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9		RE THE PHARMACY
10	DEPARTMENT OF O	CONSUMER AFFAIRS CALIFORNIA
11		
12	In the Matter of the Accusation Against:	Case No. 6185
12	RAFA CORPORATION, DBA MURPHY'S PHARMACY	
13	172 N San Jacinto Street	ACCUSATION
15	Hemet, CA 92543	
	Pharmacy Permit No. PHY 39226	
16 17	RAFAEL JUAREZ 28125 Vista Del Valle	
18	Hemet, CA 92544 Pharmacist License No. RPH 39936	
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20	Respondents.	
21	Complainant alleges:	
22 23		RTIES
		gs this Accusation solely in her official capacity
24	I. Virginia Herold (Complainant) brin as the Executive Officer of the Board of Pharma	
25 26		ard of Pharmacy issued Pharmacy Permit Number
26	2. On or about April 13, 1993, the Boa PHY 39226 to Rafa Corporation, doing busines	•
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28	Pharmacy). The Pharmacy Permit was cancelle	
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1	3.	On or about March 18, 1986, the Board of Pharmacy issued Pharmacist License
2	Number F	PH 39936 to Rafael Juarez (Respondent Rafael Juarez). The Pharmacist License was
3	in full for	e and effect at all times relevant to the charges brought herein and will expire on
4	October 3	1, 2017, unless renewed.
5		JURISDICTION
6	4.	This Accusation is brought before the Board of Pharmacy (Board), Department of
7	Consume	Affairs, under the authority of the following laws. All section references are to the
8	Business	and Professions Code unless otherwise indicated.
9	5.	Section 4011 of the Code provides that the Board shall administer and enforce both
10	the Pharm	acy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
11	Act [Heal	th & Safety Code, § 11000 et seq.].
12	6.	Section 4300(a) of the Code provides that every license issued by the Board may be
13	suspendee	l or revoked.
14	7.	Section 4300.1 of the Code states:
15	by	The expiration, cancellation, forfeiture, or suspension of a board-issued license peration of law or by order or decision of the board or a court of law, the
16	blac	sement of a license on a retired status, or the voluntary surrender of a license by a nsee shall not deprive the board of jurisdiction to commence or proceed with any
17	inve	estigation of, or action or disciplinary proceeding against, the licensee or to render cision suspending or revoking the license.
18		STATUTORY AND REGULATORY PROVISIONS
19	8.	Section 4039 of the Code states in pertinent part:
20		'Physicians,' are persons authorized by a currently valid and unrevoked
21	lice	nse to practice their respective professions in this state. "Physician" means and udes any person holding a valid and unrevoked physician's and surgeon's
22	cert	ificate or certificate to practice medicine and surgery, issued by the Medical Board California or the Osteopathic Board of California
23	9.	Section 4040(a)(2) of the Code states in pertinent part:
24		'Prescription' means an oral, written, or electronic transmission order that is both
25	oft	he following:
26		••••
27		Issued by a physician
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10. Section 4113(c) of the Code states:
The pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy.
11. Section 4126.5(a)(5) of the Code states:
A pharmacy may furnish dangerous drugs only to the following:
A patient or to another pharmacy pursuant to a prescription or as otherwise authorized by law.
12. Section 4301 of the Code states in pertinent part:
The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:
(j) The violation of any of the statutes of this state, or any other state, or of the United States regulating controlled substances and dangerous drugs
•••
(o) Violating or attempting to violate, directly or indirectly, or assisting in or
abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or any other state or federal regulatory
agency.
10 - Northern 4207(n) of the Clarks states that
13. Section 4307(a) of the Code states that:
Any person who has been denied a license or whose license has been revoked o is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a manager, administrator, owner member, officer,
director, associate, partner, or any other person with management or control of any partnership, corporation, firm, or association whose application for a license has been
denied or revoked, is under suspension or has been placed on probation, and while acting as the manger, administrator, owner, member, officer, director, associate,
 partner, or any other person with management or control had knowledge or knowingl participated in any conduct for which the license was denied, revoked, suspended, or
placed on probation, shall be prohibited from serving as a manger, administrator, owner, member, officer, director, associate, partner, or any other person with
management or control of a licensee as follows:
(1) Where a probationary license is issued or where an existing license is placed on probation, this prohibition shall remain in effect for a period not to exceed five
years.
(2) Where the license is denied or revoked, the prohibition shall continue until the license is issued or reinstated.
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1	14. Health and Safety Code section 11153(a) states:
2	A prescription for a controlled substance shall only be issued for a legitimate
3	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
4	controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. Except as
5	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
6	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
7	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.
8.	15. Health and Safety Code section 11162.1(a) states:
9	(a) The prescription forms for controlled substances shall be printed with the
10	following features:
11	(1) A latent, repetitive 'void' pattern shall be printed across the entire front of
12	the prescription blank; if a prescription is scanned or photocopied, the word "void" shall appear in a pattern across the entire front of the prescription.
13	(2) A watermark shall be printed on the backside of the prescription blank; the
14	watermark shall consist of the words "California Security Prescription."
.15	(3) A chemical void protection that prevents alteration by chemical washing.
16	(4) A feature printed in thermochromic ink.
17 18	(5) An area of opaque writing so that the writing disappears if the prescription is lightened.
	(6) A description of the security features included on each prescription form.
19 20	(7) (A) Six quantity check off boxes shall be printed on the form so that the prescriber may indicate the quantity by checking the applicable box where the
21	following quantities shall appear:
22	1-24
23	25-49
24	50-74
25	75-100
26	101-150
27	151 and over.
28	(B) In conjunction with the quantity boxes, a space shall be provided to designate the units referenced in the quantity boxes when the drug is not in tablet or
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1	capsule form.
2	(8) Prescription blanks shall contain a statement printed on the bottom of the prescription blank that the "Prescription is void if the number of drugs prescribed is not noted."
3	(9) The preprinted name, category of licensure, license number, federal
4	controlled substance registration number, and address of the prescribing practitioner.
5	(10) Check boxes shall be printed on the form so that the prescriber may indicate the number of refills ordered.
6	(11) The date of origin of the prescription.
7	(12) A check box indicating the prescriber's order not to substitute.
8 9	(13) An identifying number assigned to the approved security printer by the Department of Justice.
10	(14) (A) A check box by the name of each prescriber when a prescription form lists multiple prescribers.
11 12	(B) Each prescriber who signs the prescription form shall identify himself or herself as the prescriber by checking the box by his or her name.
13	16. Health and Safety Code section 11164(a) states in pertinent part:
14	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.
15	
16 17	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
18	17. Section 1761 of title 16, California Code of Regulations states:
19	(a) No pharmacist shall compound or dispense any prescription which contains any significant error, omission, irregularity, uncertainty, ambiguity or alteration.
20	Upon receipt of any such prescription, the pharmacist shall contact the prescriber to obtain the information needed to validate the prescription.
21	(b) Even after conferring with the prescriber, a pharmacist shall not compound
22	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
23	purpose.
24	18. Section 1306.04(a) of title 21, Code of Federal Regulations states:
25	A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of
26	his professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding
27	responsibility rests with the pharmacist who fills the prescription. An order purporting to be a prescription issued not in the usual course of professional treatment or in legitimate and authorized research is not a prescription within the meaning and
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1 2	intent of section 309 of the Act (21 U.S.C. 829) and the person knowingly filling such a purported prescription, as well as the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances.
3	COST RECOVERY
4	19. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
5	administrative law judge to direct a licentiate found to have committed a violation or violations of
6	the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
7	enforcement of the case.
8	DRUGS
9	20. <u>Norco</u> is the brand name for hydrocodone/acetaminophen, a Schedule III controlled
10	substance pursuant to Health and Safety Code section 11056(e)(5), a Schedule II controlled
11	substance pursuant to title 21, Code of Federal Regulations, section 1308.12(b)(1)(vi), effective
12	October 6, 2014 and a dangerous drug pursuant to Business and Professions Code section 4022.
13	21. <u>Roxicodone</u> is a brand name for oxycodone, a Schedule II controlled substance
14	pursuant to Health and Safety Code section 11055(b)(1)(M) and a dangerous drug pursuant to
15	Business and Professions Code section 4022.
16	22. <u>Phenergan with Codeine</u> is the brand name for promethazine with codeine, a Schedule
17	V controlled substance pursuant to Health and Safety Code section 111058(c)(1) and is a
18	dangerous drug pursuant to Business and Professions Code section 4022.
19	23. <u>Soma</u> is a brand name for carisdoprodol, a Schedule IV controlled substance pursuant
20	to title 21, Code of Federal Regulations, section 1308.14(c)(6) and is a dangerous drug pursuant to
21	Business and Professions Code section 4022.
22	24. Xanax is the brand name for alprazolam, a Schedule IV controlled substance pursuant
23	to Health and Safety Code section 11057(d)(1) and a dangerous drug pursuant to Business and
24	Professions Code section 4022.
25	FACTUAL ALLEGATIONS
26	25. From April 1, 1993 through May 1, 2017, Respondent Rafael Juarez was the
27	Pharmacist-in-Charge of Respondent Murphy's Pharmacy.
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26. L.W.'s physician's and surgeon's certificate or certificate to practice medicine and
 surgery issued by the Medical Board of California expired on or about July 22, 2010. From May
 31, 2016 to September 12, 2016, Respondents filled 37 prescriptions issued on their face, by L.W.
 with his office address identified as being located in Van Nuys, California on the prescriptions.

