

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

In the Matter of the Accusation Against:

**OMAC PHARMACY, INC.; ROBERT ERIC
VALUSEK, CEO, TREASURER, CFO, PIC; APRIL
VALUSEK, SECRETARY**

901 W. 7th Street

Oxnard, CA 93030

Pharmacy Permit No. PHY 48314,

and

ROBERT ERIC VALUSEK,

901 W. 7th Street

Oxnard, CA 93030

Pharmacist License No. RPH 55766,

Respondents.

Case No. 5371

OAH No. 2018090493

DECISION AND ORDER

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

This Decision shall become effective at 5:00 p.m. on July 2, 2019.

It is so ORDERED on June 3, 2019.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Victor Law", with a long horizontal flourish extending to the right.

By

Victor Law, R.Ph.
Board President

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2 SHAWN P. COOK
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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. 5371
OAH No. 2018090493

13 **OMAC PHARMACY, INC.; ROBERT**
14 **ERIC VALUSEK, CEO, TREASURER,**
15 **CFO, PIC; APRIL VALUSEK,**
16 **SECRETARY**

901 W. 7th Street
Oxnard, CA 93030
Pharmacy Permit No. PHY 48314,

17 **and**

18 **ROBERT ERIC VALUSEK**

901 W. 7th Street
Oxnard, CA 93030
Pharmacist License No. RPH 55766

STIPULATED SURRENDER OF
LICENSE AND ORDER AS TO ROBERT
ERIC VALUSEK ONLY

19 Respondents.
20

21 IT IS HEREBY STIPULATED AND AGREED by and between Complainant and
22 Respondent Robert Eric Valusek, parties to the above-entitled proceedings, that the following
23 matters are true:

24 **PARTIES**

25 1. Virginia Herold was the Executive Officer of the Board of Pharmacy (Board),
26 Department of Consumer Affairs from the initiation of these proceedings through December 31,
27 2018. She brought this action solely in her official capacity. As of January 1, 2019, Anne
28 Sodergren (Complainant), is the Interim Executive Officer of the Board. She maintains this action

1 solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney
2 General of the State of California, by Matthew A. King, Deputy Attorney General.

3 2. Respondent Robert Eric Valusek ("Respondent Valusek") is represented in this
4 proceeding by Ivan Petrzela of California Pharmacy Lawyers. Respondent's Counsel's address is
5 49 Discovery, Suite 240, Irvine, CA 92618-6713.

6 3. On October 5, 2006, the Board issued Pharmacy Permit No. PHY 48314 to
7 Respondent Omac Pharmacy, Inc. Respondent Omac Pharmacy, Inc.'s chief executive officer,
8 treasurer, chief financial officer, and secretary is April Valusek. The Pharmacy Permit was in full
9 force and effect at all times relevant to the charges brought in Accusation No. 5371 and will
10 expire on October 1, 2019 unless it is renewed.

11 4. On July 28, 2004, the Board issued Pharmacist License No. RPH 55766 to
12 Respondent Valusek. Said license was in full force and effect at all times relevant to the charges
13 brought in Accusation No. 5371 and will expire on December 31, 2019 unless it is renewed.

14 **JURISDICTION**

15 5. Accusation No. 5371 was filed before the Board, and is currently pending against
16 Respondents. The Accusation and all other statutorily required documents were properly served
17 on Respondents on February 16, 2017. Respondents timely filed a Notice of Defense contesting
18 the Accusation. A copy of Accusation No. 5371 is attached as exhibit A and is incorporated
19 herein by reference.

20 **ADVISEMENT AND WAIVERS**

21 6. Respondent Valusek has carefully read, fully discussed with counsel, and understands
22 the charges and allegations in Accusation No. 5371. He also has carefully read, fully discussed
23 with counsel, and understands the effects of this Stipulated Surrender of License and Order.

24 7. Respondent Valusek is fully aware of his legal rights in this matter, including the
25 right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-
26 examine the witnesses against him; the right to present evidence and to testify on his own behalf;
27 the right to the issuance of subpoenas to compel the attendance of witnesses and the production of
28 documents; the right to reconsideration and court review of an adverse decision; and all other

rights accorded by the California Administrative Procedure Act and other applicable laws.

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

CULPABILITY

9. Respondent Valusek understands that the charges and allegations in Accusation No. 5371; if proven at a hearing, constitute cause for imposing discipline upon Pharmacist License No. RPH 55766.

10. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent Valusek agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation and that those charges constitute cause for discipline. Respondent Valusek hereby gives up his right to contest that cause for discipline exists based on those charges.

11. Respondent Valusek understands that by signing this stipulation, he enables the Board to issue an order accepting the surrender of Pharmacist License No. RPH 55766 without further process.

