December 5, 2012 (7 days after it was filled.) In addition, RX Number 40233 was filled by Respondent Cal-Mex Pharmacy on September 21, 2012 for patient ES for 60 tablets of Tylenol #3; however, the prescriber wrote the prescription on October 3, 2012 (11 days after it was filled.) When Board inspectors asked Respondent PIC Oduyale for an explanation about the discrepancies in the dates, Respondent PIC Oduyale was unable to provide an explanation or any documentation supporting the discrepancies in dates. Therefore, Board inspectors determined that Respondent Cal-Mex Pharmacy filled postdated prescriptions without consulting the prescriber for clarification.

38. Board inspectors also discovered that Respondent Cal-Mex Pharmacy filled thirty-nine prescriptions from oral transmission but failed to obtain the name of the agent of the prescriber transmitting or "calling in" the prescription as follows:

	RX Number	Date Written	Date Filled	Patient	Drug	Amount
1	40321	11/16/12	11/16/12	AR	Hydrocodone/APAP 10/325	60
2	40322	11/16/12	11/16/12	MH	Hydrocodone/APAP 10/325	60
3	40323	11/16/12	11/16/12	MH	Zolpidem 10 mg	60
4	40326	11/16/12	11/16/12	ML	Hydrocodone/APAP 10/325	60
5	40329	11/16/12	11/16/12	RC	Hydrocodone/APAP 10/325	60
6	40332	11/16/12	11/16/12	NM	Hydrocodone/APAP 7.5/750	60
7	40333	11/16/12	11/16/12	BR	Hydrocodone/APAP 10/325	60
8	40334	11/16/12	11/16/12	BR	Zolpidem 10 mg	60
9	40335	11/16/12	11/16/12	BM	Hydrocodone/APAP 10/325	60
10	40336	11/16/12	11/16/12	TG	Hydrocodone/APAP 10/325	60
11	40337	11/16/12	11/16/12	TG	Zolpidem 10 mg	60
12	40338	11/16/12	11/16/12	GN	Hydrocodone/APAP 7.5/750	60

13	40339	11/16/12	11/19/12	DL	Hydrocodone/APAP 10/325	60
14	40341	11/16/12	11/16/12	ED	Hydrocodone/APAP 10/325	60
15	40342	11/16/12	11/16/12	JP	Hydrocodone/APAP 10/325	60
16	40344	11/16/12	11/16/12	FF	Hydrocodone/APAP 10/325	60
17	40345	11/16/12	11/16/12	GJ	Hydrocodone/APAP 10/325	60
18	40347	11/16/12	11/16/12	MB	Hydrocodone/APAP 5/500	60
19	40348	11/16/12	11/16/12	ML	Hydrocodone/APAP 10/325	60
20	40349	11/16/12	11/16/12	FA	Hydrocodone/APAP 10/325	60
21	40351	11/16/12	11/16/12	AL	Hydrocodone/APAP 10/325	60
22	40353	11/16/12	11/16/12	MR	Hydrocodone/APAP 10/325	60
23	40354	11/16/12	11/16/12	MR	Zolpidem 10 mg	60
24	40355	11/16/12	11/16/12	OP	Hydrocodone/APAP 5/500	60
25	40360	11/16/12	11/16/12	RC	Hydrocodone/APAP 10/325	60
26	40361	11/16/12	11/16/12	JC	Hydrocodone/APAP 7.5/750	60
27	10362	11/16/12	11/16/12	JT	Hydrocodone/APAP 10/325	60
28	40363	11/16/12	11/16/12	EC	Hydrocodone/APAP 10/325	60
29	40365	11/16/12	11/16/12	SB	Hydrocodone/APAP 10/325	60
30	40371	11/16/12	11/16/12	CQ	Hydrocodone/APAP 10/325	60
31	40372	11/16/12	11/16/12	EL	Hydrocodone/APAP 10/325	60
32	40374	11/16/12	11/16/12	CS	Hydrocodone/APAP 10/325	60
33	40320	11/16/12	11/16/12	JA	Hydrocodone/APAP 5/500	60
34	40372	11/16/12	11/16/12	EL	Hydrocodone/APAP 10/325	60
35	40374	11/16/12	11/16/12	CS	Hydrocodone/APAP 10/325	60
36	40304	11/7/12	11/7/12	EH	Ambien 5 mg	30
37	40361	11/16/12	11/16/12	JC	Hydrocodone/APAP 7.5/750	60
38	40414	12/15/12	12/15/12	JP	Temazepam 15mg	35
39	40416	15/5/12	12/5/12	EH	Ambien 5 mg	50

39. Respondent Cal-Mex Pharmacy also refilled prescriptions without obtaining the authorization of the prescriber. Specifically, RX number 603306 for patient JP was written on November 16, 2012 for Motrin 600mg, with no refills authorized on the original prescription. Respondents' records show that Respondent Cal-Mex Pharmacy dispensed RX number 603306 to patient JP on November 16, 2012 and was re-filled on December 12, 2012. Board inspectors asked Respondent PIC Oduyale about the prescription; however, Respondent PIC Oduyale was unable to explain when or who received the authorization for the December 12, 2012 refill.

40. Respondent Cal-Mex Pharmacy also dispensed approximately a 90 day supply of a controlled substance within approximately 30 days to patient BS. Prescription records demonstrated that on December 6, 2012, Respondent Cal-Mex Pharmacy dispensed to patient BS pursuant to RX number 20049, 150 tablets of oxycodone 30mg with a thirty day estimated supply. Fourteen days later on December 20, 2012, Respondent Cal-Mex Pharmacy dispensed to patient BS pursuant to RX number 20059, 150 tablets of oxycodone 30mg, which is another thirty day estimated supply. Fifteen days later on January 4, 2013, Respondent Cal-Mex Pharmacy

again dispensed to patient BS pursuant to RX number 20066, 150 tablets of oxycodone 30mg, which is yet another thirty day estimated supply. Board inspectors asked Respondent PIC Oduyale about the excessive dispensing of medication to this patient. He admitted that he did not contact the physician to approve the dispensing and also did not notice the dates when he was dispensing the medication.

41. Board inspectors also reviewed several original prescriptions that were filled by Respondent Cal-Mex Pharmacy. The original prescriptions showed that all of the prescriptions' origins were by fax or written prescription. Board inspectors questioned Respondent PIC Oduyale about the verifications for these prescriptions. Respondent PIC Oduyale told Board inspectors that verifications for these prescriptions were obtained by either calling or walking over to the prescriber's office. Although requested, Respondents did not provide the verifications for these prescriptions to Board inspectors during the January 28, 2013 inspection. However, on February 1, 2013, Respondents provided the requested verifications to Board inspectors with edited "backers" (dispensing information on the back of the original prescription). The verifications provided by Respondents contained discrepancies when compared to the originals obtained by Board inspectors. The verifications showed that the prescriptions were phoned in by a person, many of them noted that Dr. Ralfa[1] as the verifier (as opposed to fax or written prescription as reflected on the originals.) Board inspectors noted the following discrepancies when comparing the originals to the edited backers provided by Respondents:

RX No.	Date Written	Date Filled	Drug	Amount	Original	Edited Backer
40269	12/17/12	10/17/12	Lorazepam 0.5mg	75	-Front says Call in: Cal-Mex -Backer shows Origin: fax	-Backer says phone in by: Maria
40270	10/17/12	10/17/12	Hydrocodone/APAP 10/325 mg	90	-Backer shows Origin: fax	-Backer says phone in by: Maria
40271	10/17/12	10/17/12	Alprazolam .25 mg	30	-Backer shows Origin: fax	-Backer says phone in by: Maria
40303	11/7/12	11/7/12	Hydrocodone/APAP 5/500 mg	60	-Backer says Origin: written	-Backer says phone in by: Maria

[1] When Dr. Ralfa was questioned by Board inspectors, he stated that he only "sporadically" spoke to Cal-Mex and he did not know or recognize Respondent PIC Oduyale's name.

