

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

In the Matter of the Accusation Against:

Case No. 4397

RITE AID 5985

1029 E. Capitol Expressway
San Jose, CA 95121

Original Permit No. PHY 42795

And

RITE AID 5945

2021 Solano Avenue
Vallejo, CA 94590-6456

Original Permit No. PHY 42814

Respondents.

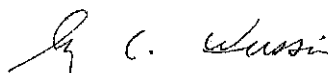
DECISION AND ORDER

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 June 4, 2014.

It is so ORDERED on May 28, 2014.

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 FRANK H. PACOE
Supervising Deputy Attorney General
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Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 4397

13 **RITE AID 5985**
14 **1029 E. Capitol Expressway**
15 **San Jose, CA 95121**

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

16 **Original Permit No. PHY 42795**

17 **And**

18 **RITE AID 5945**
19 **2021 Solano Avenue**
20 **Vallejo, CA 94590-6456**

21 **Original Permit No. PHY 42814**

22 Respondents.

23 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
24 entitled proceedings that the following matters are true:

25 **PARTIES**

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

2. Respondents Rite Aid 5985 and Rite Aid 5945 are represented in this proceeding by

1 attorney Jonathan Klein, whose address is: Kelly, Hockel & Klein, 44 Montgomery Street, Suite
2 1500, San Francisco, CA, 94104.

3 3. On or about February 21, 1997, the Board of Pharmacy issued Original Permit
4 Number PHY 42795 to Rite Aid 5985 (hereinafter "Respondent Rite Aid 5985"). The Original
5 Permit was in full force and effect at all times relevant to the charges brought herein and will
6 expire on April 1, 2014, unless renewed.

7 4. On or about February 21, 1997, the Board of Pharmacy issued Original Permit
8 Number PHY 42814 to Rite Aid 5945 (hereinafter "Respondent Rite Aid 5945"). The Original
9 Permit was in full force and effect at all times relevant to the charges brought herein and will
10 expire on April 1, 2014, unless renewed.

11 JURISDICTION

12 5. Accusation No. 4397 was filed before the Board of Pharmacy (Board), Department of
13 Consumer Affairs, and is currently pending against Respondents. The Accusation and all other
14 statutorily required documents were properly served on Respondents on July 25, 2013.
15 Respondents timely filed their joint Notice of Defense contesting the Accusation.

16 6. A copy of Accusation No. 4397 is attached as exhibit A and incorporated herein by
17 reference.

18 ADVISEMENT AND WAIVERS

19 7. Respondents have carefully read, fully discussed with counsel, and understand the
20 charges and allegations in Accusation No. 4397. Respondents have also carefully read, fully
21 discussed with counsel, and understand the effects of this Stipulated Settlement and Disciplinary
22 Order.

23 8. Both Respondents are fully aware of their legal rights in this matter, including the
24 right to a hearing on the charges and allegations in the Accusation; the right to be represented by
25 counsel at their own expense; the right to confront and cross-examine the witnesses against them;
26 the right to present evidence and to testify on their own behalf; the right to the issuance of
27 subpoenas to compel the attendance of witnesses and the production of documents; the right to
28 reconsideration and court review of an adverse decision; and all other rights accorded by the

1 California Administrative Procedure Act and other applicable laws.

2 9. Respondents voluntarily, knowingly, and intelligently waive and give up each and
3 every right set forth above.

4 **CULPABILITY**

5 10. Respondents understand that the charges and allegations in Accusation Number 4397,
6 if proven at a hearing, constitute cause for imposing discipline upon their Original Permits.

7 11. For the purpose of resolving the Accusation without the expense and uncertainty of
8 further proceedings, Respondents hereby give up their right to contest that cause for discipline
9 exists based on those charges.

10 12. Respondents understand and agree that their Original Permits are subject to discipline
11 and they agree to be bound by the Board's probationary terms as set forth in the Disciplinary
12 Order below.

13 **CONTINGENCY**

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

24 14. The parties understand and agree that Portable Document Format (PDF) and facsimile
25 copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format
26 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

27 15. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
28 integrated writing representing the complete, final, and exclusive embodiment of their agreement.

