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

11 In the Matter of the Accusation Against:

Case No. 5221

12 **DAVID ANTHONY VALENCIA,**  
13 **A.K.A. DAVID VALENCIA,**  
14 **505 Alameda Drive,**  
**Livermore, CA 94551**

OAH No. 2015010579

**FIRST AMENDED ACCUSATION**

15 **Pharmacist License No. RPH 30915;**

16 **BACON EAST PHARMACY**  
17 **2425 East Street, Suite 5**  
**Concord, CA 95420**

18 **Pharmacy Permit No. PHY 50632;**

19 **and**

20 **BOIES MEDICAL CENTER PHARMACY**  
21 **828 Delbon Avenue**  
22 **Turlock, CA 95382**

23 **Pharmacy Permit No. PHY 51468**

24 Respondents.

1 Complainant alleges:

2 PARTIES

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

6 2. On or about July 27, 1977, the Board of Pharmacy issued Pharmacist License  
7 Number RPH 30915 to Respondent David Anthony Valencia ( Valencia). The Pharmacist  
8 License was in full force and effect at all times relevant to the charges brought herein and will  
9 expire on November 30, 2015, unless renewed. Respondent Pharmacist is and has been the  
10 Pharmacist-in-Charge at Bacon East Pharmacy since March 11, 2013.

11 3. On or about June 14, 2011, the Board of Pharmacy issued Pharmacy Permit Number  
12 PHY 50632 to Respondent Bacon East Pharmacy. The Pharmacy Permit was cancelled on April  
13 16, 2015, but was in full force and effect at all times relevant to the charges brought in this First  
14 Amended Accusation.

15 4. On or about June 10, 2013, the Board of Pharmacy issued Pharmacy Permit Number  
16 PHY 51468 to Respondent Boies Medical Center Pharmacy. The Pharmacy Permit was cancelled  
17 on April 16, 2016, but was in full force and effect at all times relevant to the charges brought in  
18 this First Amended Accusation.4. Respondent Bacon East Pharmacy is owned by a Bacon East  
19 Pharmacy Inc., a California corporation, and Boies Medical Center Pharmacy is owned by Boies  
20 Pharmacy Inc., a California corporation. Each of these corporations was owned by Jamil Harb  
21 until his passing on January 4, 2015. Following Mr. Harb's passing, his widow inherited  
22 ownership in the pharmacy corporations.

23 JURISDICTION

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

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28 ////

1           6.     Section 118, subdivision (b) states:

2           “(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a  
3 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by  
4 order of a court of law, or its surrender without the written consent of the board, shall not, during  
5 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its  
6 authority to institute or continue a disciplinary proceeding against the licensee upon any ground  
7 provided by law or to enter an order suspending or revoking the license or otherwise taking  
8 disciplinary action against the licensee on any such ground.”7.     Section 4300 states, in part:

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

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

- 13           (1) Suspending judgment.  
14           (2) Placing him or her upon probation.  
15           (3) Suspending his or her right to practice for a period not exceeding one year.  
16           (4) Revoking his or her license.  
17           (5) Taking any other action in relation to disciplining him or her as the board in its  
18 discretion may deem proper.

19           ...

20           “(e) The proceedings under this article shall be conducted in accordance with Chapter 5  
21 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board  
22 shall have all the powers granted therein. The action shall be final, except that the propriety of the  
23 action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil  
24 Procedure.”

25           8.     Section 4300.1 states:

26           “The expiration, cancellation, forfeiture, or suspension of a board-issued license by  
27 operation of law or by order or decision of the board or a court of law, the placement of a license  
28 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board

1 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary  
2 proceeding against, the licensee or to render a decision suspending or revoking the license.”