40304	11/7/12	11/7/12	Ambien 5mg	30	-Backer says Origin: written	-Backer says phone in by: Maria
40393	12/5/12	11/28/12	Testim Gel 1%	1box	-Backer says Origin: written	-Backer says phone in by: Maria
40416	12/5/12	12/5/12	Ambien 5mg	50	-Backer shows Origin: fax	-Backer says phone in by: Maria
Unknown	12/5/12	12/5/12	Hydrocodone/APAP 5/500 mg	100	-Backer shows Origin: fax	-Backer says phone in by: Maria
40213	9/7/12	9/11/12	Zolpidem 10 mg	60	-Backer says Origin: written	-Backer says phone in by: Maria
40320	11/16/12	11/16/12	Hydrocodone/APAP 5/500 mg	60	-Backer says Origin: written	-Backer says phone in by: Maria
40321	11/16/12	11/16/12	Hydrocodone/APAP 10/325 mg	60	-Backer says Origin: written	-Backer says phone in by: Rafla
40322	11/16/12	11/16/12	Hydrocodone/APAP 10/325 mg	60	-Backer says Origin: written	-Backer says phone in by: Maria
40325	11/16/12	11/16/12	Hydrocodone/APAP 10/325 mg	60	-Backer says Origin: written	-Backer says phone in by: Maria
40326	11/16/12	11/16/12	Hydrocodone/APAP 10/325 mg	60	-Backer says Origin: written	-Backer says phone in by: Maria
40327	11/16/12	11/16/12	Hydrocodone/APAP 10/325 mg	60	-Backer says Origin: written	-Backer says phone in by: Rafla
40328	11/16/12	11/16/12	Hydrocodone/APAP 5/500 mg	60	-Backer says Origin: written	-Backer says phone in by: Rafla
40329	11/16/12	11/16/12	Hydrocodone/APAP 10/325 mg	60	-Backer says Origin: written	-Backer says phone in by: Rafla
40333	11/16/12	11/16/12	Hydrocodone/APAP 10/325 mg	60	-Backer says Origin: written	-Backer says phone in by: Rafla
40334	11/16/12	11/16/12	Zolpidem 10 mg	60	-Backer says Origin: written	-Backer says phone in by: Rafla
40335	11/16/12	11/16/12	Hydrocodone/APAP 10/325 mg	60	-Backer says Origin: written	-Backer says phone in by: Rafla
40336	11/16/12	11/16/12	Hydrocodone/APAP 10/325 mg	60	-Backer says Origin: written	-Backer says phone in by: Rafla
40338	11/16/12	11/16/12	Hydrocodone/APAP 7.5/750 mg	60	-Backer says Origin: written	-Backer says phone in by: Rafla
40339	11/16/12	11/16/12	Hydrocodone/APAP 10/325 mg	60	-Backer says Origin: written	-Backer says phone in by: Rafla
40342	11/16/12	11/16/12	Hydrocodone/APAP 10/325 mg	60	-Backer says Origin: written	-Backer says phone in by: Rafla
40343	11/16/12	11/16/12	Hydrocodone/APAP 10/325 mg	60	-Backer says Origin: written	-Backer says phone in by: Rafla
40344	11/16/12	11/16/12	Hydrocodone/APAP 10/325 mg	60	-Backer says Origin: written	-Backer says phone in by: Rafla
40345	11/16/12	11/16/12	Hydrocodone/APAP 10/325 mg	60	-Backer says Origin: written	-Backer says phone in by: Rafla
40347	11/16/12	11/16/12	Hydrocodone/APAP 5/500 mg	60	-Backer says Origin: written	-Backer says phone in by: Rafla
40348	11/16/12	11/16/12	Hydrocodone/APAP 10/325 mg	60	-Backer says Origin: written	-Backer says phone in by: Rafla
40349	11/16/12	11/16/12	Hydrocodone/APAP 10/325 mg	60	-Backer says Origin: written	-Backer says phone in by: Rafla
40351	11/16/12	11/16/12	Hydrocodone/APAP 10/325 mg	60	-Backer says Origin: written	-Backer says phone in by: Rafla
40352	11/16/12	11/16/12	Hydrocodone/APAP 10/325 mg	60	-Backer says Origin: written	-Backer says phone in by: Rafla

40353	11/16/12	11/16/12	Hydrocodone/APAP 10/325 mg	60	-Backer says Origin: written	-Backer says phone in by: Rafla
40354	11/16/12	11/16/12	Zolpidem 10 mg	60	-Backer says Origin: written	-Backer says phone in by: Rafla
40360	11/16/12	11/16/12	Hydrocodone/APAP 10/325 mg	60	-Backer says Origin: written	-Backer says phone in by: Rafla
40362	11/16/12	11/16/12	Hydrocodone/APAP 10/325 mg	60	-Backer says Origin: written	-Backer says phone in by: Rafla
40363	11/16/12	11/16/12	Hydrocodone/APAP 10/325 mg	60	-Backer says Origin: written	-Backer says phone in by: Rafla
40362	11/16/12	11/16/12	Hydrocodone/APAP 10/325 mg	60	-Backer says Origin: written	-Backer says phone in by: Rafla
40371	11/16/12	11/16/12	Hydrocodone/APAP 10/325 mg	60	-Backer says Origin: written	-Backer says phone in by: Rafla
40372	11/16/12	11/16/12	Hydrocodone/APAP 10/325 mg	60	-Backer says Origin: written	-Backer says phone in by: Rafla
40374	11/16/12	11/16/12	Hydrocodone/APAP 10/325 mg	60	-Backer says Origin: written	-Backer says phone in by: Rafla
40320	11/16/12	11/16/12	Hydrocodone/APAP 5/500 mg	60	-Backer says Origin: written	-Backer says phone in by: Rafla
40372	11/16/12	11/16/12	Hydrocodone/APAP 10/325 mg	60	-Backer says Origin: written	-Backer says phone in by: Rafla
40374	11/16/12	11/16/12	Hydrocodone/APAP 10/325 mg	60	-Backer says Origin: written	-Backer says phone in by: Rafla

FIRST CAUSE FOR DISCIPLINE

(Against Respondent PIC Oduyale & Respondent Cal-Mex Pharmacy: Failure to Maintain Adequate Records of Acquisition & Disposition & Failure to Keep Current Inventory)

42. Respondents are subject to disciplinary action under section 4301, subdivision (o) for violation of section 4081, subdivision (a), and California Code of Regulations, title 16, section 1718, for failure to maintain records of acquisition and disposition and failure to keep a current inventory for hydrocodone/acetaminophen 10 mg/325 mg from May 1, 2012 through January 28, 2013, as set forth in paragraph 31, which is incorporated herein by reference.

SECOND CAUSE FOR DISCIPLINE

(Against Respondent PIC Oduyale & Respondent Cal-Mex Pharmacy: Purchasing From Unlicensed Out-of-State Distributor)

43. Respondents are subject to disciplinary action under section 4301, subdivision (o) for violation of section 4169, subdivision (a), in that Respondents purchased twelve prescription medications on four different days from an unlicensed Out-of-State Wholesaler, River City

Pharma, from November 13, 2012 to January 21, 2013, as set forth in paragraph 32, which is incorporated herein by reference.

THIRD CAUSE FOR DISCIPLINE

(Against Respondent PIC Oduyale & Respondent Cal-Mex Pharmacy: Failure to Report to CURES)

44. Respondents are subject to disciplinary action under section 4301, subdivision (o) for violation of section Health and Safety Code section 11165, subdivision (d), for failing to report to the Department of Justice any of its controlled substance dispensing from August 19, 2011 to April 19, 2012 and failing to report weekly from April 19, 2012 to April 23, 2013, as set forth in paragraph 33, which is incorporated herein by reference.

FOURTH CAUSE FOR DISCIPLINE

(Against Respondent PIC Oduyale & Respondent Cal-Mex Pharmacy: Inappropriate Substitution)

45. Respondents are subject to disciplinary action under section 4301, subdivision (o) for violation of section 4073, subdivision (a), in that on August 9, 2012, Respondents failed to dispense the correct quantity when substituting oxycodone 15mg number 200 for a prescription written for oxycodone 30mg number 120, as set forth in paragraph 34, which is incorporated herein by reference.

