

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

In the Matter of the Accusation Against:

Case No. 4385

WESTSIDE PHARMACY

302 Fresno Street
Fresno, CA 93706
Willie James Whisenhunt
Pharmacist-in-Charge

Original Permit No. PHY 15178

and

WILLE JAMES WHISENHUNT

5807 e. Park Circle
Fresno, CA 93727

Pharmacist License No. RPH 26308

Respondent.

DECISION AND ORDER

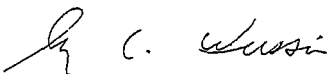
The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on December 17, 2013.

It is so ORDERED on December 13, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STAN C. WEISSER
Board President

1 KAMALA D. HARRIS
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 KENT D. HARRIS
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Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

12 **WESTSIDE PHARMACY**
13 **302 Fresno St.,**
14 **Fresno, CA 93706**
15 **WILLIE JAMES WHISENHUNT**
16 **Pharmacist-in Charge**

17 **Original Permit Number No. PHY 15178,**
18 **and**

19 **WILLIE JAMES WHISENHUNT**
20 **5807 E. Park Circle**
21 **Fresno, CA 93727**

22 **Pharmacist license No. RPH 26308**

23 Respondents.

Case No. 4385

OAH No. 2013060746

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

24 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
25 proceeding that the following matters are true:

26 PARTIES

27 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
28 She brought this action solely in her official capacity and is represented in this matter by Kamala

1 D. Harris, Attorney General of the State of California, by Kent D. Harris, Supervising Deputy
2 Attorney General.

3 2. Westside Pharmacy, Willie James Whisenhunt, Pharmacist-in-Charge; and Willie
4 James Whisenhunt (Respondents) are represented in this proceeding by attorney John A. Cronin,
5 Esq., and Peter S. Gregorovic, Esq. of Fredrickson, Mazeika & Grant, LLP, whose address is
6 5720 Oberlin Drive, San Diego, CA 92121-1723.

7 3. On or about October 22, 1969, the Board of Pharmacy issued Original Permit
8 Number No. PHY 15178 to Westside Pharmacy (Respondent). The Original Permit Number was
9 in full force and effect at all times relevant to the charges brought in Accusation No. 4385 and
10 will expire on May 1, 2014, unless renewed.

11 4. On or about August 5, 1969, the Board of Pharmacy issued Pharmacist license
12 Number RPH 26308 to Willie James Whisenhunt (Respondent). Said license was in full force
13 and effect at all times relevant to the charges brought herein and will expire on January 31, 2015,
14 unless renewed.

15 JURISDICTION

16 5. Accusation No. 4385 was filed before the Board of Pharmacy (Board), Department of
17 Consumer Affairs, and is currently pending against Respondents. The Accusation and all other
18 statutorily required documents were properly served on Respondent on May 9, 2013.
19 Respondents timely filed their Notice of Defense contesting the Accusation. A copy of
20 Accusation No. 4385 is attached as Exhibit A and incorporated by reference.

21 ADVISEMENT AND WAIVERS

22 6. Respondents have carefully read, fully discussed with counsel, and understand the
23 charges and allegations in Accusation No. 4385. Respondents have also carefully read, fully
24 discussed with counsel, and understands the effects of this Stipulated Surrender of License and
25 Order.

26 7. Respondents are fully aware of their legal rights in this matter, including the right to a
27 hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at
28 their own expense; the right to confront and cross-examine the witnesses against them; the right

1 to present evidence and to testify on their own behalf; the right to the issuance of subpoenas to
2 compel the attendance of witnesses and the production of documents; the right to reconsideration
3 and court review of an adverse decision; and all other rights accorded by the California
4 Administrative Procedure Act and other applicable laws.

5 8. Respondents voluntarily, knowingly, and intelligently waive and give up each and
6 every right set forth above.

7 CULPABILITY

8 9. Respondents understand that the charges and allegations in Accusation No. 4385, if
9 proven at a hearing, constitute cause for imposing discipline upon their Original Permit Number
10 No. PHY 15178 and Pharmacist License No. RPH 26308.

11 10. For the purpose of resolving the Accusation without the expense and uncertainty of
12 further proceedings, Respondents agree that, at a hearing, Complainant could establish a factual
13 basis for the charges in the Accusation and that those charges constitute cause for discipline.
14 Respondents hereby give up their rights to contest that cause for discipline exists based on those
15 charges.

16 11. Respondents understand that by signing this stipulation they enable the Board to issue
17 an order accepting the surrender of Original Permit Number No. PHY 15178 and Pharmacist
18 License No. RPH 26308 without further process.

19 CONTINGENCY

20 12. This stipulation shall be subject to approval by the Board of Pharmacy. Respondents
21 understand and agree that counsel for Complainant and the staff of the Board of Pharmacy may
22 communicate directly with the Board regarding this stipulation and surrender, without notice to or
23 participation by Respondents or their counsel. By signing the stipulation, Respondents
24 understand and agree that they may not withdraw its agreement or seek to rescind the stipulation
25 prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation
26 as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or
27 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,
28 and the Board shall not be disqualified from further action by having considered this matter.

1 13. The parties understand and agree that Portable Document Format (PDF) and facsimile
2 copies of this Stipulated Surrender of License and Order, including Portable Document Format
3 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

4 14. This Stipulated Surrender of License and Order is intended by the parties to be an
5 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
6 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
7 negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order
8 may not be altered, amended, modified, supplemented, or otherwise changed except by a writing
9 executed by an authorized representative of each of the parties.

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

12 **ORDER**

13 IT IS HEREBY ORDERED that Original Permit Number No. PHY 15178, issued to
14 Respondent Westside Pharmacy, and Pharmacist License No. RPH 26308, issued to Willie James
15 Whisenhunt, are surrendered and accepted by the Board of Pharmacy.

16 1. The surrender of Respondent's Original Permit Number and Pharmacist License and
17 the acceptance of the surrendered licenses by the Board shall constitute the imposition of
18 discipline against Respondents. This stipulation constitutes a record of the discipline and shall
19 become a part of Respondents license history with the Board of Pharmacy.

20 2. Respondents shall lose all rights and privileges as a Pharmacy and Pharmacist in
21 California as of the effective date of the Board's Decision and Order.

22 3. Respondents shall cause to be delivered to the Board all pocket license(s) and, if
23 previously issued, all wall certificates on or before the effective date of the Decision and Order.

24 4. Respondents understand and agree that if they ever apply for licensure or petition for
25 reinstatement in the State of California, the Board shall treat it as a new application for licensure.
26 Respondents must comply with all the laws, regulations and procedures for application for new
27 license in effect at the time the application or petition is filed, and all of the charges and
28

1 allegations contained in Accusation No. 4385 shall be deemed to be true, correct and admitted by
2 Respondents when the Board determines whether to grant or deny the application.

3 5. Respondent Willie James Whisenhunt, as owner of respondent Westside Pharmacy
4 shall, within ten (10) days of the effective date of this order, arrange for the destruction of, the
5 transfer to, or sale or storage in a facility licensed by the Board, of all controlled substances and
6 dangerous drugs and devices in the possession and control of Westside Pharmacy. Respondent
7 owner shall further provide written proof of such disposition and submit a completed
8 "Discontinuance of Business" form according to Board guidelines.

9 6 Respondents shall pay the agency its costs of investigation and enforcement in the
10 amount of \$ 11,985.00 prior to issuance of any new or reinstated license.

11 7 If Respondents should ever apply or reapply for a new license or certification, or
12 petition for reinstatement of a license, by any other health care licensing agency in the State of
13 California, all of the charges and allegations contained in Accusation, No. 4385 shall be deemed
14 to be true, correct, and admitted by Respondents for the purpose of any Statement of Issues or any
15 other proceeding seeking to deny or restrict licensure.

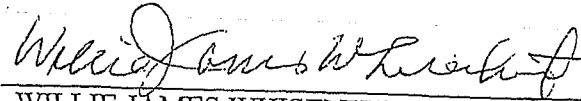
16 ACCEPTANCE

17 I have carefully read the above Stipulated Surrender of License and Order and have fully
18 discussed it with my attorneys. I understand the stipulation and the effect it will have on my
19 Original Permit No. PHY 15178. I enter into this Stipulated Surrender of License and Order
20 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
21 Board of Pharmacy.

22
23 DATED: 10/7/13 Willie James Whisenhunt
24 WESTSIDE PHARMACY
25 WILLIE JAMES WHISENHUNT, Pharmacist-in-
26 Charge, Owner.
27 Respondent
28

1 I have carefully read the above Stipulated Surrender of License and Order and have fully
2 discussed it with my attorneys. I understand the stipulation and the effect it will have on my
3 Pharmacist License No. RPH 26308. I enter into this Stipulated Surrender of License and Order
4 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
5 Board of Pharmacy.

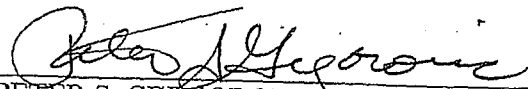
6
7 DATED: 10/7/13



8 WILLIE JAMES WHISENHUNT,
9 Respondent

10 I have read and fully discussed with Respondents the terms and conditions and other
11 matters contained in this Stipulated Surrender of License and Order. I approve its form and
12 content.

13 DATED: 10/12/13



14 PETER S. GREGOROVIC, ESQ.
15 Fredrickson, Mazeika, and Grant, LLP
16 Attorneys for Respondents


17 ENDORSEMENT

18 The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted
19 for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

20 Dated: 10/22/13

21 Respectfully submitted,

22 KAMALA D. HARRIS
23 Attorney General of California
24 ALFREDO TERRAZAS
25 Senior Assistant Attorney General


26 KENT D. HARRIS
27 Supervising Deputy Attorney General
28 Attorneys for Complainant

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Exhibit A

Accusation No. 4385

BEFORE THE
BOARD OF PHARMACY
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STATE OF CALIFORNIA

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and

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5807 E. Park Circle
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Pharmacist license No. RPH 26308

Respondents.

Case No. 4385

OAH No. 2013060746

DECISION AND ORDER

The attached Stipulated Surrender of License and 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 _____.

It is so ORDERED _____.

FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 KENT D. HARRIS
Deputy Attorney General
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6 Telephone: (916) 324-7859
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
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11 In the Matter of the Accusation Against:

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Pharmacist-in Charge
15 **Original Permit Number No. PHY 15178,**
16 **and**
17 **WILLIE JAMES WHISENHUNT**
5807 E. Park Circle
18 Fresno, CA 93727
19 **Pharmacist license No. RPH 26308**
20 Respondents.

ACCUSATION

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 ///
27 ///
28 ///

1 6. Section 4081 of the Code states in pertinent part:

2 "(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs
3 or dangerous devices shall be at all times during business hours open to inspection by authorized
4 officers of the law, and shall be preserved for at least three years from the date of making. A
5 current inventory shall be kept by every... pharmacy...holding a currently valid and unrevoked
6 certificate, license, permit, registration... who maintains a stock of dangerous drugs or dangerous
7 devices.

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

11 ...

12 7. Code section 4342 states:

13 “(a) The board may institute any action or actions as may be provided by law and that, in
14 its discretion, are necessary, to prevent the sale of pharmaceutical preparations and drugs that do
15 not conform to the standard and tests as to quality and strength, provided in the latest edition of
16 the United States Pharmacopoeia or the National Formulary, or that violate any provision of the
17 Sherman Food, Drug and Cosmetic Law (Part 5 (commencing with Section 109875) of Division
18 104 of the Health and Safety Code).

19 (b) Any knowing or willful violation of any regulation adopted pursuant to Section 4006
20 shall be subject to punishment in the same manner as is provided in Sections 4336 and 4321.”

21 8. Title 16 CCR section 1707.2 states:

22 (a) A pharmacist shall provide oral consultation to his or her patient or the patient's agent in
23 all care settings:

24 (1) upon request; or

25 (2) whenever the pharmacist deems it warranted in the exercise of his or her professional
26 judgment.

27

28

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

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

5 (B) whenever a prescription drug not previously dispensed to a patient in the same dosage
6 form, strength or with the same written directions, is dispensed by the pharmacy.

7 (2) When the patient or agent is not present (including but not limited to a prescription drug
8 that was shipped by mail) a pharmacy shall ensure that the patient receives written notice:

9 (A) of his or her right to request consultation; and

10 (B) a telephone number from which the patient may obtain oral consultation from a
11 pharmacist who has ready access to the patient's record.

12 (3) A pharmacist is not required by this subsection to provide oral consultation to an
13 inpatient of a health care facility licensed pursuant to section 1250 of the Health and Safety Code,
14 or to an inmate of an adult correctional facility or a juvenile detention facility, except upon the
15 patient's discharge. A pharmacist is not obligated to consult about discharge medications if a
16 health facility licensed pursuant to subdivision (a) or (b) of Health and Safety Code Section 1250
17 has implemented a written policy about discharge medications which meets the requirements of
18 Business and Professions Code Section 4074.

19 (c) When oral consultation is provided, it shall include at least the following:

20 (1) directions for use and storage and the importance of compliance with directions; and

21 (2) precautions and relevant warnings, including common severe side or adverse effects or
22 interactions that may be encountered.

23 (d) Whenever a pharmacist deems it warranted in the exercise of his or her professional
24 judgment, oral consultation shall also include:

25 (1) the name and description of the medication;

26 (2) the route of administration, dosage form, dosage, and duration of drug therapy;

27 (3) any special directions for use and storage;

28

1 (4) precautions for preparation and administration by the patient, including techniques for
2 self-monitoring drug therapy;

3 (5) prescription refill information;

4 (6) therapeutic contraindications, avoidance of common severe side or adverse effects or
5 known interactions, including serious potential interactions with known nonprescription
6 medications and therapeutic contraindications and the action required if such side or adverse
7 effects or interactions or therapeutic contraindications are present or occur;

8 (7) action to be taken in the event of a missed dose.

9 (e) Notwithstanding the requirements set forth in subsection (a) and (b), a pharmacist is not
10 required to provide oral consultation when a patient or the patient's agent refuses such
11 consultation.

12 9. Title 16 CCR section 1707.3 states:

13 "Prior to consultation as set forth in section 1707.2, a pharmacist shall review a patient's
14 drug therapy and medication record before each prescription drug is delivered. The review shall
15 include screening for severe potential drug therapy problems."

16 10. Title 16 CCR section 1707.6 states:

17 (a) In every pharmacy there shall be prominently posted, in a place conspicuous to and
18 readable by a prescription drug consumer, a notice containing the text in subdivision (b). Each
19 pharmacy shall use the standardized poster-sized notice provided or made available by the board,
20 unless the pharmacy has received prior approval of another format or display methodology from
21 the board. The board may delegate authority to a committee or to the Executive Officer to give
22 the approval. As an alternative to a printed notice, the pharmacy may also or instead display the
23 notice on a video screen located in a place conspicuous to and readable by prescription drug
24 consumers, so long as: (1) The video screen is at least 24 inches, measured diagonally; (2) The
25 pharmacy utilizes the video image notice provided by the board; (3) The text of the notice
26 remains on the screen for a minimum of 60 seconds; and (4) No more than five minutes elapses
27 between displays of any notice on the screen, as measured between the time that a one-screen
28 notice or the final screen of a multi-screen notice ceases to display and the time that the first or

1 only page of that notice re-displays. The pharmacy may seek approval of another format or
2 display methodology from the board. The board may delegate authority to a committee or to the
3 Executive Officer to give the approval.

4 (b) The notice shall contain the following text:

5 NOTICE TO CONSUMERS

6 California law requires a pharmacist to speak with you every time you get a new
7 prescription.

8 You have the right to ask for and receive from any pharmacy prescription drug labels in 12-
9 point font.

10 Interpreter services are available to you upon request at no cost.

11 Before taking your medicine, be sure you know: the name of the medicine and what it does;
12 how and when to take it, for how long, and what to do if you miss a dose; possible side effects
13 and what you should do if they occur; whether the new medicine will work safely with other
14 medicines or supplements; and what foods, drinks, or activities should be avoided while taking
15 the medicine. Ask the pharmacist if you have any questions.

16 This pharmacy must provide any medicine or device legally prescribed for you, unless it is
17 not covered by your insurance; you are unable to pay the cost of a copayment; or the pharmacist
18 determines doing so would be against the law or potentially harmful to health. If a medicine or
19 device is not immediately available, the pharmacy will work with you to help you get your
20 medicine or device in a timely manner.

21 You may ask this pharmacy for information on drug pricing and use of generic drugs.

22 (c) Every pharmacy, in a place conspicuous to and readable by a prescription drug
23 consumer, at or adjacent to each counter in the pharmacy where dangerous drugs are dispensed or
24 furnished, shall post or provide a notice containing the following text:

25 Point to your language. Interpreter services will be provided to you upon request at no cost.

26 This text shall be repeated in at least the following languages: Arabic, Armenian,
27 Cambodian, Cantonese, Farsi, Hmong, Korean, Mandarin, Russian, Spanish, Tagalog, and
28 Vietnamese.

1 Each pharmacy shall use the standardized notice provided or made available by the board,
2 unless the pharmacy has received prior approval of another format or display methodology from
3 the board. The board may delegate authority to a committee or to the Executive Officer to give
4 the approval.

5 The pharmacy may post this notice in paper form or on a video screen if the posted notice
6 or video screen is positioned so that a consumer can easily point to and touch the statement
7 identifying the language in which he or she requests assistance. Otherwise, the notice shall be
8 made available on a flyer or handout clearly visible from and kept within easy reach of each
9 counter in the pharmacy where dangerous drugs are dispensed or furnished, available at all hours
10 that the pharmacy is open. The flyer or handout shall be at least 8 1/2 inches by 11 inches.

11 11. Title 16 CCR section 1711 states in pertinent part:

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

15 ...

16 (d) Each pharmacy shall use the findings of its quality assurance program to develop
17 pharmacy systems and workflow processes designed to prevent medication errors. An
18 investigation of each medication error shall commence as soon as is reasonably possible, but no
19 later than 2 business days from the date the medication error is discovered. All medication errors
20 discovered shall be subject to a quality assurance review.

21 (e) The primary purpose of the quality assurance review shall be to advance error
22 prevention by analyzing, individually and collectively, investigative and other pertinent data
23 collected in response to a medication error to assess the cause and any contributing factors such
24 as system or process failures. A record of the quality assurance review shall be immediately
25 retrievable in the pharmacy..."

26 ///

27 ///

28 ///

1 12. Title 16 CCR section 1714 states in pertinent part:

2 ...

3 (b) Each pharmacy licensed by the board shall maintain its facilities, space, fixtures, and
4 equipment so that drugs are safely and properly prepared, maintained, secured and distributed.
5 The pharmacy shall be of sufficient size and unobstructed area to accommodate the safe practice
6 of pharmacy.

7 (c) The pharmacy and fixtures and equipment shall be maintained in a clean and orderly
8 condition..."

9 13. Title 16 CCR section 1715 states in pertinent part:

10 "(a) The pharmacist-in-charge of each pharmacy as defined under section 4029 or section
11 4037 of the Business and Professions Code shall complete a self-assessment of the pharmacy's
12 compliance with federal and state pharmacy law. The assessment shall be performed before July 1
13 of every odd-numbered year. The primary purpose of the self-assessment is to promote
14 compliance through self-examination and education..."

15 14. Title 16 CCR section 1718 states:

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

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

21 15. Title 21 CFR section 1304.4 states in pertinent part:

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

26 ...

27 (h) Each registered pharmacy shall maintain the inventories and records of controlled
28 substances as follows:

1 (1) Inventories and records of all controlled substances listed in Schedule I and II shall be
2 maintained separately from all other records of the pharmacy...”

3 16. Title 21 CFR section 1304.11 states in pertinent part:

4 ...

5 “(c) Biennial inventory date. After the initial inventory is taken, the registrant shall take a
6 new inventory of all stocks of controlled substances on hand at least every two years. The
7 biennial inventory may be taken on any date which is within two years of the previous biennial
8 inventory date...”

9 17. Title 21 CFR section 1305.13 states in pertinent part:

10 “(a) A purchaser must submit Copy 1 and Copy 2 of the DEA Form 222 to the supplier and
11 retain Copy 3 in the purchaser's files.

12 ...

13 (e) The purchaser must record on Copy 3 of the DEA Form 222 the number of commercial
14 or bulk containers furnished on each item and the dates on which the containers are received by
15 the purchaser...”

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

20 **JANUARY 13, 2011 PHARMACY INSPECTION**

21 19. On January 13, 2011, a California Board of Pharmacy Inspector conducted a
22 pharmacy inspection of Respondent Westside Pharmacy, 320 Fresno Street, Fresno California.
23 The inspection was prompted by a complaint of a medication error incident.

24 20. During the inspection, a notice of noncompliance was issued for a number of
25 violations of pharmacy laws. The violations that were observed are as follows:

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FIRST CAUSE FOR DISCIPLINE

(Failure to maintain current self-assessment)

21. Respondents are subject to disciplinary action under section 4301(o) by and through their violation of CCR section 1715(a) for failure to complete a self-assessment of the pharmacy's compliance with federal and state pharmacy law, in that on January 13, 2011, respondents did not have in their possession a self-assessment from the 2009 period.

SECOND CAUSE FOR DISCIPLINE

(Operational standards)

22. Respondents are subject to disciplinary action under section 4301(o) by and through their violation of CCR section 1714 (b) and (c) for failure to keep the facilities so that drugs are safely and properly prepared, maintained, secured and distributed and that the pharmacy be kept in a clean and orderly condition, in that on January 13, 2011, during an inspection of the licensed premises, the pharmacy had prescription medications scattered on the filling counter in bottle lids, and in plastic containers throughout the rest of the pharmacy. The pharmacy was dirty. There were open food items in the refrigerator along with prescription medications.

THIRD CAUSE FOR DISCIPLINE

(Failure to maintain current inventory)

23. Respondents are subject to disciplinary action under section 4301(o) by and through their violation of CCR section 1718 for failure to keep complete accountability for all dangerous drugs, in that on January 13, 2011, during an inspection of the licensed premises, the pharmacy had prescription medications scattered on the filling counter in bottle lids, and in plastic containers throughout the rest of the pharmacy. The medications were not labeled or separated in any fashion.

FOURTH CAUSE FOR DISCIPLINE

(Failure to maintain records for inspection)

24. Respondents are subject to disciplinary action under Code section 4301(j) by and through their violation of Code section 4081(a) for failure to maintain all records of acquisition, or disposition of dangerous drugs open to inspection during business hours, in that on January 13,

1 2011, during an inspection of the licensed premises, the pharmacy did not have records of
2 acquisition and disposition for the loose tablets and capsules scattered throughout the pharmacy.

3 **FIFTH CAUSE FOR DISCIPLINE**

4 **(Failure to maintain DEA inventory)**

5 25. Respondents are subject to disciplinary action under section 4301(o) by and through
6 their violation of CFR section 1304.11(c) for failure to take a new inventory of all stocks of
7 controlled substances at least every two years, in that on January 13, 2011, during an inspection
8 of the licensed premises, the pharmacy did not have a new DEA inventory taken in the last two
9 years.

10 **SIXTH CAUSE FOR DISCIPLINE**

11 **(Failure to maintain separate records for schedule II drugs)**

12 26. Respondents are subject to disciplinary action under section 4301(o) by and through
13 their violation of CFR section 1304.04(h)(1) for failure to separately maintain records for
14 schedule II drugs, in that on January 13, 2011, during an inspection of the licensed premises, the
15 pharmacy did not have Schedule II invoices or DEA 222's filed separately as required.

16 **SEVENTH CAUSE FOR DISCIPLINE**

17 **(DEA form 222 not properly endorsed)**

18 27. Respondents are subject to disciplinary action under section 4301(o) by and through
19 their violation of CFR section 1305.13(e) for failure to record on copy 3 of the DEA form 222 the
20 number of commercial or bulk containers furnished on each item and the dates on which the
21 containers were received by the purchaser, in that during the January 13, 2011 inspection, it was
22 discovered that on April 15, 2010 respondents did not complete the DEA form 222 as required.

23 **EIGHTH CAUSE FOR DISCIPLINE**

24 **(Failure to complete quality assurance review of medication error incident)**

25 28. Respondents are subject to disciplinary action under section 4301(o) by and through
26 their violation of CCR 1711(d) and (e) for failure to complete a quality assurance review of a
27 medication error, in that on or about October 20, 2010, Respondents filled a prescription for
28 Benazepril for patient R.Y., who subsequently went to the emergency room for bruising. At that

1 time the Physician discovered that the bottle labeled as Benazepril actually contained Warfarin
2 5mg (an anti-coagulant). The physician immediately contacted respondents as well as R.Y. to
3 inform them of the error. During the inspection of respondent pharmacy on January 13, 2011, a
4 quality assurance review of the incident was not immediately retrievable.

5 **APRIL 4, 2012 PHARMACY INSPECTION**

6 29. On April 4, 2012, a California Board of Pharmacy Inspector conducted a call back
7 pharmacy inspection of Respondent Westside Pharmacy, 320 Fresno Street, Fresno California.
8 The inspection was conducted in order to judge the pharmacy's compliance with the January 13,
9 2011 notice of noncompliance.

10 30. During the inspection, Respondent Whisenhunt asserted that he did not remember the
11 prior pharmacy inspection of January 13, 2011. A number of continuing violations of pharmacy
12 laws were observed as follows:

13 **NINTH CAUSE FOR DISCIPLINE**

14 **(Failure to maintain current self-assessment)**

15 31. Respondents are subject to disciplinary action under section 4301(o) by and through
16 their violation of CCR section 1715(a) for failure to complete a self-assessment of the pharmacy's
17 compliance with federal and state pharmacy law, in that on April 4, 2012, respondents did not
18 have in their possession a self-assessment from the 2009 or 2011 period.

19 **TENTH CAUSE FOR DISCIPLINE**

20 **(Operational standards)**

21 32. Respondents are subject to disciplinary action under section 4301(o) by and through
22 their violation of CCR section 1714 (b) and (c) for failure to keep the facilities so that drugs are
23 safely and properly prepared, maintained, secured and distributed and that the pharmacy be kept
24 in a clean and orderly condition, in that on April 4, 2012, during a call back inspection of the
25 licensed premises, the pharmacy had prescription medications scattered on the filling counter in
26 unmarked bottles and plastic containers. The pharmacy was disorganized and dirty. There were
27 open food items in the refrigerator along with prescription medications.

28

1 **ELEVENTH CAUSE FOR DISCIPLINE**

2 **(Failure to maintain current inventory)**

3 33. Respondents are subject to disciplinary action under section 4301(o) by and through
4 their violation of CCR section 1718 for failure to take a new inventory of all stocks of controlled
5 substances at least every two years, in that on April 4, 2012, during a call back inspection of the
6 licensed premises, the pharmacy did not have the inventory for the current period.

7 **TWELFTH CAUSE FOR DISCIPLINE**

8 **(Failure to maintain records for inspection)**

9 34. Respondents are subject to disciplinary action under Code section 4301(j) by and
10 through their violation of Code section 4081(a) for failure to maintain all records of acquisition, or
11 disposition of dangerous drugs open to inspection during business hours, in that on April 4, 2012,
12 during a call back inspection of the licensed premises, the pharmacy did not have records of
13 acquisition and disposition for the loose tablets and capsules scattered throughout the pharmacy.