3 STATUTORY AND REGULATORY PROVISIONS9. Section 4081 states, in part:

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

13 10. Section 4105 states:

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

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

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

22 “(d) Any records that are maintained electronically shall be maintained so that the  
23 pharmacist-in-charge, the pharmacist on duty if the pharmacist-in-charge is not on duty, or, in the  
24 case of a veterinary food-animal drug retailer or wholesaler, the designated representative on  
25 duty, shall, at all times during which the licensed premises are open for business, be able to  
26 produce a hard copy and electronic copy of all records of acquisition or disposition or other drug  
27 or dispensing-related records maintained electronically.

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

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

6           “(f) When requested by an authorized officer of the law or by an authorized representative  
7 of the board, the owner, corporate officer, or manager of an entity licensed by the board shall  
8 provide the board with the requested records within three business days of the time the request  
9 was made. The entity may request in writing an extension of this timeframe for a period not to  
10 exceed 14 calendar days from the date the records were requested. A request for an extension of  
11 time is subject to the approval of the board. An extension shall be deemed approved if the board  
12 fails to deny the extension request within two business days of the time the extension request was  
13 made directly to the board.”

14           11. Section 4110 states, in part:

15           “(a) No person shall conduct a pharmacy in the State of California unless he or she has  
16 obtained a license from the board. A license shall be required for each pharmacy owned or  
17 operated by a specific person. A separate license shall be required for each of the premises of any  
18 person operating a pharmacy in more than one location. The license shall be renewed annually.  
19 The board may, by regulation, determine the circumstances under which a license may be  
20 transferred.

21           “(b) The board may, at its discretion, issue a temporary permit, when the ownership of a  
22 pharmacy is transferred from one person to another, upon the conditions and for any periods of  
23 time as the board determines to be in the public interest. A temporary permit fee shall be required  
24 in an amount established by the board as specified in subdivision (a) of Section 4400. When  
25 needed to protect public safety, a temporary permit may be issued for a period not to exceed 180  
26 days, and may be issued subject to terms and conditions the board deems necessary. If the board  
27 determines a temporary permit was issued by mistake or denies the application for a permanent  
28 license or registration, the temporary license or registration shall terminate upon either personal

1 service of the notice of termination upon the permitholder or service by certified mail, return  
2 receipt requested, at the permitholder's address of record with the board, whichever comes first.  
3 Neither for purposes of retaining a temporary permit nor for purposes of any disciplinary or  
4 license denial proceeding before the board shall the temporary permitholder be deemed to have a  
5 vested property right or interest in the permit.

6 . . . .”

7 12. Section 4301 states, in part:

8 “The board shall take action against any holder of a license who is guilty of unprofessional  
9 conduct . . . . Unprofessional conduct shall include, but is not limited to, any of the following:

10 . . .

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

15 . . . .”

16 13. Section 4306.5 states:

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

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

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

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

28

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

4           14. Code of Regulations, title 16, section 1707.2 states, in part:

5           “... ”

6           “(b)(1) In addition to the obligation to consult set forth in subsection (a), a pharmacist shall  
7 provide oral consultation to his or her patient or the patient's agent in any care setting in which the  
8 patient or agent is present:

9           “(A) whenever the prescription drug has not previously been dispensed to a patient; or  
10          ....”

11          15. Code of Regulations, title 16, section 1709 states, in part:

12          “(a) Each permit to operate a pharmacy shall show the name and address of the pharmacy,  
13 the form of ownership (individual, partnership or corporation) and the pharmacist-in-charge. Each  
14 pharmacy shall, in its initial application on the annual renewal form, report the name of the  
15 pharmacist-in-charge, the names of all owners and the names of the corporate officers (if a  
16 corporation). Any changes in the pharmacist-in-charge, or the owners, or corporate officers shall  
17 be reported to the Board within 30 days.

18          “(b) Any transfer, in a single transaction or in a series of transactions, of 10 percent or more  
19 of the beneficial interest in a business entity licensed by the board to a person or entity who did  
20 not hold a beneficial interest at the time the original permit was issued, shall require written  
21 notification to the board within 30 days.