FIFTH CAUSE FOR DISCIPLINE

(Against Respondent PIC Oduyale and Respondent Cal-Mex Pharmacy: Variation From Prescription)

46. Respondents are subject to disciplinary action under section 4301, subdivision (o) for violation of California Code of Regulations, title 16, section 1716, in that Respondents deviated from the requirements of four prescriptions without documentation of prior consent of the prescriber, as set forth in paragraph 35, which is incorporated herein by reference.

SIXTH CAUSE FOR DISCIPLINE

(Against Respondent PIC Oduyale and Respondent Cal-Mex Pharmacy: Failure to Dispense From a Required Controlled Substance Prescription Form)

47. Respondents are subject to disciplinary action under section 4301, subdivision (o) for violation of Health and Safety Code section 11164, subdivision (a), in that Respondents dispensed twenty-four prescriptions for controlled substances which were not written on a controlled substance form as required by law, as set forth in paragraph 36, which is incorporated herein by reference.

SEVENTH CAUSE FOR DISCIPLINE

(Against Respondent PIC Oduyale and Respondent Cal-Mex Pharmacy: Dispensing Postdated Prescriptions Without Documentation that Prescriber was Contacted)

48. Respondents are subject to disciplinary action under section 4301, subdivision (o) for violation of Health and Safety Code section 11164, subdivision (a)(1), in that Respondents dispensed two prescriptions for controlled substances where the prescriptions were written after the medication was dispensed (postdated), which is prohibited under Health and Safety Code section 11172, and without documentation that the prescriber was contacted for correction, as set forth in paragraph 37, which is incorporated herein by reference.

EIGHTH CAUSE FOR DISCIPLINE

(Against Respondent PIC Oduyale and Respondent Cal-Mex Pharmacy: Failure to Document the Name of Agent Transmitting Oral Prescriptions)

49. Respondents are subject to disciplinary action under section 4301, subdivision (o) for violation of Health and Safety Code section 11164, subdivision (b)(3), in that Respondents failed to document or obtain the name of the agent of the prescriber who transmitted oral prescriptions for thirty nine prescriptions, as set forth in paragraph 38, which is incorporated herein by reference.

NINTH CAUSE FOR DISCIPLINE

(Against Respondent PIC Oduyale and Respondent Cal-Mex Pharmacy: Filing Controlled Substances From Preprinted Multiple Check-off Prescription Blanks)

50. Respondents are subject to disciplinary action under section 4301, subdivision (o) for violation of California Code of Regulations, title 16, section 1717.3, subdivision (a), in that Respondents dispensed twenty-four prescriptions for controlled substances pursuant to a preprinted multiple check-off prescription form, as set forth in paragraph 36, which is incorporated herein by reference.

TENTH CAUSE FOR DISCIPLINE

(Against Respondent PIC Oduyale and Respondent Cal-Mex Pharmacy: Dispensing Erroneous or Uncertain Prescriptions)

51. Respondents are subject to disciplinary action under section 4301, subdivision (o) for violation of California Code of Regulations, title 16, section 1761, subdivision (a), in that Respondents dispensed prescriptions containing significant errors, omissions, irregularities, uncertainties, ambiguities or alterations as set forth in paragraphs 36-38, which are incorporated herein by reference, and as follows:

a. Respondents dispensed twenty-four prescriptions for controlled substances pursuant to a preprinted multiple check-off prescription blank, not controlled substance forms.

b. Respondents dispensed two prescriptions for controlled medications where the prescriptions were written after the medication was dispensed (postdated) without documentation the prescriber was contacted for verification.

c. Respondents dispensed thirty-nine oral prescriptions for controlled medications which lacked the name of the agent of the prescriber transmitting the prescription.

ELEVENTH CAUSE FOR DISCIPLINE

(Against Respondent PIC Oduyale and Respondent Cal-Mex Pharmacy: Unauthorized Refill)

52. Respondents are subject to disciplinary action under section 4301, subdivision (o) for violation of Business and Professions Code section 4063 in that Respondents dispensed

prescription number 603306 to patient JP on December 12, 2012 without the authorization of the prescriber, as set forth in paragraph 39, which is incorporated herein by reference.

TWELFTH CAUSE FOR DISCIPLINE

(Against Respondent PIC Oduyale and Respondent Cal-Mex Pharmacy: Failure to Implement Corresponding Responsibility)

53. Respondents are subject to disciplinary action under section 4301, subdivision (o) for violation of Health and Safety Code section 11153, subdivision (a), in that Respondents failed to implement corresponding responsibility when dispensing within thirty days, an approximately ninety days supply of controlled substance medication to patient BS, which lacked a legitimate medical purpose, as set forth in paragraph 40, which is incorporated herein by reference.

THIRTEENTH CAUSE FOR DISCIPLINE

(Against Respondent PIC Oduyale and Respondent Cal-Mex Pharmacy: Knowingly Making a Document that Falsely Represents the Existence or Nonexistence of Facts)

54. Respondents are subject to disciplinary action under section 4301, subdivision (g) for knowingly making a document that falsely represents the existence or nonexistence of facts, in that Respondents provided to the Board altered documents which falsely represented the existence of facts, as set forth in paragraph 41, which is incorporated herein by reference.

FOURTEENTH CAUSE FOR DISCIPLINE

(Against Respondent PIC Oduyale: Failure to Implement Best Professional Judgment)

55. Respondent is subject to disciplinary action under section 4301 for unprofessional conduct as defined by Business and Professions Code section 4306.5, subdivision (b), for failing to exercise or implement his best professional judgment, as set forth in paragraphs 30-41, which are incorporated herein by reference, and as follows:

a. Respondent failed to keep a current inventory for hydrocodone/acetaminophen 10mg/325mg from May 1, 2012 through January 28, 2013;

b. Respondent purchased twelve prescription medications on four different days from an unlicensed out of state wholesaler, River City Pharma, from November 13, 2012 through January 21, 2013;

c. Respondent failed to report to the Department of Justice Respondent Cal Mex Pharmacy's controlled substance dispensing from August 19, 2011 to April 19, 2012;

d. Respondent failed to report to the Department of Justice Respondent Cal Mex Pharmacy's controlled substance dispensing on a weekly basis from April 19, 2012 to April 23, 2013;

e. Respondent dispensed four prescriptions which deviated from the requirements of the prescriber's prescription;

f. Respondent dispensed prescription number 603306 to patient JP for Motrin 600mg on December 12, 2012 without the authorization of the prescriber;

g. Respondent failed to dispense the correct quantity when substituting oxycodone 15mg number 200 for a prescription written for oxycodone 30mg number 120;

h. Respondent dispensed twenty-four prescriptions from September 10, 2012 to November 16, 2012 pursuant to an improper preprinted multiple check-off prescription blank;

i. Respondent dispensed twenty-four prescriptions for controlled substances not written on a controlled substance form, as required;

j. Respondent dispensed thirty-nine oral prescriptions for controlled medications which lacked the name of the agent of the prescriber transmitting the prescription;

k. Respondent dispensed two prescriptions for controlled medications where the prescriptions were written after the medication was dispensed (postdated) without documentation the prescriber was contacted for correction;

l. Respondent dispensed sixty-five erroneous or uncertain prescriptions;

m. Respondent failed to implement corresponding responsibility when dispensing within thirty days, an approximate ninety day supply of a oxycodone 30mg to patient BS, which lacked a legitimate medical purpose.

n. Respondent knowingly provided the Board with altered documents which falsely represented the existence of a state of facts.

JURISDICTION FOR PETITION TO REVOKE PROBATION

56. This Petition to Revoke Probation is brought against Respondent Cal-Mex Special Services, Inc., doing business as Cal-Mex Pharmacy, before the Board of Pharmacy (Board), Department of Consumer Affairs under Probation Term and Condition Number 11 of the Decision and Order *In the Matter of the Statement of Issues Against Cal-Mex Special Services, Inc., dba Cal-Mex Pharmacy,* Case No. 4009. That term and condition states:

> If Respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over Respondent's license, and probation shall be automatically extended until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.
>
> If Respondent violates probation in any respect, the board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against Respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

CAUSE TO REVOKE PROBATION

(Obey All Laws)

57. At all times after the effective date of Respondent Cal-Mex Pharmacy's probation, Condition 1 stated, in pertinent part:

> **Obey All Laws**
>
> Respondent and its officers shall obey all state and federal laws and regulations.
>
> . . . .