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

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

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

30. Prescriptions were written for oxycodone 30mg, alprazolam 2mg, carisoprodol
350mg, oxycodone 30mg and/or promethazine with codeine which are drugs of high abuse and
diversion potential, particularly when prescribed in combination. Respondents dispensed these
prescriptions written for those combinations or "cocktails" of controlled substances to individuals.
31. Respondents dispensed identical controlled substances, in the same strength and doses
to individuals who had been prescribed controlled substances by multiple prescribers.

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32. Respondents dispensed identical controlled substances, in the same strength and doses to individuals with the same last name and address.

Respondents dispensed controlled substances which were written by a physician who 33. 3 specialized in pain management but did not treat pain with alternative medications, including 4 anti-inflammatories, neuropathic pain medications, numbing agents and, non-controlled substance 5 muscle relaxants. 6

34. Respondents filled prescriptions for controlled substances which were written in an 7 identical fashion for multiple individuals. Namely, the prescriptions were written for the same 8 combination of controlled substances in the same strength (the highest available) and doses to 9 different individuals which were dispensed by Respondents. 10

Respondents filled prescriptions which were written on forms lacking an identifying 35. 11 number of the security printer, a lot number and/or the watermark, "California Security 12 Prescription" on the back of the forms. One prescription form contained the watermark, 13

"Docuguard." One of the prescriptions lacked a latent, repetitive "void" pattern on it and instead, 14 had a latent "unauthorized copy" pattern on it. 15

Respondents did not adequately verify or otherwise research whether the prescriptions 36. 16 described in paragraphs 26-28 were written for a legitimate medical purpose before filling them. .17

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FIRST CAUSE FOR DISCIPLINE

(Failing to Comply with Corresponding Responsibility

for Legitimate Controlled Substance Prescriptions)

Respondents are subject to disciplinary action under Code sections 4301(j) and (o), 37. 21for violating Health and Safety Code section 11153(a) and section 1306.04(a) of title 21 of the 22Code of Federal Regulations, in that they failed to comply with their corresponding responsibility 23 to ensure that controlled substances were dispensed for a legitimate medical purpose when 24 Respondents furnished prescriptions for controlled substances even though "red flags" were 25 present to indicate those prescriptions were not issued for a legitimate medical purpose, as set 26 forth in paragraphs 25 through 36 above, which are incorporated herein by reference. 27

