

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

In the Matter of the Statement of Issues Against:

Case No. 4009

**CALMEX SPECIAL SERVICES, INC., dba  
CAL-MEX PHARMACY**  
337 Paulin Ave., Ste. 1A  
Calexico, CA 92231

Pharmacy Permit Applicant

Respondent.

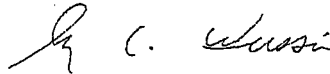
**DECISION AND ORDER**

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

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
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8  
9 **BEFORE THE**  
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**DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

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13 **CALMEX SPECIAL SERVICES, INC., dba**  
14 **CAL-MEX PHARMACY,**  
337 Paulin Ave., Suite 1A  
15 **Calexico, CA 92231**

**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER**

16 Respondent.

17  
18 In the interest of a prompt and speedy settlement of this matter, consistent with the public  
19 interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs,  
20 the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will  
21 be submitted to the Board for approval and adoption as the final disposition of the Statement of  
22 Issues.

23  
24 **PARTIES**

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





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

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

6 **DISCIPLINARY ORDER**

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

12 1. **Obey All Laws**

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

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

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

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

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1           2.     **Report to the Board**

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

10          3.     **Interview with the Board**

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

16          4.     **Cooperate with Board Staff**

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

20          5.     **Probation Monitoring Costs**

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

25          6.     **Status of License**

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

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

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

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

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

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

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

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

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

3 **8. Notice to Employees**

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

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

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

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

24 **10. Posted Notice of Probation**

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

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

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

6 **11. Violation of Probation**

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

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

19 **12. Completion of Probation**

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

22 **13. Separate File of Records**

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

26 **14. Pharmacist-in-Charge**

27 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*  
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*  
RONALD S. MARKS, Esq.  
Attorney for Respondent



**Exhibit A**

**Statement of Issues No. 4009**

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 KAREN L. GORDON  
Deputy Attorney General  
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13 **CAL-MEX PHARMACY,**  
14 **337 Paulin Ave., Suite 1A**  
**Calexico, CA 92231**

**STATEMENT OF ISSUES**

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

- 19 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official  
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 21 2. On or about June 25, 2010, the Board of Pharmacy, Department of Consumer Affairs  
22 received an application for a pharmacy permit from Calmex Special Services, Inc., dba Cal-Mex  
23 Pharmacy (Respondent). On or about June 15, 2010, Olugbenga S. Oduyale, President of Cal-  
24 Mex Special Services, Inc. (Cal-Mex); Anna Murillo, Secretary of Cal-Mex; and Oluwatoyin  
25 Oduyale, Cal-Mex Board Member; each certified under penalty of perjury to the truthfulness of  
26 all statements, answers, and representations in the application. Olugbenga S. Oduyale indicated  
27 on the application that he will be the Pharmacist-in-Charge of Cal-Mex Pharmacy. The Board  
28 denied the application on November 22, 2010.

## JURISDICTION

1  
2 3. This Statement of Issues is brought before the Board of Pharmacy (Board),  
3 Department of Consumer Affairs, under the authority of the following laws. All section  
4 references are to the Business and Professions Code unless otherwise indicated.

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

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

9 ...

10 (c) The board may refuse a license to any applicant guilty of  
11 unprofessional conduct. The board may, in its sole discretion, issue a probationary  
12 license to any applicant for a license who is guilty of unprofessional conduct and who  
13 has met all other requirements for licensure. The board may issue the license subject  
14 to any terms or conditions not contrary to public policy, including, but not limited to,  
15 the following:

- 16 (1) Medical or psychiatric evaluation.
- 17 (2) Continuing medical or psychiatric treatment.
- 18 (3) Restriction of type or circumstances of practice.
- 19 (4) Continuing participation in a board-approved rehabilitation program.
- 20 (5) Abstention from the use of alcohol or drugs.
- 21 (6) Random fluid testing for alcohol or drugs.
- 22 (7) Compliance with laws and regulations governing the practice of  
23 pharmacy.

## 24 STATUTORY PROVISIONS

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

26 (a) Notwithstanding any other provisions of this code, the provisions of  
27 this division shall govern the denial of licenses on the grounds of:

- 28 (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.

1 (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.

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

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

5 . . . .

6 (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.