58. Respondent Cal-Mex Pharmacy's probation is subject to revocation because Respondent Cal-Mex Pharmacy failed to comply with Probation Condition 1, referenced above, in that it violated state laws and regulations as set forth in paragraphs 30-55 above, which are incorporated herein by reference.

DISCIPLINARY CONSIDERATIONS

59. To determine the degree of discipline, if any, to be imposed on Respondent PIC Oduyale, Complainant alleges On August 1, 2006, in a disciplinary action entitled *In the Matter of the Accusation Against Olugbenga Solomon Oduyale,* Case No. 2733, the Board of Pharmacy issued a Decision and Order effective August 31, 2006, adopting the Proposed Decision of the Administrative Law Judge dated May 17, 2006, providing that Respondent PIC Oduyale's Pharmacist License was revoked; however, the revocation was stayed and Respondent PIC Oduyale was placed on probation for three years. On August 30, 2006, the Board granted a stay of the Decision and granted Respondent PIC Oduyale's Petition for Reconsideration based solely on the issue of whether the probation condition of "supervision" should be eliminated. On November 21, 2006, in its Decision After Reconsideration, the Board adopted the proposed decision dated May 17, 2006, with the exception of the "supervision" paragraph, which was modified to read, "Respondent shall not supervise any ancillary personnel, including, but not limited to, registered pharmacy technicians or exemptees, of any entity licensed by the board." All other provisions of the probation conditions were to remain in full force and effect and the Decision After Reconsideration became effective on December 21, 2006. Respondent PIC Oduyale's three year probationary term was completed on December 20, 2009.

PRAYER

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

1. Revoking the probation that was granted by the Board of Pharmacy in Case No. 4009 and imposing the disciplinary order that was stayed thereby revoking Pharmacy Permit No. PHY 50374 issued to Cal-Mex Special Services, Inc., doing business as Cal-Mex;

2. Revoking or suspending Pharmacy Permit No. PHY 50374, issued to Cal-Mex Special Services, Inc., doing business as Cal-Mex Pharmacy;

3. Revoking or suspending Pharmacist License Number 42719 to Olugbenga Solomon Oduyale;

4. Ordering Cal-Mex Special Services, Inc., doing business as Cal-Mex to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

5. Ordering Olugbenga Solomon Oduyale 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;

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

DATED: 7/3/13

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

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Exhibit A

Decision and Order

Board of Pharmacy Case No. 4009

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

In the Matter of the Statement of Issues Against: **CALMEX SPECIAL SERVICES, INC., dba CAL-MEX PHARMACY** 337 Paulin Ave., Ste. 1A Calexico, CA 92231 Pharmacy Permit Applicant Respondent.	Case No. 4009

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 on August 19, 2011.

It is so ORDERED July 20, 2011.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____
STANLEY C. WEISSER
Board President

KAMALA D. HARRIS
Attorney General of California
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Attorneys for Complainant

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

In the Matter of the Statement of Issues Against: **CALMEX SPECIAL SERVICES, INC., dba CAL-MEX PHARMACY,** **337 Paulin Ave., Suite 1A** **Calexico, CA 92231** Respondent.	Case No. 4009 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

In the interest of a prompt and speedy settlement of this matter, consistent with the public interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will be submitted to the Board for approval and adoption as the final disposition of the Statement of Issues.

PARTIES

1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy. She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Karen L. Gordon, Deputy Attorney General.

2. Calmex Special Services, Inc. dba Cal-Mex Pharmacy (Respondent) is represented in this proceeding by attorney Ronald S. Marks, whose address is: 21900 Burbank Blvd., Suite 300 Woodland Hills, CA 91367

3. On or about June 25, 2010, the Board of Pharmacy (Board), received an application for a pharmacy permit from Calmex Special Services, Inc., dba Cal-Mex Pharmacy (Respondent). On or about June 15, 2010, Olugbenga S. Oduyale, President of Cal-Mex Special Services, Inc. (Cal-Mex); Anna Murillo, Secretary of Cal-Mex; and Oluwatoyin Oduyale, Cal-Mex Board Member; each certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. Olugbenga S. Oduyale indicated on the application that he will be the Pharmacist-in-Charge of Cal-Mex Pharmacy. The Board denied the application on November 22, 2010.

JURISDICTION

4. Statement of Issues No. 4009 was filed before the Board of Pharmacy (Board), and is currently pending against Respondent. The Statement of Issues and all other statutorily required documents were properly served on Respondent on May 13, 2011. A copy of Statement of Issues No. 4009 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Statement of Issues No. 4009. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of its legal rights in this matter, including the right to a hearing on the charges and allegations in the Statement of Issues; the right to confront and cross-examine the witnesses against it; the right to present evidence and to testify on its 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.

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

CULPABILITY

8. Respondent admits that the license of Olugbenga Solomon Oduyale, RPH 42719, was placed on probation for a term of three (3) years effective December 21, 2006 in case number 2733.

9. Respondent agrees that its pharmacy permit application is subject to denial and it agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent 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 or its counsel. By signing the stipulation, Respondent 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.

11. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement, along with the letter dated May 29, 2011 from Karen Gordon to Ron Marks, which indicates the dates the decision of the board and the permit will be issued. This Stipulated Settlement and Disciplinary Order supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and

Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that upon satisfaction of all statutory and regulatory requirements for issuance of a license, a license shall be issued to Respondent Calmex Special Services, Inc. dba Cal-Mex Pharmacy, and immediately revoked; the order of revocation is stayed and Respondent is placed on probation for thirty-five (35) months upon the following terms and conditions.

1. **Obey All Laws**

Respondent and its officers shall obey all state and federal laws and regulations.

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

- ☐ an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- ☐ a plea of guilty or nolo contendre in any state or federal criminal proceeding to any criminal complaint, information or indictment
- ☐ a conviction of any crime
- ☐ discipline, citation, or other administrative action filed by any state or federal agency which involves Respondent's pharmacy permit or which is related to the practice of pharmacy or the manufacturing, obtaining, handling or distributing, billing, or charging for any drug, device or controlled substance.

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

///

2. **Report to the Board**

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

3. **Interview with the Board**

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

4. **Cooperate with Board Staff**

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

5. **Probation Monitoring Costs**

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

6. **Status of License**

Respondent shall, at all times while on probation, maintain current licensure with the board. If Respondent submits an application to the board, and the application is approved, for a change of location, change of permit or change of ownership, the board shall retain continuing

jurisdiction over the license, and the Respondent shall remain on probation as determined by the board. Failure to maintain current licensure shall be considered a violation of probation.

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

7. **License Surrender While on Probation/Suspension**

Following the effective date of this decision, should Respondent discontinue business, Respondent may tender the premises license to the board for surrender. The board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, Respondent will no longer be subject to the terms and conditions of probation.

Upon acceptance of the surrender, Respondent shall relinquish the premises wall and renewal license to the board within ten (10) days of notification by the board that the surrender is accepted. Respondent shall further submit a completed Discontinuance of Business form according to board guidelines and shall notify the board of the records inventory transfer.

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

Respondent may not apply for any new licensure from the board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board.

Respondent shall reimburse the board for its costs of investigation and prosecution prior to the acceptance of the surrender.

8. **Notice to Employees**

Respondent shall, upon or before the effective date of this decision, ensure that all employees involved in permit operations are made aware of all the terms and conditions of probation, either by posting a notice of the terms and conditions, circulating such notice, or both. If the notice required by this provision is posted, it shall be posted in a prominent place and shall remain posted throughout the probation period. Respondent shall ensure that any employees hired or used after the effective date of this decision are made aware of the terms and conditions of probation by posting a notice, circulating a notice, or both. Additionally, Respondent shall submit written notification to the board, within fifteen (15) days of the effective date of this decision, that this term has been satisfied. Failure to submit such notification to the board shall be considered a violation of probation.

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

9. **Owners and Officers: Knowledge of the Law**

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

10. **Posted Notice of Probation**

Respondent shall prominently post a probation notice provided by the board in a place conspicuous and readable to the public. The probation notice shall remain posted during the entire period of probation.