22          ....”16. Code of Regulations, title 16, section 1714 states, in part:

23          “... ”

24          “(d) Each pharmacist while on duty shall be responsible for the security of the prescription  
25 department, including provisions for effective control against theft or diversion of dangerous  
26 drugs and devices, and records for such drugs and devices. Possession of a key to the pharmacy  
27 where dangerous drugs and controlled substances are stored shall be restricted to a pharmacist.

28          ....”

1 17. Code of Regulations, title 16, section 1718 states, in part:

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

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

7 18. Code of Regulations, title 16, section 1735.5 states, in part:

8 “(a) Any pharmacy engaged in compounding shall maintain a written policy and procedure  
9 manual for compounding that establishes procurement procedures, methodologies for the  
10 formulation and compounding of drugs, facilities and equipment cleaning, maintenance,  
11 operation, and other standard operating procedures related to compounding.

12 “(b) The policy and procedure manual shall be reviewed on an annual basis by the  
13 pharmacist-in-charge and shall be updated whenever changes in processes are implemented.

14 . . . .”

15 COST RECOVERY

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

19 FIRST CAUSE FOR DISCIPLINE

20 (Failure to Consult)

21 (Bus. & Prof. Code §§ 4301 and 4306.5, subs. (a)-(c);  
22 Cal. Code Regs., title 16, § 1707.2, subd. (b)(1)(A))

23 20. Respondents Valencia and Bacon East Pharmacy have subjected their Pharmacist  
24 License and Pharmacy Permit, respectively, to disciplinary action for failing to consult as  
25 required by Code California Code of Regulations, title 16, section 1707.2, subdivision (b)(1)(A).  
26 (Cal. Bus. & Prof. Code §§ 4301 and 4306.5, subd. (a)-(c); Cal. Code Regs., title 16, § 1707.2,  
27 subd. (b)(1)(A)). The circumstances are as follows:

28 a. On or about July 16, 2013, during an inspection at Bacon East Pharmacy, a  
Board inspector interviewed a pharmacy clerk who stated he identified prescriptions requiring



1 consultation by a pharmacist by looking for a "consult" stamp on the receipt. However, this  
2 process was not being executed by the pharmacy staff, as the Board inspector identified three (3)  
3 new prescriptions which were not stamped with "consult" on the receipt.

4 b. During a previous inspection, conducted on or about October 17, 2011, the  
5 Board identified this as an issue Respondent Bacon East Pharmacy must correct.

6  
7 SECOND CAUSE FOR DISCIPLINE  
8 (Failure to Maintain Written Policy and Procedure Manual)  
9 (Bus. & Prof. Code §§ 4301 and 4306.5, subs. (a)-(d);  
10 Cal. Code Regs., title 16, § 1735.5, subs. (a) and (b))

11 21. Respondents Valencia and Bacon East Pharmacy have subjected their Pharmacist  
12 License and Pharmacy Permit, respectively, to disciplinary action for failing to maintain a written  
13 policy and procedure manual for compounding pharmacy activities as required by Code  
14 California Code of Regulations, title 16, section 1735.5, subdivisions (a) and (b). (Cal. Bus. &  
15 Prof. Code §§ 4301 and 4306.5, subs. (a)-(d); Cal. Code Regs., title 16, § 1735.5, subs. (a) and  
16 (b)). The circumstances are as follows:

17 a. On or about July 16, 2013, during an inspection at Bacon East Pharmacy, a  
18 Board inspector found, according to Respondent's written policy and procedure manual for  
19 compounding, that their manual had not been updated since June 2011.

20 b. During a previous inspection, conducted on or about October 17, 2011, the  
21 Board identified this as an issue Respondent Bacon East Pharmacy must correct.