7 8. Section 4022 states:

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

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

11 (b) Any device that bears the statement: "Caution: federal law restricts  
12 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  
13 licensed to use or order use of the device.

14 (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.

15 9. Section 4059.5 states, in pertinent part:

16 (a) Except as otherwise provided in this chapter, dangerous drugs or  
17 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.  
18 Where a licensee is permitted to operate through a designated representative, the  
designated representative shall sign for and receive the delivery.

19 . . . .

20 10. Section 4076 states, in pertinent part:

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

23 (1) Except where the prescriber or the certified nurse-midwife who  
24 functions pursuant to a standardized procedure or protocol described in Section  
2746.51, the nurse practitioner who functions pursuant to a standardized procedure  
25 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  
26 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  
27 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  
28 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.

1  
2 (5) Fail to maintain records of the acquisition or disposition of  
3 dangerous drugs or dangerous devices for at least three years.

4 14. Section 4301 of the Code states, in pertinent part:

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

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

14 15. Section 4332 of the Code states:

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

## 20 REGULATIONS

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

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

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

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

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

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

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

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

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

11 (a) Except as provided in paragraphs (a)(1) and (a)(2) of this section,  
12 every inventory and other records required to be kept under this part must be kept by  
13 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.

14 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:

15 (a) General requirements. Each inventory shall contain a complete and  
16 accurate record of all controlled substances on hand on the date the inventory is  
17 taken, and shall be maintained in written, typewritten, or printed form at the  
18 registered location. An inventory taken by use of an oral recording device must be  
19 promptly transcribed. Controlled substances shall be deemed to be "on hand" if they  
20 are in the possession of or under the control of the registrant, including substances  
21 returned by a customer, ordered by a customer but not yet invoiced, stored in a  
22 warehouse on behalf of the registrant, and substances in the possession of employees  
23 of the registrant and intended for distribution as complimentary samples. A separate  
24 inventory shall be made for each registered location and each independent activity  
25 registered, except as provided in paragraph (e)(4) of this section. In the event  
26 controlled substances in the possession or under the control of the registrant are  
27 stored at a location for which he/she is not registered, the substances shall be included  
28 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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1 **COST RECOVERY**

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

6 **DRUGS**

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

8 23. Levaquin is a dangerous drug pursuant to Business and Professions Code section  
9 4022.

10 24. Naproxen is a dangerous drug pursuant to Business and Professions Code section  
11 4022.

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

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

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

19 **FACTS**

20 28. The President of Respondent Cal-Mex, Olugbenga Solomon Oduyale, is a licensed  
21 pharmacist. On or about August 8, 1989, the Board of Pharmacy issued original pharmacist  
22 license number RPH 42719 to Olugbenga Solomon Oduyale. The license will expire on October  
23 31, 2012, unless renewed.

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

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

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

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

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

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

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

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

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

- 7 a. Dispensing prescription drugs in containers not labeled as legally required;
- 8 b. Failure to provide records of filled prescriptions at PVH Pharmacy and all records  
9 required for inspection by the Board's inspector;
- 10 c. Failure to have all records of sale, acquisition, or disposition of dangerous drugs open  
11 to inspection by the Board inspector at all times during business hours;
- 12 d. Failure to have a quality assurance program in place at PVH Pharmacy when  
13 inspected on March 11, 2004;
- 14 e. Failure to have an accurate and complete written DEA inventory at PVH when  
15 inspected on March 11, 2004; and
- 16 f. As Pharmacist-in-Charge, regularly allowing non-pharmacists to receive and sign for  
17 drug delivers made to PVH Pharmacy.

18 **FIRST CAUSE FOR DENIAL OF APPLICATION**

19 **(Unprofessional Conduct – Dispensing Dangerous Drugs Without Labeling)**

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

24 **SECOND CAUSE FOR DENIAL OF APPLICATION**

25 **(Unprofessional Conduct – Failure to Provide Records)**

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

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

3 **THIRD CAUSE FOR DENIAL OF APPLICATION**

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

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

11 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

12 **(Unprofessional Conduct – Failure to Implement Quality Assurance Program)**

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

17 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

18 **(Unprofessional Conduct – Failure to Maintain DEA Inventory)**

19 40. Respondent's application is subject to denial under Code sections 4300 (c) and 4301  
20 (o) for violation of CCR section 1718 and CFR sections 1304.04 and 1304.11 in that Olugbenga  
21 Solomon Oduyale failed to have an accurate and complete written or printed DEA Inventory at  
22 PVH Pharmacy when inspected on or about March 11, 2004, as set forth above in paragraphs 28  
23 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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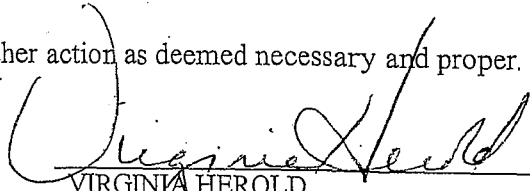
**PRAYER**

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

1 BILL LOCKYER, Attorney General  
of the State of California  
2 SUSAN FITZGERALD, State Bar No. 112278  
Deputy Attorney General  
3 California Department of Justice  
110 West "A" Street, Suite 1100  
4 San Diego, CA 92101  
5 P.O. Box 85266  
San Diego, CA 92186-5266  
6 Telephone: (619) 645-2066  
Facsimile: (619) 645-2061  
7 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:  
13 OLUGBENGA SOLOMON ODUYALE, RPH  
2209 E 27th St  
14 Yuma, AZ 85365  
15 Original Pharmacist License No. RPH 42719  
16 Respondent.

Case No. 2733  
ACCUSATION

18 Complainant alleges:

19 PARTIES

- 20 1. Patricia F. Harris (Complainant) brings this Accusation solely in her official  
21 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.  
22 2. On or about August 8, 1989, the Board of Pharmacy issued Original Pharmacist  
23 License Number RPH 42719 to Olugbenga Solomon Oduyale, RPH (Respondent). The Original  
24 Pharmacist License was in full force and effect at all times relevant to the charges brought herein  
25 and will expire on October 31, 2006, unless renewed.

26 JURISDICTION

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

1 Professions Code:

2 A. Section 4301 of the Code states:

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

7 "...

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

11 "...

12 "(j) The violation of any of the statutes of this state or of the United States regulating  
13 controlled substances and dangerous drugs.

14 "...

15 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
16 violation of or conspiring to violate any provision or term of this chapter or of the  
17 applicable federal and state laws and regulations governing pharmacy, including  
18 regulations established by the board.

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

21 "..."

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

25 C. Section 4059.5 states in pertinent part:

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

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

3 "...."

4 D. Section 4060 of the Code states:

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

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

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

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

21 "..."

22 F. Section 4332 states:

23 "Any person who fails, neglects, or refuses to maintain the records required by Section  
24 4081 or who, when called upon by an authorized officer or member of the board, fails, neglects,  
25 or refused to produce the records within a reasonable time, or who willfully produces or furnishes  
26 records that are false, is guilty of a misdemeanor."

27 G. Section 4125 states in pertinent part:

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

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

5 "...."

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

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

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

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

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

19 "...."

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

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

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

28 //

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

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

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

8 B. Section 1718 states:

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

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

### 17 DRUGS

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

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

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

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

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

- 1 E. "Vicodin ES," a brand name for hydrocodone 7.5 mg with APAP, is a Schedule  
2 III controlled substance under H&S Code section 11056(e)(4);
- 3 F. "Tylenol w/Codeine," a brand name for APAP with codeine, is a Schedule III  
4 controlled substance under H&S Code section 11056(e)(2);
- 5 G. "Xanax," a brand name for alprazolam, is a Schedule IV controlled substance  
6 under H&S Code section 11057(d)(1);
- 7 H. "Ativan," a brand name for lorazepam, is a Schedule IV controlled substance  
8 under H&S Code section 11057(d)(16);
- 9 I. "Luminal," a brand name for phenobarbital, is a Schedule IV controlled substance  
10 under H&S Code section 11057(d)(26);
- 11 J. "Phenergan w/Codeine," a brand name for promethazine with codeine, is a  
12 Schedule V controlled substance under H&S Code section 11058(c)(1);
- 13 K. "Soma" is a dangerous drug under Business & Professions Code section 4022;
- 14 L. "Lupron" is a dangerous drug under Business & Professions Code section 4022;
- 15 M. "Epogen" is a dangerous drug under Business & Professions Code section 4022;
- 16 N. "Viagra" is a dangerous drug under Business & Professions Code section 4022;
- 17 O. "Naprosyn" is a dangerous drug under Business & Professions Code section 4022;
- 18 P. "Levaquin" is a dangerous drug under Business & Professions Code section 4022;
- 19 Q. "Floxin" is a dangerous drug under Business & Professions Code section 4022;