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Respondent shall not, directly or indirectly, engage in any conduct or make any statement which is intended to mislead or is likely to have the effect of misleading any patient, customer, member of the public, or other person(s) as to the nature of and reason for the probation of the licensed entity.

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

11. **Violation of Probation**

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

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

12. **Completion of Probation**

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

13. **Separate File of Records**

Respondent shall maintain and make available for inspection a separate file of all records pertaining to the acquisition or disposition of all controlled substances. Failure to maintain such file or make it available for inspection shall be considered a violation of probation.

14. **Pharmacist-in-Charge**

Respondent will be acceptable to the Board as Pharmacist-in-Charge of Cal-Mex Pharmacy.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Ronald S. Marks. I understand the stipulation and the effect it will have on the pharmacy permit issued to Respondent Calmex Special Services, Inc. dba Cal-Mex Pharmacy. 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: 5-29-11

OLUGBENGA S. ODUYALE, President
CALMEX SPECIAL SERVICES, INC. dba
CAL-MEX PHARMACY
Respondent

APPROVAL

I have read and fully discussed with Olugbenga S. Oduyale, President of Respondent Calmex Special Services, Inc. dba Cal-Mex Pharmacy, the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 5/29/11

RONALD S. MARKS, Esq.
Attorney for Respondent

ENDORSEMENT

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

Dated: May 31, 2011

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General

Karen Gordon

KAREN L. GORDON
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Statement of Issues No. 4009

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LINDA K. SCHNEIDER
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KAREN L. GORDON
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Attorneys for Complainant

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

In the Matter of the Statement of Issues Against: **CALMEX SPECIAL SERVICES, INC., dba CAL-MEX PHARMACY,** **337 Paulin Ave., Suite 1A** **Calexico, CA 92231** Respondent.	Case No. 4009 **STATEMENT OF ISSUES**

Complainant alleges:

PARTIES

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

2. On or about June 25, 2010, the Board of Pharmacy, Department of Consumer Affairs received an application for a pharmacy permit from Calmex Special Services, Inc., dba Cal-Mex Pharmacy (Respondent). On or about June 15, 2010, Olugbenga S. Oduyale, President of Cal-Mex Special Services, Inc. (Cal-Mex); Anna Murillo, Secretary of Cal-Mex; and Oluwatoyin Oduyale, Cal-Mex Board Member; each certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. Olugbenga S. Oduyale indicated on the application that he will be the Pharmacist-in-Charge of Cal-Mex Pharmacy. The Board denied the application on November 22, 2010.

JURISDICTION

3. This Statement of Issues is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

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

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

. . .

> (c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy, including, but not limited to, the following:
>
> (1) Medical or psychiatric evaluation.
>
> (2) Continuing medical or psychiatric treatment.
>
> (3) Restriction of type or circumstances of practice.
>
> (4) Continuing participation in a board-approved rehabilitation program.
>
> (5) Abstention from the use of alcohol or drugs.
>
> (6) Random fluid testing for alcohol or drugs.
>
> (7) Compliance with laws and regulations governing the practice of pharmacy.

STATUTORY PROVISIONS

6. Section 475 of the Code states, in pertinent part:

> (a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:
>
> (1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.
>
> (2) Conviction of a crime.
>
> (3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

7. Section 480 of the Code states, in pertinent part:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

. . . .

(3)(A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

8. Section 4022 states:

Dangerous drug" or "dangerous device" means any drug or device unsafe for self use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

9. Section 4059.5 states, in pertinent part:

(a) Except as otherwise provided in this chapter, dangerous drugs or dangerous devices may only be ordered by an entity licensed by the board and shall be delivered to the licensed premises and signed for and received by a pharmacist. Where a licensee is permitted to operate through a designated representative, the designated representative shall sign for and receive the delivery.

. . . .

10. Section 4076 states, in pertinent part:

(a) A pharmacist shall not dispense any prescription except in a container that meets the requirements of state and federal law and is correctly labeled with all of the following:

(1) Except where the prescriber or the certified nurse-midwife who functions pursuant to a standardized procedure or protocol described in Section 2746.51, the nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1 or protocol, the physician assistant who functions pursuant to Section 3502.1, the naturopathic doctor who functions pursuant to a standardized procedure or protocol described in Section 3640.5, or the pharmacist who functions pursuant to a policy, procedure, or protocol pursuant to either Section 4052.1 or 4052.2 orders otherwise, either the manufacturer's trade name of the drug or the generic name and the name of the manufacturer. Commonly used abbreviations may be used. Preparations containing two or more active ingredients may be identified by the manufacturer's trade name or the commonly used name or the

principal active ingredients.

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

(3) The name of the patient or patients.

(4) The name of the prescriber or, if applicable, the name of the certified nurse-midwife who functions pursuant to a standardized procedure or protocol described in Section 2746.51, the nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1 or protocol, the physician assistant who functions pursuant to Section 3502.1, the naturopathic doctor who functions pursuant to a standardized procedure or protocol described in Section 3640.5, or the pharmacist who functions pursuant to a policy, procedure, or protocol pursuant to either Section 4052.1 or 4052.2.

(5) The date of issue.

(6) The name and address of the pharmacy, and prescription number or other means of identifying the prescription.

(7) The strength of the drug or drugs dispensed.

(8) The quantity of the drug or drugs dispensed.

(9) The expiration date of the effectiveness of the drug dispensed.

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

(11) (A) Commencing January 1, 2006, the physical description of the dispensed medication, including its color, shape, and any identification code that appears on the tablets or capsules, except as follows:

(i) Prescriptions dispensed by a veterinarian.

(ii) An exemption from the requirements of this paragraph shall be granted to a new drug for the first 120 days that the drug is on the market and for the 90 days during which the national reference file has no description on file.

(iii) Dispensed medications for which no physical description exists in any commercially available database.

(B) This paragraph applies to outpatient pharmacies only.

(C) The information required by this paragraph may be printed on an auxiliary label that is affixed to the prescription container.

(D) This paragraph shall not become operative if the board, prior to January 1, 2006, adopts regulations that mandate the same labeling requirements set forth in this paragraph.

. . . .

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11. Section 4081 states, in pertinent part:

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

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

12. Section 4125 states:

(a) Every pharmacy shall establish a quality assurance program that shall, at a minimum, document medication errors attributable, in whole or in part, to the pharmacy or its personnel. The purpose of the quality assurance program shall be to assess errors that occur in the pharmacy in dispensing or furnishing prescription medications so that the pharmacy may take appropriate action to prevent a recurrence.

(b) Records generated for and maintained as a component of a pharmacy's ongoing quality assurance program shall be considered peer review documents and not subject to discovery in any arbitration, civil, or other proceeding, except as provided hereafter. That privilege shall not prevent review of a pharmacy's quality assurance program and records maintained as part of that system by the board as necessary to protect the public health and safety or if fraud is alleged by a government agency with jurisdiction over the pharmacy. Nothing in this section shall be construed to prohibit a patient from accessing his or her own prescription records. Nothing in this section shall affect the discoverability of any records not solely generated for and maintained as a component of a pharmacy's ongoing quality assurance program.

(c) This section shall become operative on January 1, 2002.

13. Section 4169 provides in pertinent part:

(a) A person or entity may not do any of the following:

(1) Purchase, trade, sell, or transfer dangerous drugs or dangerous devices at wholesale with a person or entity that is not licensed with the board as a wholesaler or pharmacy.

. . . .

(3) Purchase, trade, sell, or transfer dangerous drugs that the person knew or reasonably should have known were misbranded, as defined in Section 111335 of the Health and Safety Code.

. . . .

(5) Fail to maintain records of the acquisition or disposition of dangerous drugs or dangerous devices for at least three years.

14. 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 procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

. . . .

(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 by any other state or federal regulatory agency.

15. Section 4332 of the Code states:

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

REGULATIONS

16. Section 1711 of the California Code of Regulations, Title 16, (CCR) states, in pertinent part:

(a) Each pharmacy shall establish or participate in an established quality assurance program which documents and assesses medication errors to determine cause and an appropriate response as part of a mission to improve the quality of pharmacy service and prevent errors.

. . . .

17. Section 1718 of the California Code of Regulations, Title 16, (CCR) states:

The controlled substances inventories required by Title 21, CFR, Section 1304 shall be available for inspection upon request for at least 3 years after the date of the inventory.