22 THIRD CAUSE FOR DISCIPLINE  
23 (Failure to Maintain Records of Acquisition and Disposition)  
24 (Bus. & Prof. Code §§ 4081, subd. (a); 4105; 4301;  
25 and 4306.5, subs. (a)-(d); and Cal. Code Regs., title 16, § 1718)

26 22. Respondents Valencia and Bacon East Pharmacy have subjected their Pharmacist  
27 License and Pharmacy Permit, respectively, to disciplinary action for failing to maintain records  
28 accounting for the records of acquisition and disposition and the current inventory of dangerous  
29 drugs as required by Business and Professions Code sections 4081, subdivision (a), and 4105.

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31 ////

1 (Cal. Bus. & Prof. Code §§ 4081, subd. (a); 4105; 4301; and 4306.5, subds. (a)-(d); and Cal. Code  
2 Regs., title 16, § 1718). The circumstances are as follows:

3 a. On or about July 16, 2013, during an inspection at Bacon East Pharmacy, a  
4 Board inspector found that Respondents did not have accurate records of acquisition and/or  
5 disposition to account for an inventory shortage for 4,252 tablets of oxycodone 30 mg tablets.  
6 Oxycodone is a Schedule II controlled substance pursuant to Health and Safety Code section  
7 11055, subdivision (b)(1)(M), and a dangerous drug according to Business and Professions Code  
8 section 4022 in that it can be lawfully dispensed only by prescription.

9  
10 FOURTH CAUSE FOR DISCIPLINE  
11 (Failure to Maintain Security of Prescription Department)  
12 (Bus. & Prof. Code §§ 4301 and 4306.5, subds. (a)-(c);  
13 and Cal. Code Regs., title 16, § 1714, subd. (d))

14 23. Respondents Valencia and Bacon East Pharmacy have subjected their Pharmacist  
15 License and Pharmacy Permit, respectively, to disciplinary action for failing to maintain the  
16 security of the prescription department, including provisions for effective control against theft or  
17 diversion of dangerous drugs and records for such drugs as required by Code California Code of  
18 Regulations, title 16, section 1714, subdivision (d). (Cal. Bus. & Prof. Code §§ 4301 and 4306.5,  
19 subds. (a)-(c); and Cal. Code Regs., title 16, § 1714, subd. (d)). The circumstances are as follows:

20 a. On or about July 16, 2013, during an inspection at Bacon East Pharmacy, a  
21 Board inspector found that Respondents had an inventory shortage (purchases/acquisitions greater  
22 than sales/disposition) of 4,252 tablets of oxycodone 30 mg tablets. Oxycodone is a Schedule II  
23 controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(M),  
24 and a dangerous drug according to Business and Professions Code section 4022 in that it can be  
25 lawfully dispensed only by prescription.

26 FIFTH CAUSE FOR DISCIPLINE  
27 (Failure to Notify of Change of Ownership)  
28 (Cal. Code Regs., title 16, § 1709, subds. (a) and (b))

29 24. Respondents Valencia, Bacon East Pharmacy, and Boies Medical Center Pharmacy  
30 have subjected their Pharmacist License and Pharmacy Permits, respectively, to disciplinary

1 action for failing to notify the Board regarding a change in the ownership of the pharmacies.  
2 (Cal. Code Regs., title 16, § 1709, subds. (a) and (b)). The circumstances are as follows:

3 a. The Respondent pharmacies were formerly owned by Jamil Harb, until his  
4 passing on January 4, 2015. Following Mr. Harb's passing, his widow inherited ownership of the  
5 pharmacies.

6 b. Between January 4, 2015 and April 15, 2015, Bacon East Pharmacy and Boies  
7 Medical Center Pharmacy continued to operate but Respondents failed to submit change in  
8 ownership applications, based on the transfer of ownership from Jamil Harb to his widow, or  
9 request a temporary permit from the Board.