CONTINGENCY

12. This stipulation shall be subject to approval by the Board. Respondent Valusek understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent Valusek or his counsel. By signing the stipulation, Respondent Valusek understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

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

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

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

ORDER

IT IS HEREBY ORDERED that Pharmacist License No. RPH 55766, issued to Respondent Robert Eric Valusek is surrendered and accepted by the Board.

1. The surrender of Pharmacist License No. RPH 55766 and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent Valusek. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

2. Respondent Valusek shall lose all rights and privileges as a pharmacist in California as of the effective date of the Board's Decision and Order.

3. Respondent Valusek shall cause to be delivered to the Board his pocket license and, if one was issued, any wall certificate on or before the effective date of the Decision and Order.

4. If Respondent Valusek ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a new application for licensure and shall not be eligible to petition for reinstatement of licensure. Respondent Valusek shall satisfy all requirements applicable to that license as of the date the application is submitted to the board, including, but not limited to, taking and passing licensing examination(s) as well as fulfilling any education or experience requirements prior to the issuance of a new license.

5. Respondent Valusek may not petition for reinstatement of a revoked or surrendered license or registration for three years from the effective date of this Decision.

1 6. Respondent Valusek may not apply for any license, permit, or registration from the
2 Board for three years from the effective date of this Decision.

3 7. Respondent Valusek shall pay the agency its costs of investigation and enforcement
4 jointly and severally with Omac Pharmacy, Inc. in the amount of \$30,137.50 prior to issuance of
5 a new or reinstated license.

6 8. If Respondent Valusek should ever apply or reapply for a new license or certification,
7 or petition for reinstatement of a license, by any other health care licensing agency in the State of
8 California, all of the charges and allegations contained in Accusation No. 5371 shall be deemed to
9 be true, correct, and admitted by Respondent Valusek for the purpose of any Statement of Issues
10 or any other proceeding seeking to deny or restrict licensure.

11 **ACCEPTANCE**


12 I have carefully read the above Stipulated Surrender of License and Order and have fully
13 discussed it with my attorney. I understand the stipulation and the effect it will have on
14 Pharmacist License No. RPH 55766. I enter into this Stipulated Surrender of License voluntarily,
15 knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of
16 Pharmacy.

17
18
19 DATED: 1-2-2019


ROBERT ERIC VALUSEK
Respondent

21
22 I have read and fully discussed with my client the terms and conditions and other matters
23 contained in this Stipulated Surrender of License and Order. I approve its form and content.
24

25
26 DATED: January 2, 2019


IVAN PETRZELKA
California Pharmacy Lawyers
Attorney for Respondent Robert Eric Valusek

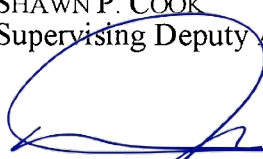
ENDORSEMENT

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

Dated: January 2, 2019

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
SHAWN P. COOK
Supervising Deputy Attorney General



MATTHEW A. KING
Deputy Attorney General
Attorneys for Complainant

LA2015500187
13376925

Exhibit A

Accusation No. 5371

1 XAVIER BECERRA
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2 THOMAS L. RINALDI
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Attorneys for Complainant
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8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 5371

12 **OMAC PHARMACY, INC.,**
13 **dba OMAC PHARMACY,**
14 **ROBERT ERIC VALUSEK,**
15 **CEO/TREASURER/CFO AND**
16 **PHARMACIST IN CHARGE;**
17 **APRIL VALUSEK, SECRETARY,**
18 **901 W. 7th Street**
19 **Oxnard, CA 93030**

A C C U S A T I O N

17 Pharmacy Permit No. PHY 48314,

18 **AND**

19 **ROBERT ERIC VALUSEK**
20 **195 Meadowlark Drive**
21 **Alpine, Utah 84004**

22 **Pharmacist No. RPH 55766**

23 Respondents.

24
25 Complainant alleges:

26 **PARTIES**

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

2. On or about October 5, 2006, the Board of Pharmacy issued Pharmacy Permit Number PHY 48314 to Omac Pharmacy, Inc.; dba OMAC PHARMACY, Robert Eric Valusek, CEO/Treasurer/CFO, and April Valusek, Secretary (Respondent Pharmacy), with Robert Eric Valusek also designated as Pharmacist in Charge of Respondent Pharmacy. The Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein and will expire on October 1, 2017, unless renewed.

3. On or about July 28, 2004, the Board of Pharmacy issued Pharmacist Number RPH 55766 to Robert Eric Valusek (Respondent Valusek). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2017, unless renewed.

JURISDICTION

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

5. Section **118**, subdivision (b), of the Code provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

6. Section 4300 of the Code states:

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

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

"(1) Suspending judgment.

"(2) Placing him or her upon probation.

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

"(4) Revoking his or her license.

"(5) Taking any other action in relation to disciplining him or her as the board in its

1 discretion may deem proper.

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

7 "(1) Medical or psychiatric evaluation.

8 "(2) Continuing medical or psychiatric treatment.

9 "(3) Restriction of type or circumstances of practice.