18. Section 1769 of the California Code of Regulations, Title 16, (CCR) states, in pertinent part:

(a) When considering the denial of a facility or personal license under Section 480 of the Business and Professions Code, the board, in evaluating the rehabilitation of the applicant and his present eligibility for licensing or registration, will consider the following criteria:

(1) The nature and severity of the act(s) or offense(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under Section 480 of the Business and Professions Code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) Whether the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

19. Section 1304.04 of the Code of Federal Regulations, Title 21, (CFR) sets forth the DEA requirements for the maintenance and inventories of controlled substances and states, in pertinent part:

(a) Except as provided in paragraphs (a)(1) and (a)(2) of this section, every inventory and other records required to be kept under this part must be kept by the registrant and be available, for at least 2 years from the date of such inventory or records, for inspection and copying by authorized employees of the Administration.

20. Section 1304.11 of the Code of Federal Regulations, Title 21, (CFR) sets forth the DEA inventory requirements for controlled substances and states, in pertinent part:

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

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COST RECOVERY

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

DRUGS

22. Floxin is a dangerous drug pursuant to Business and Professions Code section 4022.

23. Levaquin is a dangerous drug pursuant to Business and Professions Code section 4022.

24. Naproxen is a dangerous drug pursuant to Business and Professions Code section 4022.

25. Viagra is a dangerous drug pursuant to Business and Professions Code section 4022.

26. Vicodin, a brand name for hydrocodone, is a Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4), and is a dangerous drug pursuant to Business and Professions Code section 4022.

27. Xanax, a brand name for alprazolam, is a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(1), and is a dangerous drug pursuant to Business and Professions Code section 4022.

FACTS

28. The President of Respondent Cal-Mex, Olugbenga Solomon Oduyale, is a licensed pharmacist. On or about August 8, 1989, the Board of Pharmacy issued original pharmacist license number RPH 42719 to Olugbenga Solomon Oduyale. The license will expire on October 31, 2012, unless renewed.

29. From approximately March of 1997 until approximately January of 2003, Olugbenga Solomon Oduyale worked as the Pharmacist-in-Charge at Rite-Aid Pharmacy in Calexico, California (Calexico Rite-Aid.)

30. On or about December 31, 2002, just after midnight, Olugbenga Solomon Oduyale was observed by a California Highway Patrol (CHP) Officer driving erratically, drifting across

lanes of traffic. The Officer pulled Olugbenga Solomon Oduyale over and observed a wooden billyclub and two brown prescription bottles without prescription labels on them in his car. Olugbenga Solomon Oduyale was in possession of the controlled substances Vicodin and Xanax illegally without a valid prescription and the controlled substances were in containers without proper labeling. Olugbenga Solomon Oduyale was arrested for possession of controlled substances and a dangerous weapon.

31. Once Olugbenga Solomon Oduyale was arrested, the officer searched Olugbenga Solomon Oduyale and found more prescription medicines which were identified as Viagra, Floxin, Naproxen, and Levaquin. Olugbenga Solomon Oduyale also had $968.00 in cash in his pocket and $3,734.00 in cash in the trunk of his car.

32. From approximately January of 2003 until approximately March of 2005, Olugbenga Solomon Oduyale worked as the Pharmacist-in-Charge at Palo Verde Hospital Pharmacy (PVH Pharmacy) in Blythe, California.

33. On or about March 11, 2004, the Board conducted an inspection of PVH Pharmacy. The inspection revealed that Olugbenga Solomon Oduyale failed to keep accurate and complete records of the acquisition and disposition of controlled substances at PVH Pharmacy. Olugbenga Solomon Oduyale did not have a written quality assurance program at PVH Pharmacy. Olugbenga Solomon Oduyale did not have a Drug Enforcement Agency (DEA) Inventory at the PVH Pharmacy. Most drug deliveries at PVH Pharmacy were received and signed for by non-pharmacists. As Pharmacist-in-Charge, Olugbenga Solomon Oduyale should not have permitted non-pharmacists to accept drug deliveries.

34. On or about April 29, 2005, Accusation Case No. 2733 was filed before the Board against Olugbenga Solomon Oduyale. A copy of Accusation Case No. 2733 is attached hereto as Exhibit 1 and is incorporated by reference.

35. Following a hearing on February 6, 7, and 8, 2006, in Accusation Case No. 2733, a decision was rendered against Olugbenga Solomon Oduyale revoking his pharmacist's license, with the revocation stayed and probation imposed for three years on terms and conditions. The decision was to become effective on August 31, 2006, but Olugbenga Solomon Oduyale filed a

Petition for Reconsideration. The Board granted reconsideration solely on a condition of probation concerning supervision. The Board rendered a decision after reconsideration allowing Olugbenga Solomon Oduyale to supervise ancillary personnel, including registered pharmacy technicians. The decision became effective on December 21, 2006. The three year probationary term was completed on December 20, 2009. The decision was rendered imposing discipline for the following violations based upon the facts set forth in paragraphs 29 through 33 above:

a. Dispensing prescription drugs in containers not labeled as legally required;

b. Failure to provide records of filled prescriptions at PVH Pharmacy and all records required for inspection by the Board's inspector;

c. Failure to have all records of sale, acquisition, or disposition of dangerous drugs open to inspection by the Board inspector at all times during business hours;

d. Failure to have a quality assurance program in place at PVH Pharmacy when inspected on March 11, 2004;

e. Failure to have an accurate and complete written DEA inventory at PVH when inspected on March 11, 2004; and

f. As Pharmacist-in-Charge, regularly allowing non-pharmacists to receive and sign for drug delivers made to PVH Pharmacy.

FIRST CAUSE FOR DENIAL OF APPLICATION

(Unprofessional Conduct – Dispensing Dangerous Drugs Without Labeling)

36. Respondent's application is subject to denial under Code sections 4300 (c) and 4301 (o) for violation of section 4076 (a) in that Olugbenga Solomon Oduyale dispensed prescription drugs (dangerous drugs) in containers not labeled as legally required, as set forth above in paragraphs 28 to 35.

SECOND CAUSE FOR DENIAL OF APPLICATION

(Unprofessional Conduct – Failure to Provide Records)

37. Respondent's application is subject to denial under Code sections 4300 (c) and 4301 (o) for violation of sections 4081 and 4332 in that Olugbenga Solomon Oduyale failed to provide to the Board's inspector records of all filled prescriptions at the PVH Pharmacy and all required

records during the inspection on or about March 11, 2004 and for a reasonable time thereafter when requested by the Board inspector, as set forth above in paragraphs 28 to 35.

THIRD CAUSE FOR DENIAL OF APPLICATION

(Unprofessional Conduct – Failure to Maintain Accurate Records and Complete Accountability of Inventory)

38. Respondent's application is subject to denial under Code sections 4300 (c) and 4301 (o) for violation of section 4081 as well as CCR section 1718 in that Olugbenga Solomon Oduyale failed to have all records of sale, acquisition, or disposition of dangerous drugs open to inspection by the Board inspector at all times during business hours at PVH Pharmacy, including complete accountability for all inventory, as set forth above in paragraphs 28 to 35.

FOURTH CAUSE FOR DENIAL OF APPLICATION

(Unprofessional Conduct – Failure to Implement Quality Assurance Program)

39. Respondent's application is subject to denial under Code sections 4300 (c) and 4301 (o) for violation of section 4125 as well as CCR section 1711 in that Olugbenga Solomon Oduyale failed to have a quality assurance program in place at PVH Pharmacy when inspected on or about March 11, 2004, as set forth above in paragraphs 28 to 35.

FIFTH CAUSE FOR DENIAL OF APPLICATION

(Unprofessional Conduct – Failure to Maintain DEA Inventory)

40. Respondent's application is subject to denial under Code sections 4300 (c) and 4301 (o) for violation of CCR section 1718 and CFR sections 1304.04 and 1304.11 in that Olugbenga Solomon Oduyale failed to have an accurate and complete written or printed DEA Inventory at PVH Pharmacy when inspected on or about March 11, 2004, as set forth above in paragraphs 28 to 35.