1 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
2 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
3 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
4 writing executed by an authorized representative of each of the parties.

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

8 **DISCIPLINARY ORDER**

9 IT IS HEREBY ORDERED that Original Permit No. PHY 42795, issued to Rite Aid 5985,
10 and Original Permit Number PHY 42814, issued to Rite Aid 5945, are each revoked. However,
11 each revocation is stayed, and each Respondent is separately placed on probation for one (1) year
12 on the following terms and conditions.

13 **1. Obey All Laws**

14 Respondent shall obey all state and federal laws and regulations.

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

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

27 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 shall state in each report under penalty of perjury whether there has
5 been compliance with all the terms and conditions of probation. Failure to submit timely reports
6 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency
7 in submission of reports as directed may be added to the total period of probation. Moreover, if
8 the final probation report is not made as directed, probation shall be automatically extended until
9 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 shall appear in person for interviews
12 with the board or its designee, at such intervals and locations as are determined by the board or its
13 designee. Failure to appear for any scheduled interview without prior notification to board staff,
14 or failure to appear for two (2) or more scheduled interviews with the board or its designee during
15 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
19 probation. Failure to cooperate shall be considered a violation of probation.

20 **5. Reimbursement of Board Costs**

21 As a condition precedent to successful completion of probation, Respondents shall, jointly
22 and severally, pay to the board its costs of investigation and prosecution in the amount of
23 \$3,878.50. Respondents shall make said payments within 30 days of the effective date of this
24 Decision and Order. Failure to pay costs by the deadline shall be considered a violation of
25 probation.

26 The filing of bankruptcy by one or both Respondents shall not relieve Respondents of their
27 responsibility to reimburse the board its costs of investigation and prosecution.

28 ///

1 **6. Probation Monitoring Costs**

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

6 **7. Status of License**

7 Respondent shall, at all times while on probation, maintain current licensure with the board.
8 If Respondent submits an application to the board, and the application is approved, for a change
9 of location, change of permit or change of ownership, the board shall retain continuing
10 jurisdiction over the license, and Respondent shall remain on probation as determined by the
11 board. Failure to maintain current licensure shall be considered a violation of probation.

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

16 **8. License Surrender While on Probation/Suspension**

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

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

26 Respondent shall also, by the effective date of any decision accepting surrender of license,
27 arrange for the continuation of care for ongoing patients of the pharmacy by, at minimum,
28 providing a written notice to ongoing patients that specifies the anticipated closing date of the

1 pharmacy and that identifies one or more area pharmacies capable of taking up the patients' care,
2 and by cooperating as may be necessary in the transfer of records or prescriptions for ongoing
3 patients. Within five days of its provision to the pharmacy's ongoing patients, Respondent shall
4 provide a copy of the written notice to the board. For the purposes of this provision, "ongoing
5 patients" means those patients for whom the pharmacy has on file a prescription with one or more
6 refills outstanding, or for whom the pharmacy has filled a prescription within the preceding sixty
7 (60) days.

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

11 Respondent further stipulates that it shall reimburse the board for its costs of investigation
12 and prosecution prior to the acceptance of the surrender.

13 **9. Notice to Employees**

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

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

27 **10. Owners and Officers: Knowledge of the Law**

28 Respondent shall provide, within thirty (30) days after the effective date of this decision,

1 signed and dated statements from their owners, including any owner or holder of ten percent
2 (10%) or more of the interest in Respondent or Respondent's stock, and any officer or any
3 regional manager authorized by Respondent, stating under penalty of perjury that said individuals
4 have read and are familiar with state and federal laws and regulations governing the practice of
5 pharmacy. The failure to timely provide said statements under penalty of perjury shall be
6 considered a violation of probation.