14 **THIRTEENTH CAUSE FOR DISCIPLINE**

15 **(Failure to maintain DEA inventory)**

16 35. Respondents are subject to disciplinary action under section 4301(o) by and through
17 their violation of CFR section 1304.11(c) for failure to take a new inventory of all stocks of
18 controlled substances at least every two years, in that on April 4, 2012, during a call back
19 inspection of the licensed premises, the pharmacy did not have a new DEA inventory taken in the
20 last two years.

21 **FOURTEENTH CAUSE FOR DISCIPLINE**

22 **(Failure to maintain separate records for schedule II drugs)**

23 36. Respondents are subject to disciplinary action under section 4301(o) by and through
24 their violation of CFR section 1304.04(h)(1) for failure to separately maintain records for
25 schedule II drugs, in that on April 4, 2013, during a call back inspection of the licensed premises,
26 the pharmacy did not have Schedule II invoices or DEA 222's filed separately as required.

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FIFTEENTH CAUSE FOR DISCIPLINE

(DEA form 222 not properly endorsed)

37. Respondents are subject to disciplinary action under section 4301(o) by and through their violation of CFR section 1305.13(e) for failure to record on copy 3 of the DEA form 222 the number of commercial or bulk containers furnished on each item and the dates on which the containers were received by the purchaser, in that during the April 4, 2012 call back inspection, there were no DEA form 222's on file at all. Therefore, respondents did not complete the DEA form 222's as required.

SIXTEENTH CAUSE FOR DISCIPLINE

(Notice to Consumers posters not posted)

38. Respondents are subject to disciplinary action under section 4301(o) by and through their violation of CCR 1707.6 for failure to post the required notices in the pharmacy, in that on or about January 13, 2011 and April 4, 2012, during inspections of the pharmacy, the respondents did not have the posters displayed as required.

SEVENTEENTH CAUSE FOR DISCIPLINE

(Failure to review drug therapy and patient medication profile prior to delivery)

39. Respondents are subject to disciplinary action under section 4301(o) by and through their violation of CCR 1707.3 for failure to review patients drug therapy and medication record before each prescription drug is delivered, in that on or about April 4, 2012, during the call back inspection of the pharmacy, respondent Whisenhunt was observed, while working as pharmacist-in-charge and dispensing prescriptions, to not refer to the pharmacy computer at any time to review any consumers' drug profile. Respondent Whisenhunt further admitted to the inspector that he did not do so.

EIGHTEENTH CAUSE FOR DISCIPLINE

(Drugs lacking in quality and strength)

40. Respondents are subject to disciplinary action under section 4301(o) by and through their violation of section 4342(a) for keeping outdated prescription medications in the active stock of the pharmacy available for dispensing, in that on or about April 4, 2012, during the call back

1 inspection of the pharmacy, outdated prescription medications were found in the active stock of
2 the pharmacy available for dispensing.

3 **DISCIPLINE CONSIDERATIONS**

4 41. On July 19, 2006 an inspection was conducted of respondents' licensed premises by a
5 pharmacy board inspector. The inspection resulted in the issuance of correction orders for many
6 of the same violations alleged above, to wit: B&P section 4081, CCR sections 1711, 1715, and
7 CFR sections 1304.04, 1304.11, and 1305.09.

8 **PRAYER**

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

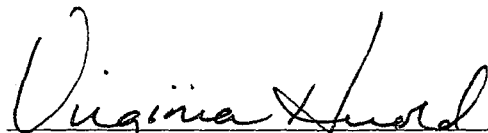
11 1. Revoking or suspending Original Permit Number PHY 15178, issued to Westside
12 Pharmacy ;

13 2. Revoking or suspending Pharmacist license Number RPH 26308, issued to Willie
14 James Whisenhunt.;

15 3. Ordering Westside Pharmacy and Willie James Whisenhunt to pay the Board of
16 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to
17 Business and Professions Code section 125.3;

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

19
20
21 DATED: 4/28/13


22 VIRGINIA HEROLD
23 Executive Officer
24 Board of Pharmacy
25 Department of Consumer Affairs
26 State of California
27 Complainant

26 SA2012107229
27 accusation.rtf
28