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SIXTH CAUSE FOR DENIAL OF APPLICATION

(Unprofessional Conduct – Allowing Non-Pharmacists to Receive Drug Purchases)

41. Respondent's application is subject to denial under Code sections 4300 (c) and 4301 (o) for violation of section 4059.5(a) in that as Pharmacist-in-Charge at PVH Pharmacy, Olugbenga Solomon Oduyale regularly allowed non-pharmacists to receive and sign for drug deliveries made to PVH Pharmacy, as set forth above in paragraphs 28 to 35.

SEVENTH CAUSE FOR DENIAL OF APPLICATION

(Acts if Done by Licentiate are Grounds for Discipline)

42. Respondent's application is subject to denial under Code sections 480(a)(3)(A) in that Olugbenga Solomon Oduyale has done acts that if done by a licentiate would be grounds for suspension or revocation of his license, when Olugbenga Solomon Oduyale dispensed prescription drugs (dangerous drugs) in containers not labeled as legally required in violation of section 4076(a); failed to provide to the Board's inspector records of all filled prescriptions at the PVH Pharmacy and all required records during the inspection on or about March 11, 2004 and for a reasonable time thereafter when requested by the Board inspector in violation of sections 4081 and 4332; failed to have all records of sale, acquisition, or disposition of dangerous drugs open to inspection by the Board inspector at all times during business hours at PVH Pharmacy, including complete accountability for all inventory, in violation of section 4081 as well as CCR section 1718; failed to have a quality assurance program in place at PVH Pharmacy when inspected on or about March 11, 2004 in violation of section 4125 as well as CCR section 1711; failed to have an accurate and complete written or printed DEA Inventory at PVH Pharmacy when inspected on or about March 11, 2004 in violation of CCR section 1718 and CRF sections 1304.04 and 1304.11; and regularly allowed non-pharmacists to receive and sign for drug deliveries made to PVH Pharmacy in violation of Code section 4059.5(a), as set forth above in paragraphs 28 to 35.

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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. Denying the application of Calmex Special Services, Inc. dba Cal-Mex Pharmacy for a pharmacy permit.

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

DATED: 5/10/11

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

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EXHIBIT 1

ACCUSATION CASE NO. 2733

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Attorneys for Complainant

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

In the Matter of the Accusation Against: OLUGBENGA SOLOMON ODUYALE, RPH 2209 E 27th St Yuma, AZ 85365 Original Pharmacist License No. RPH 42719 Respondent.	Case No. 2733 ACCUSATION

Complainant alleges:

PARTIES

1. Patricia F. Harris (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 August 8, 1989, the Board of Pharmacy issued Original Pharmacist License Number RPH 42719 to Olugbenga Solomon Oduyale, RPH (Respondent). The Original Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2006, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following sections of the California Business &

Professions Code:

A. Section 4301 of the Code states:

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

". . .

"(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

". . .

"(j) The violation of any of the statutes of this 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.

"(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the Board.

". . ."

B. Section 4059 of the Code states, in pertinent part, that a person may not furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian.

C. Section 4059.5 states in pertinent part:

"(a) Except as otherwise provided in this chapter, dangerous drugs or dangerous devices may only be ordered by an entity licensed by the board and must be delivered to the licensed premises and signed for and received by the pharmacist-in-charge or, in his or her absence,

another pharmacist designed by the pharmacist-in-charge. Where a licensee is permitted to operate through an exemptee, the exemptee may sign for and receive the delivery.

". . ."

D. Section 4060 of the Code states:

"No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, or veterinarian, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, physician, podiatrist, dentist, veterinarian, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

"Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, or a physician assistant to order his or her own stock of dangerous drugs and devices."

E. Section 4076 of the Code states in pertinent part:

"(a) A pharmacist shall not dispense any prescription except in a container that meets the requirements of state and federal law and is correctly labeled with all of the following. . .

". . ."

F. Section 4332 states:

"Any person who fails, neglects, or refuses to maintain the records required by Section 4081 or who, when called upon by an authorized officer or member of the board, fails, neglects, or refused to produce the records within a reasonable time, or who willfully produces or furnishes records that are false, is guilty of a misdemeanor."

G. Section 4125 states in pertinent part:

"(a) Every pharmacy shall establish a quality assurance program that shall, at a

minimum, document medication errors attributable, in whole or in part, to the pharmacy or its personnel. The purpose of the quality assurance program shall be to assess errors that occur in the pharmacy in dispensing or furnishing prescription medications so that the pharmacy may take appropriate action to prevent a recurrence.

". . ."

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

4. This Accusation is also brought under the authority of the following sections of the California Health & Safety Code (H&S Code):

A. H&S Code section 11171 states that "[n]o person shall prescribe, administer, or furnish a controlled substance except under the conditions and in the manner provided in this division."

B. H&S Code section 11173 states in pertinent part:

"(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge. . .

". . ."

C. H&S Code section 11350(a) states that it is illegal to possess narcotic Schedule I controlled substances or any narcotic drugs in Schedules II, III, IV, or V without a legitimate prescription.

D. H&S Code section 11352(a) states in pertinent part that it is illegal to transport, sell, furnish, administer, give away or attempt to do any of those things with respect to any narcotic controlled substances unless upon a legitimate written prescription.

E. H&S Code section 11377(a) states in pertinent part that it is illegal to possess any non-narcotic controlled substance without a legitimate prescription.

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F. H&S Code section 11379(a) states in pertinent part that it is illegal to transport, sell, furnish, administer, give away or attempt to do any of those things with respect to any non-narcotic controlled substances unless upon a legitimate prescription.

5. This Accusation is also brought under the authority of the following sections of Title 16, California Code of Regulations (CCR):

A. Section 1711 establishes the requirements for a pharmacy's quality assurance program.

B. Section 1718 states:

"'Current Inventory' as used in Sections 4081 and 4332 of the Business and Professions Code shall be considered to include complete accountability for all dangerous drugs handled by every licensee enumerated in Section s 4081 and 4332. The controlled substances inventories required by Title 21, CFR, Section 1304 shall be available for inspection upon request for at least 3 years after the date of the inventory."

6. This Accusation also refers to Title 21, Code of Federal Regulation, section 1304 et seq. which provides the DEA requirements concerning controlled substance record keeping/inventories.

DRUGS

7. The following are all dangerous drugs, pursuant to Business & Professions Code section 4022 and are also controlled substances, if so identified below:

A. "Oxycontin," a brand name for oxycodone, is a Schedule II controlled substance under H&S Code section 11055(b)(1)(N);

B. Hydrocodone, a narcotic drug, with acetaminophen 5/500 mg, a brand name for which is "Vicodin," is a Schedule III controlled substance under H&S Code section 11056(e)(4);

C. Depo-testosterone is a male hormone and is a Schedule III controlled substance under H&S Code section 11056(f)(30);

D. "Ketalar," a brand name for ketamine, is a Schedule III controlled substance under H&S Code section 11056(g);

E. "Vicodin ES," a brand name for hydrocodone 7.5 mg with APAP, is a Schedule III controlled substance under H&S Code section 11056(e)(4);

F. "Tylenol w/Codeine," a brand name for APAP with codeine, is a Schedule III controlled substance under H&S Code section 11056(e)(2);

G. "Xanax," a brand name for alprazolam, is a Schedule IV controlled substance under H&S Code section 11057(d)(1);

H. "Ativan," a brand name for lorazepam, is a Schedule IV controlled substance under H&S Code section 11057(d)(16);

I. "Luminal," a brand name for phenobarbital, is a Schedule IV controlled substance under H&S Code section 11057(d)(26);

J. "Phenergan w/Codeine," a brand name for promethazine with codeine, is a Schedule V controlled substance under H&S Code section 11058(c)(1);

K. "Soma" is a dangerous drug under Business & Professions Code section 4022;

L. "Lupron" is a dangerous drug under Business & Professions Code section 4022;

M. "Epogen" is a dangerous drug under Business & Professions Code section 4022;

N. "Viagra" is a dangerous drug under Business & Professions Code section 4022;

O. "Naprosyn" is a dangerous drug under Business & Professions Code section 4022;

P. "Levaquin" is a dangerous drug under Business & Professions Code section 4022;

Q. "Floxin" is a dangerous drug under Business & Professions Code section 4022;

CHARGES AND ALLEGATIONS RE 2002 INCIDENT

8. On or about December 31, 2002, Respondent was stopped by the California Highway Patrol while driving on Interstate 8. He was found to have in his possession and control two amber, unlabeled drug prescription bottles, one of which he indicated contained "Vicodin" and the other "Xanax," both for a "Mrs. Robinson." When the highway patrolman noted a variety of different pills in the container Respondent identified as having Xanax in it, Respondent then also said that it contained, additionally, Viagra, an antibiotic, and Claritin. In fact, the bottles contained Vicodin in one bottle and Xanax mixed with Viagra, Floxin, Naproxin and 35 unidentified pills in the other.