7 **11. Posted Notice of Probation**

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

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

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

16 **12. Violation of Probation**

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

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

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13. Completion of Probation

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

14. Community Services Program

During the period of probation, Respondent shall organize, publicize, and provide, at no cost to patients, at least four (4) "brown bag" event days for patients of the pharmacy, each of which shall consist of medication assessments being performed for patients by Respondent's pharmacist(s), and each of which shall take place on a separate day and be offered for at least six (6) hours. Or, in the alternative, Respondent shall organize, publicize, and provide, at no cost to patients, a community service program, in which Respondent shall provide free health care related services to the community or a community or charitable facility or agency for at least 6 hours per day on at least 4 occasions during the period of probation if approved by the Board or its designee. Failure to comply with this provision shall be considered a violation of probation.

ACCEPTANCE

I am authorized to sign this document on behalf of Rite Aid 5985, Original Permit No. PHY 42795. I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Jonathan Klein. I understand the stipulation and the effect it will have on Original Permit No. PHY 42795. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree, on behalf of Rite Aid 5985, to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 4-22-14 M. A. [Signature]
Respondent

I am authorized to sign this document on behalf of Rite Aid 5945, Original Permit No. PHY 42814. I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Jonathan Klein. I understand the stipulation and the effect it will have on Original Permit No. PHY 42814. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree, on behalf of Rite Aid

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5945, to be bound by the Decision and Order of the Board of Pharmacy.

DATED:

4-22-14 M. A. Polgenchi

Respondent

I have read and fully discussed with Respondents Rite Aid 5985 and Rite Aid 5945 the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED:

Jonathan Klein
Attorney for Respondent

ENDORSEMENT

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

Dated:

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General

JONATHAN D. COOPER
Deputy Attorney General
Attorneys for Complainant

1 5945, to be bound by the Decision and Order of the Board of Pharmacy.

2 DATED: _____

3 Respondent

4 I have read and fully discussed with Respondents Rite Aid 5985 and Rite Aid 5945 the
5 terms and conditions and other matters contained in the above Stipulated Settlement and
6 Disciplinary Order. I approve its form and content.

7 DATED: 4/11/14 _____

8 Jonathan Klein
9 Attorney for Respondent

ENDORSEMENT

10 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
11 submitted for consideration by the Board of Pharmacy.

12 Dated:

Respectfully submitted,

13 KAMALA D. HARRIS
14 Attorney General of California
15 FRANK H. PACOE
16 Supervising Deputy Attorney General

17 JONATHAN D. COOPER
18 Deputy Attorney General
19 *Attorneys for Complainant*

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1 5945, to be bound by the Decision and Order of the Board of Pharmacy.

2 DATED: _____

3 Respondent

4 I have read and fully discussed with Respondents Rite Aid 5985 and Rite Aid 5945 the
5 terms and conditions and other matters contained in the above Stipulated Settlement and
6 Disciplinary Order. I approve its form and content.

7 DATED: 4/11/14 _____

Jonathan Klein
Attorney for Respondent

9 **ENDORSEMENT**

10 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
11 submitted for consideration by the Board of Pharmacy.

12
13 Dated: 6/28/14

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General

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JONATHAN D. COOPER
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 4397

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JONATHAN D. COOPER
Deputy Attorney General
4 State Bar No. 141461
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A C C U S A T I O N

14 **Original Permit No. PHY 42795**

15 **And**

16 **RITE AID 5945**
17 **2021 Solano Avenue**
Vallejo, CA 94590-6456

18 **Original Permit No. PHY 42814**

19 Respondent.

20
21 Complainant alleges:

22 **PARTIES**

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

25 2. On or about February 21, 1997, the Board of Pharmacy issued Original Permit
26 Number PHY 42795 to Rite Aid 5985 (hereinafter "Respondent Rite Aid 5985"). The Original
27 Permit was in full force and effect at all times relevant to the charges brought herein and will
28 expire on April 1, 2014, unless renewed.

1 3. On or about February 21, 1997, the Board of Pharmacy issued Original Permit
2 Number PHY 42814 to Rite Aid 5945 (hereinafter "Respondent Rite Aid 5945"). The Original
3 Permit was in full force and effect at all times relevant to the charges brought herein and will
4 expire on April 1, 2014, unless renewed.

5 **JURISDICTION AND GENERAL AUTHORITY**

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

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

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

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

14 (1) Suspending judgment.