10 "(4) Continuing participation in a board-approved rehabilitation program.

11 "(5) Abstention from the use of alcohol or drugs.

12 "(6) Random fluid testing for alcohol or drugs.

13 "(7) Compliance with laws and regulations governing the practice of pharmacy.

14 "(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary
15 certificate of licensure for any violation of the terms and conditions of probation. Upon
16 satisfactory completion of probation, the board shall convert the probationary certificate to a
17 regular certificate, free of conditions.

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

23 7. Section **4300.1** of the Code states:

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

1 8. Section **4301** of the Code states:

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

5 . . .

6 "(d) The clearly excessive furnishing of controlled substances in violation of subdivision (a)
7 of Section 11153 of the Health and Safety Code,

8 . . .

9 "(j) The violation of any of the statutes of this state, or any other state, or of the United
10 States regulating controlled substances and dangerous drugs.

11 . . .

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

16 . . .

17 9. Section **4022** of the Code states

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

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

22 "(b) Any device that bears the statement: "Caution: federal law restricts this device to sale
23 by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled
24 in with the designation of the practitioner licensed to use or order use of the device.

25 "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
26 prescription or furnished pursuant to Section 4006."

27 10. Section **4081** of the Code states:

28 "(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs

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

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

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

16 11. Section **4105** of the Code states:

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

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

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

25 "(d) Any records that are maintained electronically shall be maintained so that the
26 pharmacist-in-charge, the pharmacist on duty if the pharmacist-in-charge is not on duty, or, in the
27 case of a veterinary food-animal drug retailer or wholesaler, the designated representative on
28 duty, shall, at all times during which the licensed premises are open for business, be able to

1 produce a hard copy and electronic copy of all records of acquisition or disposition or other drug
2 or dispensing-related records maintained electronically.

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

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

8 12. Section **4306.5** of the Code states:

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

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

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

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

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

23 13. Section **4307(a)** of the Code states that:

24 Any person who has been denied a license or whose license has been revoked or is under
25 suspension, or who has failed to renew his or her license while it was under suspension, or who
26 has been a manager, administrator, owner member, officer, director, associate, or partner of any
27 partnership, corporation, firm, or association whose application for a license has been denied or
28 revoked, is under suspension or has been placed on probation, and while acting as the manger,

1 administrator, owner, member, officer, director, associate, or partner had knowledge or
2 knowingly participated in any conduct for which the license was denied, revoked, suspended, or
3 placed on probation, shall be prohibited from serving as a manger, administrator, owner, member,
4 officer, director, associate, or partner of a licensee as follows:

5 (1) Where a probationary license is issued or where an existing license is placed on
6 probation, this prohibition shall remain in effect for a period not to exceed five years.

7 (2) Where the license is denied or revoked, the prohibition shall continue until the license
8 is issued or reinstated.

9 14. Health and Safety Code section **11153** states:

10 "(a) A prescription for a controlled substance shall only be issued for a legitimate medical
11 purpose by an individual practitioner acting in the usual course of his or her professional practice.
12 The responsibility for the proper prescribing and dispensing of controlled substances is upon the
13 prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the
14 prescription. Except as authorized by this division, the following are not legal prescriptions: (1)
15 an order purporting to be a prescription which is issued not in the usual course of professional
16 treatment or in legitimate and authorized research; or (2) an order for an addict or habitual user of
17 controlled substances, which is issued not in the course of professional treatment or as part of an
18 authorized narcotic treatment program, for the purpose of providing the user with controlled
19 substances, sufficient to keep him or her comfortable by maintaining customary use."

20 15. California Code of Regulations, title 16, section **1707.3** states:

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

24 16. California Code of Regulations, title 16, section **1716** states, in part:

25 "Pharmacists shall not deviate from the requirements of a prescription except upon the
26 prior consent of the prescriber or to select the drug product in accordance with Section 4073 of
27 the Business and Professions Code."

28 17. California Code of Regulations, title 16, section **1761** states:

“(a) No pharmacist shall compound or dispense any prescription which contains any significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon receipt of any such prescription, the pharmacist shall contact the prescriber to obtain the information needed to validate the prescription.

“(b) Even after conferring with the prescriber, a pharmacist shall not compound or dispense a controlled substance prescription where the pharmacist knows or has objective reason to know that said prescription was not issued for a legitimate medical purpose.”

COST RECOVERY

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

19. DRUG CLASSIFICATIONS

Brand Name(s)	Generic Name	Dangerous Drug [Bus. & Prof. Code § 4022]	Scheduled Drug [Health & Safety Code (HSC)]	Indications For Use
Ativan	Lorazepam 2mg	Yes	Schedule IV HSC § 11057(d)(16)	Anxiety
Dolophine	Methadone	Yes	Schedule II HSC § 11055(c)(14)	Pain, Narcotic Addiction
Dilaudid	Hydromorphone	Yes	Schedule II HSC § 11055(b)(1)(J)	Pain
Klonopin	Clonazepam 2mg	Yes	Schedule IV HSC § 11057(d)(7)	Anxiety
Norco ¹ , Vicodin ES, Lorcet	Hydrocodone/ acetaminophen (APAP)	Yes	Schedule III HSC § 11056(e)(4)	Pain

¹ Norco 10/325 mg contains 10 mg of hydrocodone and 325 mg of acetaminophen (brand name, Tylenol). The maximum recommended dosage for acetaminophen is four (4) grams or 4000 mg every 24 hours.

OxyContin	Oxycodone	Yes	Schedule II HSC § 11055(b)(1)(M)	Pain
Opana ER	Oxycodone	Yes	Schedule II HSC § 11055(b)(1)(N)	Pain
Oxy IR	Oxycodone 30 mg	Yes	Schedule II HSC § 11055(b)(1)(M)	Pain
Subutex, Suboxone	Buprenorphine	Yes	Schedule V HSC § 11058(d)	Narcotic Addiction
Valium	Diazepam (non-barbiturate, benzodiazepine sedative hypnotic)	Yes	Schedule IV HSC § 11057(d)(9)	Anxiety
Xanax	Alprazolam (non-barbiturate, benzodiazepine sedative hypnotic)	Yes	Schedule IV HSC § 11057(d)(1)	Anxiety

FACTUAL SUMMARY

20. The following allegations are common to all causes for discipline in this matter:

A. At all times relevant herein, Respondent Robert Eric Valusek was Pharmacist-in-Charge of the retail pharmacy owned and operated by OMAC Pharmacy Inc., dba OMAC Pharmacy (Respondent Pharmacy), located at 901 West 7th Street, in the city of Oxnard, CA.

Background

B. Beginning in approximately January 2013, the Board initiated an investigation of Respondent Pharmacy.

C. On or about January 5, 2012, the Board was notified that Dr. Julio Gabriel Diaz also known as Otero Julio Gabriel Diaz, MD (Dr. Diaz) was arrested on federal painkiller trafficking charges. He was linked to a string of drug overdose deaths. Dr. Julio Diaz, a General Practice physician with secondary practice areas in Geriatrics and Pathology, operated Family Medical Clinic, located at 510 Milpas Street, Santa Barbara, CA 93103. Respondent Pharmacy dispensed numerous prescriptions for controlled substances written by Dr. Diaz, despite the fact that Respondent Pharmacy was located in Oxnard – a considerable distance from Dr. Diaz's office.

1 D. On or about January 18, 2012, pursuant to a criminal complaint filed in United States
2 District Court, Dr. Diaz was charged with illegal distribution of controlled substances. The
3 affidavit in support of the criminal complaint stated that Dr. Diaz wrote prescriptions for powerful
4 painkillers, such as OxyContin, for "patients" who were drug addicts with no legitimate need for
5 the drugs. Some of Dr. Diaz's "patients" diverted the pills they received to the black market
6 and/or suffered fatal overdoses from the narcotics.²

7 E. Effective November 2, 2012, the California Medical Board revoked Dr. Diaz's
8 medical license in the case entitled In the Matter of the Accusation against Otero Julio Gabriel
9 Diaz, M.D., case no. 06-2010-209660. Dr. Diaz's license was revoked for committing gross
10 negligence and incompetence and for excessive prescribing narcotic medications to a patient.

11 **Inspection - January 9, 2013**

12 F. On or about January 9, 2013, two Board inspectors conducted an unannounced
13 inspection of Respondent Pharmacy. Respondent Valusek was on duty at the time of the
14 inspection.

15 G. To investigate controlled substance dispensing practices of Respondents, Board
16 inspectors selected 21 random patients of Dr. Diaz who filled their prescriptions at Respondent
17 Pharmacy to profile and asked Respondent Valusek to complete questionnaires regarding these
18 patients. Questions asked included the patients' diagnoses, the methods of payment, and the
19 nature of the prescriber's practice. Board inspectors further obtained from Respondent
20 prescription records of the 21 randomly selected patients for later analysis.

21 **Corresponding Responsibility Analysis**

22 H. As part of their investigation, Board inspectors also obtained and analyzed
23 CURES³ data for Respondent Pharmacy for the 21 randomly selected patients.

24 ² On August 28, 2015, following a jury trial, Dr. Diaz was found guilty in a federal
25 District Court of more than 25 counts of felony drug trafficking offenses, in *United States of*
America v. Julio Gabriel Diaz (U.S.D.C.(CA Central), criminal case no. 8:11MJ00636

26 ³ CURES is an acronym for "California Utilization Review and Evaluation System." It
27 contains over 100 million entries of controlled substance drugs that were dispensed in California.
28 Pharmacists and prescribers can register with the Department of Justice to obtain access to the
CURES data through the California Prescription Drug Monitoring Program (PDMP). Patient
Activity Reports (PARs) are provided and reflect all controlled substances dispensed to an

(continued...)

1 I. In analyzing the controlled substance drug treatment and therapy regimen for the
2 sample group of 21 patients, Inspectors found that Respondents routinely filled prescriptions
3 despite key objective factors indicating the prescriptions were not legitimate, or circumstances
4 that should have caused Respondents to question and investigate the prescription's legitimacy:

5 J. The CURES data for Respondent Pharmacy revealed that Respondents dispensed
6 a total of 24,949 controlled substance prescriptions from January 1, 2010 through December 5,
7 2012. During this period, Respondent Pharmacy dispensed 2,732 controlled substance
8 prescriptions written by Dr. Diaz, which represented 10.95 % of the total controlled substance
9 prescriptions dispensed by the pharmacy. Dr. Diaz was the pharmacy's largest controlled
10 substance prescriber for a total of 442,539 dosage units dispensed.

11 K. **Prescribing Pattern of Dr. Diaz** - The CURES data for Respondent Pharmacy
12 also showed Dr. Diaz's questionable prescribing pattern. Dr. Diaz normally prescribed large
13 quantities of opiates in combination with one or more anti-anxiety agents (e.g. tranquilizers). The
14 usual combination included hydromorphone, hydrocodone/acetaminophen, oxycodone,
15 methadone, fentanyl, OxyContin, morphine sulfate with either alprazolam, clonazepam,
16 lorazepam, and/or diazepam in large quantities. He typically prescribed on average 3 to 4 opiate
17 medications with 1 to 2 anxiolytic medication prescriptions to his patients. The table below
18 contains a list of selected drugs and the average quantities of those drugs prescribed by Dr. Diaz
19 and dispensed by Respondent pharmacy for the one year period of January 1, 2011 to January 9,
20 2012.

Drug	Avg. qty prescribed by Dr. Diaz (1/1/2011 to 1/9/2012)
Hydrocodone/APAP 10/325mg	231
Oxycodone 30mg	190
Methadone 10mg	213
Alprazolam 2mg	100
Hydromorphone 8mg	135

26 (...continued)
27 individual. CURES herein refers to CURES in general and PARs. Pharmacies are required to
28 report to the California Department of Justice every schedule II, II and IV drug prescription under
Health and Safety Code section 1165, subdivision (d).

L. **Payment Method** – In cases of drug diversion, medications are often purchased for cash (cash, debit card or credit card) from the pharmacy without the use of insurance in order to avoid tracking of activity. If the ‘patients’ are fictitious, there is no insurance to bill. In the instant case, Board Inspectors found that of the 24,949 controlled substance prescriptions dispensed, approximately 34.24% were for cash patients.⁴

M. **Distance Traveled**- The “common trading area” in this part of California is estimated by Board staff to be approximately 5 miles, due to the ready accessibility of pharmacies. Analysis of the 21 patients’ records showed that the total distance these patients travelled to obtain controlled substances was objectively and clearly excessive. Using reported home addresses, Inspectors calculated that the distances travelled from patients’ home to doctor’s office and home to pharmacy ranged from 73.42 to 207.4 miles – with an average distance of 90.76 miles.

N. **Pattern of Early Refills** – Inspectors noted a consistent pattern of early refills with prescriptions for Dr. Diaz’s patients.

O. **Continuing Omissions** – In review and analysis of CURES data and prescription records of the 21 sample patients, Board inspectors identified several continuing problems with Respondents’ handling of medical legitimacy issues, including the following:

(1) **Diaz was General Practitioner** - Nearly all of the Diaz prescriptions reviewed for the sample patients were for pain or anxiety medications. In his patient questionnaires, Respondent Valusek incorrectly identified Dr. Diaz as a pain management prescriber, and indicated his belief that what Diaz prescribed was appropriate for his practice. In fact, Dr. Diaz was a general practice physician with a secondary practice in

⁴ In cases of drug diversion, most of the medications purchased from a pharmacy are purchased without the use of insurance to avoid tracking of activity. If the patients are fictitious persons, there is no insurance to bill. The bypassing of insurance is commonly referred to as “paying cash.” Frequently, the medications are purchased with actual money but “paying cash” could also mean using a debit or credit card. The use of electronic payment is rare for the same reason drug diverters avoid using insurance.

1 geriatrics and pathology.

2 (2) **Inability to use CURES reports** - At the time of the January 2013 inspection,
3 Respondent Valusek advised Inspectors that he had not signed up for the California
4 Prescription Drug Monitoring Program (PDMP) until March, 2012. Therefore, CURES
5 Patient Activity Reports (PARs) (reflecting all controlled substances dispensed to an
6 individual, pharmacies and physicians visited), a useful tool in meeting Respondents'
7 responsibility to determine medical legitimacy prior to dispensing, was not available for
8 use or review by Respondents prior to March, 2012.

9 (3) **No Drug Therapy Records** -The pharmacy did not maintain files or notes to
10 monitor the drug therapy of its own patients.

11 **Review and Analysis of Sample Patient Records**

12 P. In review and analysis of CURES data and prescription records of the 21 sample
13 patients by Board inspectors revealed that Respondents routinely ignored key objective factors
14 which should have caused them to investigate or challenge the medical legitimacy of
15 prescriptions. Examples are provided as follows:

16 (1) **Patient MB**

17 Patient MB saw 6 prescribers and went to 6 different pharmacies from 1/1/2009 to
18 4/5/2013. MB had no history of anxiety 22 months prior to 9/2010, so starting treatment with
19 diazepam 10mg, the highest dose of diazepam tablet available, is questionable. Additionally,
20 Respondent did not provide prescription hard copies for **RX#6239683, 6266004 and 6275829**

21 (2) **Patient CB**

22 Patient CB saw 8 prescribers and went to 15 pharmacies from 1/1/2009 to 4/5/2013. CB
23 had no known history of pain or anxiety for 6 months prior to 6/3/2009, so starting with
24 oxycodone 30mg, Oxycotin 40mg, methadone 10mg, HC/AP 10/325mg and alprazolam 2mg, for
25 a "narcotic naïve" patient is questionable.

26 Further, Omac Pharmacy dispensed RX#2002854, 2003195, 2003265, 2004108 for
27 Oxycontin above the recommended dosing interval of twice daily. Review of CB's profile from
28

Omac Pharmacy revealed he received most of his pain medication from Dr. Diaz, though Diaz was not a pain specialist.

Additionally, Respondents did not provide prescription hardcopies for Rx#2002918, 2002919, 2002920, 2002990, 2002991, 2002992 and 6270192.

(3) **Patient SG**

SG saw 9 different prescribers and went to 29 different pharmacies from 1/1/2009 to 4/5/2013. Review of CURES reports revealed that SG received multiple prescriptions for HC/AP 10/325mg on or about the same time all prescribed by Dr. Diaz, which he filled at numerous pharmacies as listed below:

Date	Drug	RX#	Pharmacy	Notes
06/06/2011	HC/AP 10/325 #300	6291463	Omac Phy	SG was prescribed 540-1200 tablets of HC/AP within 1 month/30 days. SG received 55-105 day's supply within 30 day time.
06/18/2011	HC/AP 10/325 #240	507941	Studio City Phy	LC received 6,500-14,950mg/day of acetaminophen
07/12/2011	HC/AP 10/325 #300	1432422	Rite Aid 5452	The maximum recommended dose of acetaminophen is 4,000mg/day
7/20/2011	HC/AP 10/325 #240	6296360	Omac Phy	
08/04/2011	HC/AP 10/325 #300	6296360	Omac Phy	
08/10/2011	HC/AP 10/325 #300	1432422	Rite Aid 5452	
9/1/2011	HC/AP 10/325 #300	6296360	Omac Phy	
9/4/2011	HC/AP 10/325 #300	1074034	Walgreens 6700	
9/7/2011	HC/AP 10/325 #300	566153	Rite Aid 5542	
9/13/2011	HC/AP 10/325 #00	1074034	Walgreens 6700	

Additionally, the following prescriptions dispensed to SG by Omac Pharmacy were questionable:

(a) **RX#6284830** for Diazepam 10mg with a direction of 2-3 tablets every 6 hours

(Note: the high dose) Usual diazepam dosage as an anti-anxiety agent is 2mg-

10mg 2-4 times daily. SG received 20-30mg every 6 hours.

- (b) **RX#2005972** for methadone had an unclear date on the prescription document and should have been questioned by the pharmacy before dispensing.

(4) **Patient SH**

SH had no significant pain history 2 years prior to 3/9/2011. For Dr. Diaz to start treatment with oxycodone 30mg, HC/AP 10/325mg, and methadone 10mg, for an "opioid naïve" patient is questionable. Similarly, SH also had no significant anxiety history 2.5 years prior to 7/1/2011. For Dr. Diaz to start treatment with alprazolam 2mg, at the highest available dose is questionable.

(5) **Patient DH**

DH saw 6 prescribers and went to 15 pharmacies from 1/1/2009 to 4/5/2013. Review of this patient's PAR report revealed that DH received multiple prescriptions for HC/AP 10/325mg and alprazolam 2mg on or around the same time all prescribed by Dr. Diaz. DH went to numerous pharmacies to have them dispensed.

Date	Drug	RX#	Pharmacy	Notes
11/8/2010	HC/AP 10/325 #240	6259009	Omac Phy	DH was prescribed 480-800 tablets of HC/AP within 1 month/30 days. DH received 60 day worth of supply within 30 day time frame.
11/19/2010	HC/AP 10/325 #240	149894	Farmacia Estrella	DH received 5,200-7,800mg/day of acetaminophen
3/3/2011	HC/AP 10/325 #240	6259009	Omac Phy	The maximum recommended dose of acetaminophen is 4,000mg/day
3/14/2011	HC/AP 10/325 #280	170012	Farmacia Estrella	
3/31/2011	HC/AP 10/325 #280	170012	Framacia Estrella	
11/18/2010	Alprazolam 2mg #150	6259010	Omac Phy	DH was prescribed 300-450 tablets of alprazolam 2mg within 22 days, ZG received 51-76 day's supply within 22 day time frame.
11/19/2010	Alprazolam 2mg #150	149892	Farmacia Estrella	
11/30/2010	Alprazolam 2mg #150	262238	Taft Phy	
3/3/2011	Alprazolam	6271544	Omac Phy	

	2mg #150			
3/14/2011	Alprazolam 2mg #150	170010	Farmacia Estrella	

The pharmacy did not provide prescription hardcopies for Rx # 6266924, and 6271544.

(6) Patient MH

MH saw 26 prescribers and went to 19 pharmacies from 1/1/2009 to 4/5/2013. Review of the PAR for this patient revealed that MH received multiple prescriptions for methadone 10mg HC/AP 10/325mg and oxycodone 30mg around the same time, then went to numerous pharmacies to have them dispensed.

Date	Drug	RX#	Pharmacy	Notes
3/7/2011	Methadone 10mg #120	171648	Farmacia Estrella	MH was prescribed 240-540 tablets of methadone within 10 days. MH received 60 days supply within 10 day time frame.
3/15/2011	Methadone 10mg #120	2005206	Omac Phy	
6/21/2011	Methadone 10mg #300	2005868	Omac Phy	
7/1/2011	Methadone 10mg #240	183508	Farmacia Estrella	
5/2/2011	Oxycodone 30mg #300	176686	Farmacia Estrella	MH was prescribed 600-7250 tablets of oxycodone within 30 days. MH received 60 day's supply within 30 day time frame.
5/21/2011	Oxycodone 30mg #300	2005676	Omac Phy	
7/1/2011	Oxycodone 30mg #300	183506	Farmacia Estrella	
7/28/2011	Oxycodone 30mg #300	2006151	Omac Phy	
5/25/2011	HC/AP 10- 325mg #300	6297170	Omac Phy	MH was prescribed 600 tablets of HC/AP within 10 days. MH received 50 day worth of supply within 10 day time frame.
5/27/2011	HC/AP 10- 325mg #300	174316	Farmacia Estrella	MH received 7,800mg/day of acetaminophen
11/8/2011	HC/AP 10- 325mg #300	192365	Farmacia Estrella	The maximum recommended dose of acetaminophen is 4,000mg/day
11/10/2011	HC/AP 10- 325mg	6313819	Omac Phy	Note: MH had HC/AP dispensed at least 2 different pharmacies all of

	#300			2011
12/1/2011	HC/AP 10-325mg #300	192365	Farmacia Estrella	
12/01/2011	HC/AP 10-325mg #300	6324116	Omac Phy	

The pharmacy did not provide prescription hardcopies for **RX # 2007157**.

(7) **Patient DL**

DL saw only Dr. Diaz and went to two pharmacies from 1/1/2009 to 4/5/2013, Omac Pharmacy and Farmacia Estrella. Review of this patient's PAR revealed that he received multiple prescriptions for HC/AP 10/25mg and alprazolam 2mg on or around the same time, all prescribed by Dr. Diaz.

Date	Drug	Rx#	Pharmacy	Notes
5/23/2009	HC/AP 10/325mg #240	6169592	Omac Phy	DL received 480 tablets of HC/AP within 10 days. DL received 60 days supply within 10 day time frame.
5/28/2009	HC/AP 10/325mg #240	114793	Farmacia Estrella	DL received 5,200mg/day of acetaminophen
1/26/2010	HC/AP 10/325mg #240	134415	Farmacia Estrella	The maximum recommended dose of acetaminophen is 4,000mg/day
1/26/2010	HC/AP 10/325mg #240	6215106	Omac Phy	
6/19/2010	HC/AP 10/325mg #240	6226814	Omac Phy	
6/25/2010	HC/AP 10/325mg #240	145891	Farmacia Estrella	
1/9/2011	HC/A 10/325mg #240	160310	Farmacia Estrella	
1/13/2011	HC/A 10/325mg #240	6254272	Omac Phy	
7/28/2009	Alprazolam 2mg #100	114795	Farmacia Estrella	DL received 200-220 tablets of alprazolam 2mg within 7 days
7/31/2009	Alprazolam 2mg #100	6184953	Omac Phy	DL received 50-55 days supply within 7 day time frame.
11/13/2010	Alprazolam 2mg #100	6254273	Omac Phy	
11/19/2010	Alprazolam 2mg #120	160311	Farmacia Estrella	
1/6/2011	Alprazolam 2mg	160311	Farmacia	

	#120		Estrella	
1/13/2011	Alprazolam 2mg #100	6254273	Omac Phy	

(8) **Patient DP**

DP saw 24 prescribers and went to 8 pharmacies from 1/1/2009 to 4/5/2013. Omac Pharmacy dispensed the following prescriptions for Oxycontin and Opana ER above the recommended dosing interval of twice daily: RX # 2003405, 2003575, 2003783, 2004100, 2003078, 2006091, 2006314, 2006559, 2007057, 2006778, 2007280, 2005504, 2005693, 2005344, 2005062, 2004734, 2004581, 2005862.