9. A further search uncovered the following:

* an amber unlabeled prescription container with 16 ½ Viagra tablets;
* a sealed bottle of Viagra;
* 2 white bottles containing 94 and 100 Naproxen tablets;
* an amber prescription container labeled only "Levaquin" with 5 pills;
* a silver-foil wrapped card containing 8 unidentified pills;
* a gold-foil wrapped card containing 4 unidentified white pills;
* miscellaneous pills in Respondent's pocket: 4 Viagra, 2 Naproxen, 1 Floxin, and one unidentified pill;
* $4,702.00 in cash. $968.00 in Respondent's pocket.

10. Respondent could not produce any prescriptions for any drugs for "Mrs Robinson."

11. Respondent was arrested and "Mirandized," after which he told the highway patrolman that the Vicodin was for a "Don Brenizer" and the Xanax for "Mrs. Robinson."

12. Respondent's then-employer, Rite-Aid Pharmacy #5675 in Calexico, California, did not know Respondent had taken any of the above drugs.

13. Respondent admitted that he was taking the Levaquin himself and did not have a prescription for it.

14. On or about December 30, 2002, Respondent fraudulently created a prescription for Donald Brenizer for 30 tablets of hydrocodone with APAP 5/500 mg. using the name of a doctor in the area. That doctor knew nothing of the prescription and had never treated Donald Brenizer.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Illegal Possession of Vicodin)

15. Respondent is subject to disciplinary action under section 4301(o) in conjunction with section 4060 and, separately, under section 4301(j) in conjunction with H&S Code section 11350(a), in that he illegally possessed hydrocodone with APAP, as more particularly alleged in paragraphs 8-14 above and incorporated herein by reference.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Illegal Possession of Xanax)

16. Respondent is subject to disciplinary action under section 4301(o) in conjunction with section 4060 and, separately, under section 4301(j) in conjunction with H&S Code section 11377(a) in that he illegally possessed Xanax, as more particularly alleged in paragraphs 8-14 above and incorporated herein by reference.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Illegal Prescribing or Furnishing of Controlled Substances)

17. Respondent is subject to disciplinary action under section 4301(j) in conjunction with H&S Code section 11171 in that he illegally prescribed and/or furnished hydrocodone with APAP and Xanax in violation of the California Health & Safety Code, as more particularly alleged in paragraphs 8-14 above and incorporated herein by reference.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Act of Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)

18. Respondent is subject to disciplinary action under section 4301(f) for acts of moral turpitude, dishonesty, fraud, deceit, or corruption, as more particularly alleged in paragraphs 8-14 above and incorporated herein by reference.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Obtaining Controlled Substances by Fraud, Deceit, Misrepresentation or Subterfuge)

19. Respondent is subject to disciplinary action under section 4301(j) in conjunction with H&S Code section 11173(a) in that he obtained hydrocodone with APAP and Xanax by fraud, deceit, misrepresentation or subterfuge, as more particularly alleged in paragraphs 8-14 above and incorporated herein by reference.

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SIXTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Illegal Transporting of Generic Vicodin)

20. Respondent is subject to disciplinary action under section 4301(j) in conjunction with H&S Code section 11352(a) in that he transported generic Vicodin without a legitimate prescription, as more particularly alleged in paragraphs 8-14 above and incorporated herein by reference.

SEVENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Illegal Transporting of Xanax)

21. Respondent is subject to disciplinary action under section 4301(j) in conjunction with H&S Code section 11379(a) in that he transported Xanax without a legitimate prescription, as more particularly alleged in paragraphs 8-14 above and incorporated herein by reference.

EIGHTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Furnishing Dangerous Drugs to Oneself W/O Prescription)

22. Respondent is subject to disciplinary action under section 4301(o) in conjunction with section 4059 in that he furnished himself Levaquin, Viagra, Naproxen, and Floxin without a prescription, as more particularly alleged in paragraphs 8-14 above and incorporated herein by reference.

NINTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Dispensing Dangerous Drugs Without Labeling)

23. Respondent is subject to disciplinary action under section 4301(o) in conjunction with section 4076 in that he dispensed prescription drugs in containers not labeled at all or not labeled as legally required, as more particularly alleged in paragraphs 8-14 above and incorporated herein by reference.

CHARGES AND ALLEGATIONS RE 2004 PHARMACY INSPECTION/AUDIT

24. At all times relevant to the charges and allegations below and since January 13, 2003, Respondent has been the pharmacist-in-charge (PIC) of the hospital pharmacy at Palo Verde Hospital in Blythe, California.

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25. In March 11, 2004, a Board inspector performed an inspection of Palo Verde Hospital pharmacy. Numerous violations were uncovered.

TENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Failure to Provide Records)

26. Respondent is subject to disciplinary action under section 4301(o) in conjunction with 4332 for failure to provide, or timely provide records to the Board's inspector, as more particular alleged below:

A. During the inspection and for a reasonable time thereafter, Respondent PIC failed to provide certain invoices for APAP/codeine, carisoprodol, lorazepam, promethazine/codeine, and Vicodin ES when requested by the inspector.

B. During the inspection and for a reasonable time thereafter, Respondent PIC failed to provide accurate and complete dispensing records of dangerous drugs when requested by the inspector.

ELEVENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Failure to Maintain Accurate Records and Complete Accountability of Inventory)

27. Respondent is subject to disciplinary action under section 4301(o) in conjunction with 4081(a) and (b) as well as CCR §1718 for failure to maintain accurate records and complete accountability of inventory, as more particular alleged below:

Respondent failed to maintain accurate records of acquisition and disposition of controlled substances at Palo Verde hospital, including complete accountability for all inventory during a specific audit period for carisoprodol, lorazepam and phenobarbital.

TWELFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Failure to Implement Quality Assurance Program)

28. Respondent is subject to disciplinary action under section 4301(o) in conjunction with 4125 and CCR §1711 in that on March 11, 2004, Respondent did not have a quality assurance program in place at Palo Verde hospital, as required by law.

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THIRTEENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Failure to Maintain DEA Inventory)

29. Respondent is subject to disciplinary action under section 4301(o) in conjunction with CCR §1718 and CFR §1304 et seq. in that on March 11, 2004, Respondent did not have a DEA Inventory at Palo Verde hospital. A perpetual inventory maintained by the hospital did not meet the requirements of a DEA inventory and was inaccurate.

FOURTEENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Allowing Non-Pharmacists to Receive Drug Purchases)

30. Respondent is subject to disciplinary action under section 4301(o) in conjunction with section 4059.5(a) in that while PIC of Palo Verde hospital pharmacy he repeatedly allowed non-pharmacists to receive drug purchases.

FIFTEENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Act of Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)

31. Respondent is subject to disciplinary action under section 4301(f) for dishonesty in that on or about March 11, 2004 Respondent knowingly falsely stated to the Board's inspector that only pharmacists received drug deliveries at Palo Verde hospital. In fact, only about 15% of the deliveries between January 13, 2003 and March 11, 2004 were received by Respondent or another pharmacist.

SIXTEENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Attempting to Subvert a Board Investigation)

32. Respondent is subject to disciplinary action under section 4301(q) for attempting to subvert a Board investigation. as more particularly alleged above in paragraph 31, which is incorporated here by reference.

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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 Pharmacist License Number RPH 42719, issued to Olugbenga Solomon Oduyale, RPH;

2. Ordering Olugbenga Solomon Oduyale, RPH 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;

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

DATED: 4/29/05

P. F. Harris

PATRICIA F. HARRIS
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant