

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

In the Matter of the Accusation Against:

**DAVID ANTHONY VALENCIA,  
A.K.A. DAVID VALENCIA,  
505 Alameda Drive  
Livermore, CA 94551  
Pharmacist License No. RPH 30915**

**BACON EAST PHARMACY  
2425 East Street, Suite 5  
Concord, CA 95420  
Pharmacy Permit No. PHY 50632**

**and**

**BOIES MEDICAL CENTER PHARMACY  
828 Delbon Avenue  
Turlock, CA 95382  
Pharmacy Permit No. PHY 51468**

Respondents.

Case No. 5221

OAH No. 2015010579

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER AS TO  
RESPONDENT DAVID ANTHONY  
VALENCIA ONLY**

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is here by adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on March 17, 2016.

It is so ORDERED on February 16, 2016.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.  
Board President

1 KAMALA D. HARRIS  
Attorney General of California  
2 DIANN SOKOLOFF  
Supervising Deputy Attorney General  
3 CARTER OTT  
Deputy Attorney General  
4 State Bar No. 221660  
1515 Clay Street, 20th Floor  
5 P.O. Box 70550  
Oakland, CA 94612-0550  
6 Telephone: (510) 622-2219  
Facsimile: (510) 622-2270  
7 E-mail: Carter.Ott@doj.ca.gov  
*Attorneys for Complainant*

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

Case No. 5221

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

OAH No. 2015010579

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

**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER AS TO**  
**RESPONDENT DAVID ANTHONY**  
**VALENCIA ONLY**

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

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

20 **and**

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

23 **Pharmacy Permit No. PHY 51468**

24 Respondents.

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

3 PARTIES

4 1. Virginia Herold ("Complainant") is the Executive Officer of the Board of Pharmacy.  
5 She brought this action solely in her official capacity and is represented in this matter by Kamala  
6 D. Harris, Attorney General of the State of California, by Carter Ott, Deputy Attorney General.

7 2. David Anthony Valencia, also known as David Valencia, is represented in this  
8 proceeding by Jeremy A. Meier, whose address is Greenberg Traurig LLP, 1201 K Street, Suite  
9 1100, Sacramento, CA 95814.

10 3. On or about July 27, 1977, the Board of Pharmacy issued Pharmacist License  
11 Number RPH 30915 to Respondent David Anthony Valencia (Respondent). The Pharmacist  
12 License was in full force and effect at all times relevant to the charges brought herein and will  
13 expire on November 30, 2017, unless renewed. Respondent was the Pharmacist-in-Charge at  
14 Bacon East Pharmacy from March 11, 2013 to approximately April 16, 2015. Respondent has  
15 been a staff pharmacist at Bacon East Pharmacy from approximately April 16, 2015 to the  
16 present.

17 JURISDICTION

18 4. Accusation No. 5221 was filed before the Board of Pharmacy (Board), Department of  
19 Consumer Affairs, and that pleading and all other statutorily required documents were properly  
20 served on Respondent on October 3, 2014. Respondent timely filed his Notice of Defense  
21 contesting the Accusation. On October 13, 2015, a First Amended Accusation was filed and  
22 served on Respondent. That pleading is currently pending against Respondent. A copy of First  
23 Amended Accusation No. 5221 is attached as Exhibit A and incorporated by reference.

24 ADVISEMENT AND WAIVERS

25 5. Respondent has carefully read, fully discussed with counsel, and understands the  
26 charges and allegations in First Amended Accusation No. 5221. Respondent has also carefully  
27 read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and  
28 Disciplinary Order.

1           6.     Respondent is fully aware of his legal rights in this matter, including the right to a  
2 hearing on the charges and allegations in the First Amended Accusation; the right to be  
3 represented by counsel at his own expense; the right to confront and cross-examine the witnesses  
4 against him; the right to present evidence and to testify on his own behalf; the right to the  
5 issuance of subpoenas to compel the attendance of witnesses and the production of documents;  
6 the right to reconsideration and court review of an adverse decision; and all other rights accorded  
7 by the California Administrative Procedure Act and other applicable laws.

8           7.     Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
9 every right set forth above.

#### 10                                   CULPABILITY

11           8.     Respondent understands and agrees that the charges and allegations in the First  
12 Amended Accusation No. 5221, if proven at a hearing, constitute cause for imposing discipline  
13 upon his Pharmacist License.

14           9.     For the purpose of resolving the First Amended Accusation without the expense and  
15 uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could  
16 establish a factual basis for the charges in the First Amended Accusation, and that Respondent  
17 hereby gives up his right to contest those charges.

18           10.    Respondent agrees that his Pharmacist License is subject to discipline and he agrees  
19 to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

#### 20                                   CIRCUMSTANCES IN MITIGATION

21           11.    Respondent has never been the subject of any disciplinary action. He is admitting  
22 responsibility at an early stage in the proceedings.

#### 23                                   CONTINGENCY

24           12.    This stipulation shall be subject to approval by the Board. Respondent understands  
25 and agrees that counsel for Complainant and the staff of the Board may communicate directly  
26 with the Board regarding this stipulation and settlement, without notice to or participation by  
27 Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he  
28 may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board

1 considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order,  
2 the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this  
3 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not  
4 be disqualified from further action by having considered this matter.

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

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

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

17 **DISCIPLINARY ORDER**

18 IT IS HEREBY ORDERED that Pharmacist License No. RPH 30915 issued to Respondent  
19 is revoked. However, the revocation is stayed and Respondent is placed on probation for two (2)  
20 years on the following terms and conditions.

21 **1. Obey All Laws**

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

23 Respondent shall report any of the following occurrences to the Board, in writing, within  
24 seventy-two (72) hours of such occurrence:

- 25 • an arrest or issuance of a criminal complaint for violation of any provision of the  
26 Pharmacy Law, state and federal food and drug laws, or state and federal controlled  
27 substances laws.

- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment.
- a conviction of any crime.
- discipline, citation, or other administrative action filed by any state or federal agency which involves Respondent's license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

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

## **2. Report to the Board**

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

## **3. Interview with the Board**

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

## **4. Cooperate with Board Staff**

Respondent shall cooperate with the Board's inspection program and with the Board's monitoring and investigation of Respondent's compliance with the terms and conditions of his probation. Failure to cooperate shall be considered a violation of probation.

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1           **5. Continuing Education**

2           Respondent shall provide evidence of efforts to maintain skill and knowledge as a  
3 pharmacist as directed by the Board or its designee.

4           **6. Notice to Employers**

5           During the period of probation, Respondent shall notify all present and prospective  
6 employers of the decision in case number 5221 and the terms, conditions and restrictions imposed  
7 on Respondent by the decision, as follows:

8           Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of  
9 Respondent undertaking any new employment, Respondent shall cause his direct supervisor,  
10 pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's  
11 tenure of employment) and owner to report to the Board in writing acknowledging that the listed  
12 individual(s) has/have read the decision in case number 5221, and terms and conditions imposed  
13 thereby. It shall be Respondent's responsibility to ensure that his employer(s) and/or  
14 supervisor(s) submit timely acknowledgment(s) to the Board.

15           If Respondent works for or is employed by or through a pharmacy employment service,  
16 Respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity  
17 licensed by the Board of the terms and conditions of the decision in case number 5221 in advance  
18 of the Respondent commencing work at each licensed entity. A record of this notification must  
19 be provided to the Board upon request.

20           Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen  
21 (15) days of Respondent undertaking any new employment by or through a pharmacy  
22 employment service, Respondent shall cause his direct supervisor with the pharmacy employment  
23 service to report to the Board in writing acknowledging that he has read the decision in case  
24 number 5221 and the terms and conditions imposed thereby. It shall be Respondent's  
25 responsibility to ensure that his employer(s) and/or supervisor(s) submit timely  
26 acknowledgment(s) to the Board.

1 Failure to timely notify present or prospective employer(s) or to cause that/those  
2 employer(s) to submit timely acknowledgments to the Board shall be considered a violation of  
3 probation.

4 "Employment" within the meaning of this provision shall include any full-time,  
5 part-time, temporary, relief or pharmacy management service as a pharmacist or any  
6 position for which a pharmacist license is a requirement or criterion for employment,  
7 whether the Respondent is an employee, independent contractor or volunteer.

8 **7. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as**  
9 **Designated Representative-in-Charge, or Serving as a Consultant**

10 During the period of probation, Respondent shall not supervise any intern pharmacist, be  
11 the pharmacist-in-charge or designated representative-in-charge of any entity licensed by the  
12 Board nor serve as a consultant unless otherwise specified in this order. Assumption of any such  
13 unauthorized supervision responsibilities shall be considered a violation of probation.

14 **8. Reimbursement of Board Costs**

15 As a condition precedent to successful completion of probation, Respondent shall pay to the  
16 Board its costs of investigation and prosecution in the amount of \$2,500.

17 There shall be no deviation from this schedule absent prior written approval by the Board or  
18 its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of  
19 probation.

20 The filing of bankruptcy by Respondent shall not relieve Respondent of his responsibility to  
21 reimburse the Board its costs of investigation and prosecution.

22 **9. Probation Monitoring Costs**

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

27 ////

28 ////



1           **10. Status of License**

2           Respondent shall, at all times while on probation, maintain an active, current license with  
3 the Board, including any period during which suspension or probation is tolled. Failure to  
4 maintain an active, current license shall be considered a violation of probation.

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

9           **11. License Surrender While on Probation**

10          Following the effective date of this decision, should Respondent cease practice due to  
11 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,  
12 Respondent may tender his license to the Board for surrender. The Board or its designee shall  
13 have the discretion whether to grant the request for surrender or take any other action it deems  
14 appropriate and reasonable. Upon formal acceptance of the surrender of the license, Respondent  
15 will no longer be subject to the terms and conditions of probation. This surrender constitutes a  
16 record of discipline and shall become a part of the Respondent's license history with the Board.

17          Upon acceptance of the surrender, Respondent shall relinquish his pocket and wall license  
18 to the Board within ten (10) days of notification by the Board that the surrender is accepted.  
19 Respondent may not reapply for any license from the Board for three (3) years from the effective  
20 date of the surrender. Respondent shall meet all requirements applicable to the license sought as  
21 of the date the application for that license is submitted to the Board, including any outstanding  
22 costs.

23           **12. Notification of a Change in Name, Residence Address, Mailing Address or**  
24 **Employment**

25          Respondent shall notify the Board in writing within ten (10) days of any change of  
26 employment. Said notification shall include the reasons for leaving, the address of the new  
27 employer, the name of the supervisor and owner, and the work schedule if known. Respondent  
28

1 shall further notify the Board in writing within ten (10) days of a change in name, residence  
2 address, mailing address, or phone number.

3 Failure to timely notify the Board of any change in employer(s), name(s), address(es), or  
4 phone number(s) shall be considered a violation of probation.

### 5 **13. Tolling of Probation**

6 Respondent shall, at all times while on probation, be employed as a pharmacist in  
7 California for a minimum of forty (40) hours per calendar month. Any month during which this  
8 minimum is not met shall toll the period of probation, i.e., the period of probation shall be  
9 extended by one month for each month during which this minimum is not met. During any such  
10 period of tolling of probation, Respondent must nonetheless comply with all terms and conditions  
11 of probation.

12 Should Respondent, regardless of residency, for any reason (including vacation) cease  
13 practicing as a pharmacist for a minimum of forty (40) hours per calendar month in California,  
14 Respondent must notify the Board in writing within ten (10) days of the cessation of practice, and  
15 must further notify the Board in writing within ten (10) days of the resumption of practice. Any  
16 failure to provide such notification(s) shall be considered a violation of probation.

17 It is a violation of probation for Respondent's probation to remain tolled pursuant to the  
18 provisions of this condition for a total period, counting consecutive and non-consecutive months,  
19 exceeding thirty-six (36) months.

20 "Cessation of practice" means any calendar month during which Respondent is  
21 not practicing as a pharmacist for at least 40 hours, as defined by Business and  
22 Professions Code section 4000 et seq. "Resumption of practice" means any calendar  
23 month during which Respondent is practicing as a pharmacist for at least 40 hours as  
24 a pharmacist as defined by Business and Professions Code section 4000 et seq.

25 Respondent is required to practice as a pharmacist in a licensed pharmacy setting that  
26 dispenses medication for a minimum of one year prior to the completion of probation. After the  
27 first year of probation, the Board or its designee may consider a modification of this requirement.  
28

1 If Respondent fails to comply with this requirement or a subsequent modification thereto, such  
2 failure shall be considered a violation of probation.

3 **14. Violation of Probation**

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

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

16 **15. Completion of Probation**

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

19 **16. Remedial Education**

20 Within thirty (30) days of the effective date of this decision, Respondent shall submit to the  
21 Board or its designee, for prior approval, an appropriate program of remedial education related to  
22 the grounds for discipline. The program of remedial education shall consist of at least six (6)  
23 hours in pharmacy operations and six (6) hours in security, inventory control, which shall be  
24 completed within two (2) years at Respondent's own expense. All remedial education shall be in  
25 addition to, and shall not be credited toward, continuing education (CE) courses used for license  
26 renewal purposes.

27 Failure to timely submit or complete the approved remedial education shall be considered a  
28 violation of probation. The period of probation will be automatically extended until such

1 remedial education is successfully completed and written proof, in a form acceptable to the  
2 Board, is provided to the Board or its designee.

3 Following the completion of each course, the Board or its designee may require the  
4 Respondent, at his own expense, to take an approved examination to test the Respondent's  
5 knowledge of the course. If the Respondent does not achieve a passing score on the examination,  
6 this failure shall be considered a violation of probation. Any such examination failure shall  
7 require Respondent to take another course approved by the Board in the same subject area.

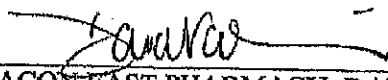
8 **17. No Ownership of Licensed Premises**

9 Respondent shall not own, have any legal or beneficial interest in, or serve as a manager,  
10 administrator, member, officer, director, trustee, associate, or partner of any business, firm,  
11 partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell  
12 or transfer any legal or beneficial interest in any entity licensed by the Board within ninety (90)  
13 days following the effective date of this decision and shall immediately thereafter provide written  
14 proof thereof to the Board. Failure to timely divest any legal or beneficial interest(s) or provide  
15 documentation thereof shall be considered a violation of probation.

16 ACCEPTANCE

17 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
18 discussed it with my attorney, Jeremy A. Meier. I understand the stipulation and the effect it will  
19 have on my Pharmacist License. I enter into this Stipulated Settlement and Disciplinary 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: 1/6/2016

  
24 BACON EAST PHARMACY; DAVID ANTHONY  
25 VALENCIA  
26 Respondent  
27  
28

1 I have read and fully discussed with Respondent the terms and conditions and other matters  
2 contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and  
3 content.

4 DATED: 01/06/2016

  
Jeremy A. Meier  
Attorney for Respondent

7 ENDORSEMENT

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

10 Dated:

Respectfully submitted,

11 KAMALA D. HARRIS  
Attorney General of California  
12 DIANN SOKOLOFF  
Supervising Deputy Attorney General

13  
14 CARTER OTT  
15 Deputy Attorney General  
16 *Attorneys for Complainant*

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1 I have read and fully discussed with Respondent the terms and conditions and other matters  
2 contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and  
3 content.

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

Jeremy A. Meier  
Attorney for Respondent


7 ENDORSEMENT

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

10 Dated: 1/7/16

Respectfully submitted,

11 KAMALA D. HARRIS  
Attorney General of California  
12 DIANN SOKOLOFF  
Supervising Deputy Attorney General

13   
14 CARTER OTT  
15 Deputy Attorney General  
Attorneys for Complainant

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**Exhibit A**

**First Amended Accusation No. 5221**

1 KAMALA D. HARRIS  
Attorney General of California  
2 DIANN SOKOLOFF  
Supervising Deputy Attorney General  
3 CARTER OTT  
Deputy Attorney General  
4 State Bar No. 221660  
1515 Clay Street, 20th Floor  
5 P.O. Box 70550  
Oakland, CA 94612-0550  
6 Telephone: (510) 622-2219  
Facsimile: (510) 622-2270  
7 E-mail: Carter.Ott@doj.ca.gov  
*Attorneys for Complainant*

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

OAH No. 2015010579

**FIRST AMENDED ACCUSATION**

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

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

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

20 **and**

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

23 **Pharmacy Permit No. PHY 51468**

24 **Respondents.**



1 Complainant alleges:

2 PARTIES

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

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

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

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

23 JURISDICTION

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

27 ////

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

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

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

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

13       (1) Suspending judgment.

14       (2) Placing him or her upon probation.

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

16       (4) Revoking his or her license.

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

19       ...

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

25       8.    Section 4300.1 states:

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

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

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

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

13 10. Section 4105 states:

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

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

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

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

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

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

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

14       11. Section 4110 states, in part:

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

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

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

6 ....”

7 12. Section 4301 states, in part:

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

10 ...

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

15 ....”

16 13. Section 4306.5 states:

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

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

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

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

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

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

5       “...

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

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

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

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

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

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

23       “...

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

28       ....”

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

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

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

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

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

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

14 ....”

#### 15 COST RECOVERY

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

#### 19 FIRST CAUSE FOR DISCIPLINE

20 (Failure to Consult)

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

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

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

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

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

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

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

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

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

20  
21 THIRD CAUSE FOR DISCIPLINE  
(Failure to Maintain Records of Acquisition and Disposition)  
(Bus. & Prof. Code §§ 4081, subd. (a); 4105; 4301;  
22 and 4306.5, subds. (a)-(d); and Cal. Code Regs., title 16, § 1718)

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

27 ////

28 ////



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

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

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

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

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

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

26 24. Respondents Valencia, Bacon East Pharmacy, and Boies Medical Center Pharmacy  
27 have subjected their Pharmacist License and Pharmacy Permits, respectively, to disciplinary  
28

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

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

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

10 SIXTH CAUSE FOR DISCIPLINE

11 (Unlicensed Activity)

(Bus. & Prof. Code § 4110, subds. (a) and (b))

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

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

21 PRAYER

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

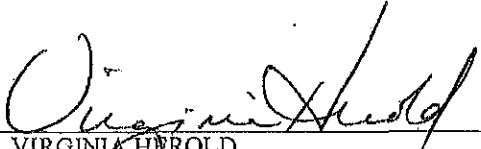
- 24 1. Revoking or suspending Pharmacist License Number RPH 30915, issued to  
25 Respondent David Anthony Valencia;  
26 2. Revoking or suspending Pharmacy Permit Number PHY 50632, issued to Respondent  
27 Bacon East Pharmacy;  
28

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

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

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

7  
8 DATED: 10/2/15

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

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1 KAMALA D. HARRIS  
Attorney General of California  
2 DIANN SOKOLOFF  
Supervising Deputy Attorney General  
3 CARTER OTT  
Deputy Attorney General  
4 State Bar No. 221660  
1515 Clay Street, 20th Floor  
5 P.O. Box 70550  
Oakland, CA 94612-0550  
6 Telephone: (510) 622-2219  
Facsimile: (510) 622-2270  
7 E-mail: Carter.Ott@doj.ca.gov  
*Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5221

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

**ACCUSATION**

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

16 **and**

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

19 **Pharmacy Permit No. PHY 50632**

20 Respondents.

21  
22 Complainant alleges:

23 **PARTIES**

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

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

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

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

#### 8 JURISDICTION

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

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

#### 15 REGULATORY PROVISIONS

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

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

26 ////

27 ////

28 ////

1       7.     Section 4105 of the Code states:

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

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

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

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

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

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

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

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

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

4       . . .

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

9       . . . ."

10      9.     Section 4306.5 of the Code states:

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

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

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

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

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

25      ////

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

4                               **COST RECOVERY**

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

9                               **CAUSES FOR DISCIPLINE**

10                              **FIRST CAUSE FOR DISCIPLINE**

11                                       (Failure to Consult)

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

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

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

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

26       ////

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28       ////

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SECOND CAUSE FOR DISCIPLINE

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

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

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

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

THIRD CAUSE FOR DISCIPLINE

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

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

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

FOURTH CAUSE FOR DISCIPLINE

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

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

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

PRAYER

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

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

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

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

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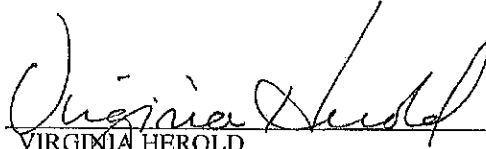
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DATED:

9/25/14



VIRGINIA HEROLD

Executive Officer

Board of Pharmacy

Department of Consumer Affairs

State of California

Complainant

SF2014902527