15 (2) Placing him or her upon probation.

16 (3) Suspending his or her right to practice for a period not exceeding one year.

17 (4) Revoking his or her license.

18 (5) Taking any other action in relation to disciplining him or her as the board in its
19 discretion may deem proper.

20 ...
21 6. Section 4300.1 of the Code states:

22 The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation
23 of law or by order or decision of the board or a court of law, the placement of a license on a
24 retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of
25 jurisdiction to commence or proceed with any investigation of, or action or disciplinary
26 proceeding against, the licensee or to render a decision suspending or revoking the license.

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1 STATUTES AND REGULATIONS

2 7. Section 4081 of the Code states, in pertinent part:

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

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

15 (c) The pharmacist-in-charge or representative-in-charge shall not be criminally responsible
16 for acts of the owner, officer, partner, or employee that violate this section and of which the
17 pharmacist-in-charge or representative-in-charge had no knowledge, or in which he or she did not
18 knowingly participate.

19 8. Section 4105 of the Code states:

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

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

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

28 (d) Any records that are maintained electronically shall be maintained so that the

1 pharmacist-in-charge, the pharmacist on duty if the pharmacist-in-charge is not on duty, or, in the
2 case of a veterinary food-animal drug retailer or wholesaler, the designated representative on
3 duty, shall, at all times during which the licensed premises are open for business, be able to
4 produce a hard copy and electronic copy of all records of acquisition or disposition or other drug
5 or dispensing-related records maintained electronically.

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

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

11 9. Section 4301 of the Code states, in pertinent part:

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

15 ...
16 (j) The violation of any of the statutes of this state, or any other state, or of the United
17 States regulating controlled substances and dangerous drugs.

18 ...
19 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
20 violation of or conspiring to violate any provision or term of this chapter or of the applicable
21 federal and state laws and regulations governing pharmacy, including regulations established by
22 the board or by any other state or federal regulatory agency.

23 10. Section 4306 of the Code states:

24 It shall constitute unprofessional conduct and a violation of this chapter for any person
25 licensed under this chapter to violate, attempt to violate, directly or indirectly, or assist in or abet
26 the violation of, or conspire to violate, any provision or term of this article, the Moscone-Knox
27 Professional Corporation Act, or any regulations duly adopted under those laws.

28 11. Section 4333 of the Code states, in pertinent part, that all prescriptions filled by a

1 pharmacy and all other records required by Section 4081 shall be maintained on the premises and
2 available for inspection by authorized officers of the law for a period of at least three years. In
3 cases where the pharmacy discontinues business, these records shall be maintained in a
4 board-licensed facility for at least three years.

5 12. California Civil Code, section 56.10, provides that no provider of health care may
6 disclose medical information regarding a patient without authorization from the patient except
7 under specified circumstances.

8 13. California Civil Code, section 56.101, provides that health care providers who
9 dispose of medical information shall do so in a manner that preserves the confidentiality of the
10 information contained therein.

11 14. Code of Federal Regulations, Title 45, Parts 164 et seq., provides that no health care
12 provider may disclose medical information regarding a patient without authorization from the
13 patient except under specified circumstances.

14 15. Code of Federal Regulations, Title 45, Part 164.530(c)(1), provides that health care
15 providers shall have and enforce safeguards to protect the privacy of medical information.

16 16. California Code of Regulations, title 16, section 1764, states:

17 No pharmacist shall exhibit, discuss, or reveal the contents of any prescription, the
18 therapeutic effect thereof, the nature, extent, or degree of illness suffered by any patient or any
19 medical information furnished by the prescriber with any person other than the patient or his or
20 her authorized representative, the prescriber or other licensed practitioner then caring for the
21 patient, another licensed pharmacist serving the patient, or a person duly authorized by law to
22 receive such information.

23 17. California Code of Regulations, title 16, section 1770, states:

24 For the purpose of denial, suspension, or revocation of a personal or facility license
25 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
26 crime or act shall be considered substantially related to the qualifications, functions or duties of a
27 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
28 licensee or registrant to perform the functions authorized by his license or registration in a manner

1 consistent with the public health, safety, or welfare.