10 SIXTH CAUSE FOR DISCIPLINE  
11 (Unlicensed Activity)  
(Bus. & Prof. Code § 4110, subds. (a) and (b))

12 25. Respondents Bacon East Pharmacy and Boies Medical Center Pharmacy have  
13 subjected their Pharmacy Permits to disciplinary action for operating without a license. (Bus. &  
14 Prof. Code § 4110, subds. (a) and (b)). The circumstances are as follows:

15 a. Upon the January 4, 2015 passing of Jamil Harb, the former owner of Bacon  
16 East Pharmacy and Boies Medical Center Pharmacy, the permits the Board issued to those  
17 pharmacies expired. Between January 4, 2015 and April 15, 2015, Bacon East Pharmacy and  
18 Boies Medical Center Pharmacy continued to operate without submitting change in ownership  
19 applications or requesting a temporary permit from the Board. During this period of time  
20 (between January 4, 2015 and April 15, 2015), these pharmacies were operating without a license.

21 PRAYER

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

- 24 1. Revoking or suspending Pharmacist License Number RPH 30915, issued to  
25 Respondent David Anthony Valencia;
- 26 2. Revoking or suspending Pharmacy Permit Number PHY 50632, issued to Respondent  
27 Bacon East Pharmacy;
- 28

1           3.    Revoking or suspending Pharmacy Permit Number PHY 51468, issued to Respondent  
2 Boies Medical Center Pharmacy;

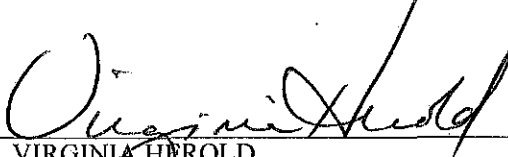
3           4.    Ordering Respondents David Anthony Valencia, Bacon East Pharmacy, and Boies  
4 Medical Center Pharmacy to pay the Board of Pharmacy the reasonable costs of the investigation  
5 and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

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DATED: \_\_\_\_\_

10/2/15



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

SF2014902527

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

11 In the Matter of the Accusation Against:

Case No. 5221

12 **DAVID ANTHONY VALENCIA,**  
13 **A.K.A. DAVID VALENCIA,**  
14 **505 Alameda Drive,**  
**Livermore, CA 94551**

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

15 **Pharmacist License No. RPH 30915,**

16 **and**

17 **BACON EAST PHARMACY**  
18 **2425 East Street, Suite 5**  
**Concord, CA 95420**

19 **Pharmacy Permit No. PHY 50632**

20 Respondents.

21  
22 Complainant alleges:

23 **PARTIES**

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

26 2. On or about June 14, 2011, the Board of Pharmacy issued Pharmacy Permit Number  
27 PHY 50632 to Respondent Bacon East Pharmacy (Respondent Pharmacy). The Pharmacy Permit  
28

1 was in full force and effect at all times relevant to the charges brought in this Accusation and will  
2 expire on June 1, 2015, unless renewed.

3 3. On or about July 27, 1977, the Board of Pharmacy issued Pharmacist License  
4 Number RPH 30915 to Respondent David Anthony Valencia (Respondent Pharmacist). The  
5 Pharmacist License was in full force and effect at all times relevant to the charges brought herein  
6 and will expire on November 30, 2015, unless renewed. Respondent Pharmacist is and has been  
7 the Pharmacist-in-Charge since March 11, 2013.

8 **JURISDICTION**

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

12 5. Section 2764 of the Code provides, in part, that the expiration of a license shall not  
13 deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or  
14 to render a decision imposing discipline on the license.

15 **REGULATORY PROVISIONS**

16 6. Section 4081 of the Code states in relevant part:

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

26 ////

27 ////

28 ////

1           7.     Section 4105 of the Code states:

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

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

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

10           “(d) Any records that are maintained electronically shall be maintained so that the  
11 pharmacist-in-charge, the pharmacist on duty if the pharmacist-in-charge is not on duty, or, in the  
12 case of a veterinary food-animal drug retailer or wholesaler, the designated representative on  
13 duty, shall, at all times during which the licensed premises are open for business, be able to  
14 produce a hard copy and electronic copy of all records of acquisition or disposition or other drug  
15 or dispensing-related records maintained electronically.