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2	SECOND CAUSE FOR DISCIPLINE
3	(Dispensing Controlled Substance Prescriptions with Significant Errors, Omissions,
4	Irregularities, Uncertainties, Ambiguities or Alterations)
5	38. Respondents are subject to disciplinary action under Code section 4301(o), for
6	violating title 16, California Code of Regulations, sections 1761(a) and (b), in that they dispensed
7	prescriptions for controlled substances, which contained significant errors, omissions,
8	irregularities, uncertainties, ambiguities or alterations, as set forth in paragraphs 25 through 36
9	above, which are incorporated herein by reference.
10	THIRD CAUSE FOR DISCIPLINE
11	(Dispensing Controlled Substance Prescriptions Written on Unauthorized Forms)
12	39. Respondents are subject to disciplinary action under Code section 4301(j), for
13	violating Health and Safety Code sections 11162.1(a) and 11164(a), in that they dispensed
14	prescriptions written on unauthorized forms, as set forth in paragraphs 25-36 above, which are
15	incorporated herein by reference.
16	FOURTH CAUSE FOR DISCIPLINE
17	(Furnishing Dangerous Drugs to Patients without Valid Prescriptions)
18	40. Respondents are subject to disciplinary action under Code section 4301(o), for
19	violating Code section 4126.5(a)(5), as prescriptions are defined by Code section 4040 and
20	physicians are defined by Code section 4039, in that they dispensed furnished dangerous drugs to
21	patients without valid prescriptions, as set forth in paragraphs 25-36 above, which are
22	incorporated herein by reference.
23	FIFTH CAUSE FOR DISCIPLINE
24	(Unprofessional Conduct)
25	41. Respondents are subject to disciplinary action under Code section 4301 for
26	unprofessional conduct in that they engaged in the activities described in paragraphs 25 through
27	36 above, which are incorporated herein by reference.
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2	OTHER MATTERS
3	42. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number
4	PHY 39226 issued to Rafa Corporation, doing business as Murphy's Pharmacy, Rafa
5	Corporation, doing business as Murphy's Pharmacy shall be prohibited from serving as a
6	manager, administrator, owner, member, officer, director, associate, or partner of a licensee for
7.	five years if Pharmacy Permit Number PHY 39226 is placed on probation or until Pharmacy
8	Permit Number PHY 39226 is reinstated if it is revoked.
9	43. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number
10	PHY 39226 issued to Rafa Corporation, doing business as Murphy's Pharmacy while Rafael
11	Juarez has been an officer and owner and had knowledge of or knowingly participated in any
12	conduct for which the licensee was disciplined, Rafael Juarez shall be prohibited from serving as
13	a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for
14	five years if Pharmacy Permit Number PHY 39226 is placed on probation or until Pharmacy
15	Permit Number PHY 39226 is reinstated if it is revoked.
16	44. Pursuant to Code section 4307, if discipline is imposed on Pharmacist License
17	Number RPH 39936 issued to Rafael Juarez, Rafael Juarez shall be prohibited from serving as a
18	manager, administrator, owner, member, officer, director, associate, or partner of a licensee for
19	five years if Pharmacist License Number RPH 39936 is placed on probation or until Pharmacist
20	License Number RPH 39936 is reinstated if it is revoked.
21	DISCIPLINARY CONSIDERATIONS
22	45. To determine the degree of discipline, if any, to be imposed on Respondents,
23	Complainant alleges:
24	a. On November 9, 2015, the Board issued Modified Citation number CI 2011 49888
25	against Respondent Murphy's Pharmacy for violating Business and Professions Code section
26	4126.5(a)(4) for improperly furnishing drugs to a wholesaler. The Board issued a fine which
27	Respondent Murphy's Pharmacy paid.
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1	b. On February 23, 2012, the Board issued Citation number CI 2011 51346 and an Order
2	of Abatement against Respondent Rafael Juarez for violating Business and Professions Code
3	section 4126.5(a)(4) for improperly furnishing drugs to a wholesaler. The Board required
4	Respondent to enroll, initiate and successfully participate in an ethics course and submit proof of
5	enrollment or pay a fine. Respondent Rafael complied with the terms of the Citation.
6	PRAYER
7	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
8	and that following the hearing, the Board of Pharmacy issue a decision:
9	1. Revoking or suspending Pharmacy Permit Number PHY 39226, issued to Rafa
10	Corporation, doing business as Murphy's Pharmacy;
11	2. Revoking or suspending Pharmacist License Number RPH 39936, issued to Rafael
12	Juarez;
13	3. Prohibiting Rafa Corporation, doing business as Murphy's Pharmacy from serving as
14	a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for
15	five years if Pharmacy Permit Number PHY 39226 is placed on probation or until Pharmacy
16	Permit Number PHY 39226 is reinstated if Pharmacy Permit Number PHY 39226 issued to Rafa
17	Corporation, doing business as Murphy's Pharmacy is revoked;
18	4. Prohibiting Rafael Juarez from serving as a manager, administrator, owner,
19	member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit
20	Number PHY 39226 is placed on probation or until Pharmacy Permit Number PHY 39226 is
21	reinstated if Pharmacy Permit Number PHY 39226 issued to Rafa Corporation, doing business as
22	Murphy's Pharmacy is revoked;
23	5. Prohibiting Rafael Juarez from serving as a manager, administrator, owner,
24	member, officer, director, associate, or partner of a licensee for five years if Pharmacist License
25	Number RPH 39936 is placed on probation or until Pharmacist License Number RPH 39936 is
26	reinstated if Pharmacist License Number RPH 39936 issued to Rafael Juarez is revoked;
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6. Ordering Rafa Corporation, doing business as Murphy's Pharmacy and Rafael Juarez to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and, Taking such other and further action as deemed necessary and proper. 7. 7/16/17 DATED: VIRGINIA HEROLD **Executive** Officer Board of Pharmacy Department of Consumer Affairs State of California Complainant SD2017705377 81724036.doc 1.8 ACCUSATION