2 **COSTS**

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

7 **FACTUAL SUMMARY**

8 **Rite Aid 5985:**

9 19. On or about April, 2011, Respondent Rite Aid 5985 relocated its pharmacy operation
10 from its prior location in San Jose to a new location in San Jose. When it did so, Respondent Rite
11 Aid 5985 failed to relocate, and left behind in its old premises, an unlocked filing cabinet which
12 contained a large amount of original prescription documents regarding both controlled and non-
13 controlled substances. The documents pertained to approximately 52,700 prescriptions, dating
14 from October, 2009 through April, 2011. The contents of the filing cabinet were placed in a
15 dumpster.

16 **Rite Aid 5945:**

17 20. On or about August, 2011, Respondent Rite Aid 5945 discovered that it was missing
18 several boxes of original prescription records regarding both controlled and non-controlled
19 substances. The documents pertained to prescriptions dating from July, 2007, to October, 2010.
20 The records appear to have been misplaced when Respondent Rite Aid 5945 relocated from its
21 prior location in Vallejo to its new Vallejo location.

22 **FIRST CAUSE FOR DISCIPLINE (Rite Aid 5985)**

23 (Unauthorized Disclosure Of Prescription Information)

24 21. Respondent Rite Aid 5985 is subject to disciplinary action under section 4301,
25 subsections (j) and (o) and 4306 of the Code, and under California Code of Regulations, Title 16,
26 section 1764, and pursuant to California Civil Code section 56.10, and pursuant to Code of
27 Federal Regulations, Title 45, Part 164, et seq., in that it disclosed patient prescription records
28 without patient authorization, as set forth above in paragraph 19.

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SECOND CAUSE FOR DISCIPLINE (Rite Aid 5985)

(Failure to Properly Maintain and/or Dispose of Pharmacy Records)

22. Respondent Rite Aid 5985 is subject to disciplinary action under section 4301, subsections (j) and (o) and 4306 of the Code, and pursuant to California Civil Code section 56.101, and pursuant to Code of Federal Regulations, Title 45, Part 164.530(c)(1), in that it failed to dispose of pharmacy records in a manner that would preserve patient confidentiality, as set forth above in paragraph 19.

THIRD CAUSE FOR DISCIPLINE (Rite Aid 5945)

(Failure to Properly Maintain and/or Dispose of Pharmacy Records)

23. Respondent Rite Aid 5945 is subject to disciplinary action under section 4301, subsections (j) and (o) and 4306 of the Code, and pursuant to California Civil Code section 56.101, and pursuant to Code of Federal Regulations, Title 45, Part 164.530(c)(1), in that it failed to maintain and/or dispose of pharmacy records in a manner that would preserve patient confidentiality, as set forth above in paragraph 20.

DISCIPLINE CONSIDERATIONS

24. To determine the degree of discipline, if any, to be imposed on Respondent Rite Aid 5985, Complainant alleges that on or about August 9, 2007, in a prior action entitled *In the Matter of the Citation and Fine Against Rite Aid #5985, PHY 42795*, before the Board of Pharmacy, Case Number CI 2006 32770, Respondent Rite Aid 5985 was cited for two separate violations of California Code of Regulations, Title 16, section 1707.2 (failure to provide patient consultation).

25. To determine the degree of discipline, if any, to be imposed on Respondent Rite Aid 5945, Complainant alleges that on or about May 28, 2009, in a prior action entitled *In the Matter of the Citation Against Rite Aid 5945, PHY 42814*, before the Board of Pharmacy, Case Number CI 2008 38144, Respondent Rite Aid 5945 was cited for violation of Business and Professions Code sections 4077(a) and 4076(a)(4) (violation of labeling requirements).

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PRAYER

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

1. Revoking or suspending Original Permit Number PHY 42795, issued to Rite Aid 5985;
2. Revoking or suspending Original Permit Number PHY 42814, issued to Rite Aid 5945;
3. Ordering Respondents 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;
4. Taking such other and further action as deemed necessary and proper.

DATED: 7/20/13

Virginia Herold

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