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

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

21           “(f) When requested by an authorized officer of the law or by an authorized representative  
22 of the board, the owner, corporate officer, or manager of an entity licensed by the board shall  
23 provide the board with the requested records within three business days of the time the request  
24 was made. The entity may request in writing an extension of this timeframe for a period not to  
25 exceed 14 calendar days from the date the records were requested. A request for an extension of  
26 time is subject to the approval of the board. An extension shall be deemed approved if the board  
27 fails to deny the extension request within two business days of the time the extension request was  
28 made directly to the board.”

1           8.     Section 4301 of the Code states in relevant part:

2           “The board shall take action against any holder of a license who is guilty of unprofessional  
3 conduct . . . . Unprofessional conduct shall include, but is not limited to, any of the following:

4           . . .

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

9           . . . .”

10          9.     Section 4306.5 of the Code states:

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

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

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

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

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

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STATUTORY PROVISIONS

10. Code of Regulations, title 16, section 1707.2 states, in relevant part:

“... ”

“(b)(1) In addition to the obligation to consult set forth in subsection (a), a pharmacist shall provide oral consultation to his or her patient or the patient's agent in any care setting in which the patient or agent is present:

“(A) whenever the prescription drug has not previously been dispensed to a patient; or  
...”

11. Code of Regulations, title 16, section 1714 states, in relevant part:

“... ”

“(d) Each pharmacist while on duty shall be responsible for the security of the prescription department, including provisions for effective control against theft or diversion of dangerous drugs and devices, and records for such drugs and devices. Possession of a key to the pharmacy where dangerous drugs and controlled substances are stored shall be restricted to a pharmacist.

...”

12. Code of Regulations, title 16, section 1718 states, in relevant part:

“‘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.”

13. Code of Regulations, title 16, section 1735.5 states, in relevant part:

“(a) Any pharmacy engaged in compounding shall maintain a written policy and procedure manual for compounding that establishes procurement procedures, methodologies for the formulation and compounding of drugs, facilities and equipment cleaning, maintenance, operation, and other standard operating procedures related to compounding.

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1 “(b) The policy and procedure manual shall be reviewed on an annual basis by the  
2 pharmacist-in-charge and shall be updated whenever changes in processes are implemented.  
3 ....”

4 **COST RECOVERY**

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

9 **CAUSES FOR DISCIPLINE**

10 **FIRST CAUSE FOR DISCIPLINE**

11 (Failure to Consult)

12 (Cal. Bus. & Prof. Code §§ 4301 and 4306.5, subsds. (a)-(c);  
13 Cal. Code Regs., title 16, § 1707.2, subd. (b)(1)(A))

14 15. Respondent Pharmacist and Respondent Pharmacy have subjected their Pharmacist  
15 License and Pharmacy Permit, respectively, to disciplinary action for failing to consult as  
16 required by Code California Code of Regulations, title 16, section 1707.2, subdivision (b)(1)(A).  
17 (Cal. Bus. & Prof. Code §§ 4301 and 4306.5, subd. (a)-(c); Cal. Code Regs., title 16, § 1707.2,  
18 subd. (b)(1)(A)). The circumstances are as follows:

19 a. On or about July 16, 2013, during an inspection at Bacon East Pharmacy, a  
20 Board inspector interviewed a pharmacy clerk who stated he identified prescriptions requiring  
21 consultation by a pharmacist by looking for a “consult” stamp on the receipt. However, this  
22 process was not being executed by the pharmacy staff, as the Board inspector identified three (3)  
23 new prescriptions which were not stamped with “consult” on the receipt.

24 b. During a previous inspection, conducted on or about October 17, 2011, the  
25 Board identified this as an issue Respondents must correct.