20 CHARGES AND ALLEGATIONS RE 2002 INCIDENT

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



- 1 9. A further search uncovered the following:
- 2 \* an amber unlabeled prescription container with 16 1/2 Viagra tablets;
- 3 \* a sealed bottle of Viagra;
- 4 \* 2 white bottles containing 94 and 100 Naproxen tablets;
- 5 \* an amber prescription container labeled only "Levaquin" with 5 pills;
- 6 \* a silver-foil wrapped card containing 8 unidentified pills;
- 7 \* a gold-foil wrapped card containing 4 unidentified white pills;
- 8 \* miscellaneous pills in Respondent's pocket: 4 Viagra, 2 Naproxen, 1 Floxin, and
- 9 one unidentified pill;
- 10 \* \$4,702.00 in cash. \$968.00 in Respondent's pocket.
- 11 10. Respondent could not produce any prescriptions for any drugs for "Mrs

12 Robinson."

13 11. Respondent was arrested and "Mirandized," after which he told the highway

14 patrolman that the Vicodin was for a "Don Brenizer" and the Xanax for "Mrs. Robinson."

15 12. Respondent's then-employer, Rite-Aid Pharmacy, #5675 in Calexico, California,

16 did not know Respondent had taken any of the above drugs.

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

18 prescription for it.

19 14. On or about December 30, 2002, Respondent fraudulently created a prescription

20 for Donald Brenizer for 30 tablets of hydrocodone with APAP 5/500 mg. using the name of a

21 doctor in the area. That doctor knew nothing of the prescription and had never treated Donald

22 Brenizer.

23 FIRST CAUSE FOR DISCIPLINE

24 (Unprofessional Conduct: Illegal Possession of Vicodin)

25 15. Respondent is subject to disciplinary action under section 4301(o) in conjunction

26 with section 4060 and, separately, under section 4301(j) in conjunction with H&S Code section

27 11350(a), in that he illegally possessed hydrocodone with APAP, as more particularly alleged in

28 paragraphs 8-14 above and incorporated herein by reference.

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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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1 SIXTH CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct: Illegal Transporting of Generic Vicodin)

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

7 SEVENTH CAUSE FOR DISCIPLINE

8 (Unprofessional Conduct: Illegal Transporting of Xanax)

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

12 EIGHTH CAUSE FOR DISCIPLINE

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

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

18 NINTH CAUSE FOR DISCIPLINE

19 (Unprofessional Conduct: Dispensing Dangerous Drugs Without Labeling)

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

24 CHARGES AND ALLEGATIONS RE 2004 PHARMACY INSPECTION/AUDIT

25 24. At all times relevant to the charges and allegations below and since January 13.  
26 2003, Respondent has been the pharmacist-in-charge (PIC) of the hospital pharmacy at Palo  
27 Verde Hospital in Blythe, California.

28 ///

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

3   TENTH CAUSE FOR DISCIPLINE

4   (Unprofessional Conduct: Failure to Provide Records)

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

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

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

14   ELEVENTH CAUSE FOR DISCIPLINE

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

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

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

23   TWELFTH CAUSE FOR DISCIPLINE

24   (Unprofessional Conduct: Failure to Implement Quality Assurance Program)

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

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1 THIRTEENTH CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct: Failure to Maintain DEA Inventory)

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

7 FOURTEENTH CAUSE FOR DISCIPLINE

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

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

12 FIFTEENTH CAUSE FOR DISCIPLINE

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

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

20 SIXTEENTH CAUSE FOR DISCIPLINE

21 (Unprofessional Conduct: Attempting to Subvert a Board Investigation)

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

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P R A Y E R

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 Olughenga Solomon Oduyale, RPH;

2. Ordering Olughenga 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. J. Harris  
PATRICIA F. HARRIS  
Executive Officer  
Board of Pharmacy  
Department of Consumer Affairs  
State of California  
Complainant