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SECOND CAUSE FOR DISCIPLINE

(Failure to Maintain Written Policy and Procedure Manual)  
(Cal. Bus. & Prof. Code §§ 4301 and 4306.5, subds. (a)-(d);  
Cal. Code Regs., title 16, § 1735.5, subds. (a) and (b))

16. Respondent Pharmacist and Respondent Pharmacy have subjected their Pharmacist License and Pharmacy Permit, respectively, to disciplinary action for failing to maintain a written policy and procedure manual for compounding pharmacy activities as required by Code California Code of Regulations, title 16, section 1735.5, subdivisions (a) and (b). (Cal. Bus. & Prof. Code §§ 4301 and 4306.5, subds. (a)-(d); Cal. Code Regs., title 16, § 1735.5, subds. (a) and (b)). The circumstances are as follows:

a. On or about July 16, 2013, during an inspection at Bacon East Pharmacy, a Board inspector found, according to Respondent's written policy and procedure manual for compounding, that their manual had not been updated since June 2011.

b. During a previous inspection, conducted on or about October 17, 2011, the Board identified this as an issue Respondents must correct.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Records of Acquisition and Disposition)  
(Cal. Bus. & Prof. Code §§ 4081, subd. (a); 4105; 4301;  
and 4306.5, subds. (a)-(d); and Cal. Code Regs., title 16, § 1718)

17. Respondent Pharmacist and Respondent Pharmacy have subjected their Pharmacist License and Pharmacy Permit, respectively, to disciplinary action for failing to maintain records accounting for the records of acquisition and disposition and the current inventory of dangerous drugs as required by Business and Professions Code sections 4081, subdivision (a), and 4105. (Cal. Bus. & Prof. Code §§ 4081, subd. (a); 4105; 4301; and 4306.5, subds. (a)-(d); and Cal. Code Regs., title 16, § 1718). The circumstances are as follows:

a. On or about July 16, 2013, during an inspection at Bacon East Pharmacy, a Board inspector found that Respondents did not have accurate records of acquisition and/or disposition to account for an inventory shortage for 4,252 tablets of oxycodone 30 mg tablets. Oxycodone is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(M), and a dangerous drug according to Business and Professions Code section 4022 in that it can be lawfully dispensed only by prescription.

FOURTH CAUSE FOR DISCIPLINE  
(Failure to Maintain Security of Prescription Department)  
(Cal. Bus. & Prof. Code §§ 4301 and 4306.5, subds. (a)-(c);  
and Cal. Code Regs., title 16, § 1714, subd. (d))

18. Respondent Pharmacist and Respondent Pharmacy have subjected their Pharmacist License and Pharmacy Permit, respectively, to disciplinary action for failing to maintain the security of the prescription department, including provisions for effective control against theft or diversion of dangerous drugs and records for such drugs as required by Code California Code of Regulations, title 16, section 1714, subdivision (d). (Cal. Bus. & Prof. Code §§ 4301 and 4306.5, subds. (a)-(c); and Cal. Code Regs., title 16, § 1714, subd. (d)). The circumstances are as follows:

a. On or about July 16, 2013, during an inspection at Bacon East Pharmacy, a Board inspector found that Respondents had an inventory shortage (purchases/acquisitions greater than sales/disposition) of 4,252 tablets of oxycodone 30 mg tablets. Oxycodone is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(M), and a dangerous drug according to Business and Professions Code section 4022 in that it can be lawfully dispensed only by prescription.

PRAYER

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

1. Revoking or suspending Pharmacist License Number RPH 30915, issued to Respondent David Anthony Valencia;
2. Revoking or suspending Pharmacy Permit Number PHY 50632, issued to Respondent Bacon East Pharmacy;

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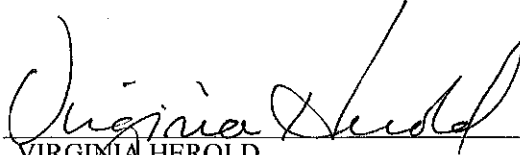
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3. Ordering Respondents David Anthony Valencia and Bacon East Pharmacy to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

DATED:

9/25/14



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

SF2014902527