Review of DP's profile revealed DP received mostly pain and anxiety medication from Dr. Diaz, despite Dr. Diaz not being a pain specialist. DP usually paid cash for medications – and on numerous occasions paid over \$2500.00 cash to have her Oxycontin prescription filled.

The pharmacy did not provide prescriptions hardcopies of **Rx # 2006314, 2002965, 6266058, 6270130 and 6266057.**

(9) **Patient LR**

LR saw 3 prescribers and went to 9 pharmacies from 1/1/2009 to 4/5/2013, LR saw prescribers in Oxnard and Santa Barbara and went to pharmacies in Oxnard and Ventura.

Prior to going to Omac Pharmacy, LR went to multiple pharmacies and Dr. Diaz. While going to Omac Pharmacy, LR continued to go to multiple pharmacies and Dr. Diaz.

Review of LR CURES PAR report also revealed, LR received multiple prescriptions for HC/AP 10/325 and alprazolam 2mg on or around the same time all prescribed by Dr. Diaz. LR went to numerous pharmacies to have them dispensed.

Date	Drug	RX#	Pharmacy	Notes
5/07/2010	HC/AP 10/325mg #200	1213310	Leon's Phy	LR received 400-500 tablets of HC/AP within 30 days. LR received 55-75 day's supply within 30 day time frame.
5/13/2010	HC/AP 10/325mg #200	6224915	Omac Phy	LR received 4,550-6,175mg/day of acetaminophen.
11/15/2010	HC/AP 10/325mg	6253379	Omac Phy	The maximum

	#200			recommended dose of acetaminophen is 4,000mg/day
11/26/2010	HC/AP 10/325mg #100	150759	Farmacia Estrella	
11/29/2010	HC/AP 10/325mg #200	1224071	Leon's Phy	
1/14/2011	Alprazolam 2mg #100	165774	Farmacia Estrella	LR received 200 tablets of alprazolam within 30 days.
1/20/2011	Alprazolam 2mg #100	6274550	Omac Phy	LR received 50 day supply within 30 day time frame.
4/9/2011	Alprazolam 2mg #100	6274550	Omac Phy	
4/22/2011	Alprazolam 2mg #100	176223	Farmacia Estrella	Note: this practice of LR received HC/AP and alprazolam from Dr. Diaz and multiple pharmacies occurred on numerous months from 2009 thru 2011.

Omac Pharmacy dispensed the following prescriptions of Oxycontin above the recommended dosage interval: RX#2002780, 2003151, and 2003293

The pharmacy did not provide prescriptions hardcopies for Rx #2002968, 2002969 and 2002970.

(10) **Patient AS**

AS saw 10 prescribers and went to 14 pharmacies from 1/1/2009 to 4/5/2013. While going to Omac Pharmacy, AS went to numerous prescribers and pharmacies.

AS was prescribed Suboxone, used for treatment of narcotic addiction, prior to Dr. Diaz. AS was also prescribed Subutex, indicated for treatment of narcotic addiction, by Dr. Diaz.

Review of AS PAR also revealed, AS received multiple prescriptions of HC/AP 10/325mg on or around the same time all prescribed by Dr. Diaz.

Date	Drug	RX#	Pharmacy	Notes
7/1/2011	HC/AP 10/325mg #300	183488	Farmacia Estrella	AS received 500-1,040 tablets of HC/AP within 30 days. AS received 50-104 days'

				supply within 30 day time frame.
7/08/2011	HC/AP 10/325mg #300	6285428	Omac Phy	AS received 6,500-13,000mg/day of acetaminophen.
7/9/2011	HC/AP 10/325mg #140	6285428	Omac Phy	The maximum recommended dose of acetaminophen is 4,000mg/day.
7/28/2011	HC/AP 10/325mg #300	6306202	Omac Phy	
10/18/2011	HC/AP 10/325mg #200	6317458	Omac Phy	
10/26/2011	HC/AP 10/325mg #300	183488	Farmacia Estrella	

Omac Pharmacy dispensed the following prescriptions in which the date was not in prescriber's handwriting RX # 2006626, 2006625, 2006624.

The pharmacy did not provide prescription hardcopies for **Rx # 6264331 and 6318508.**

(11) **Patient JT**

JT went to multiple pharmacies and prescribers while going to Omac Pharmacy.

Omac Pharmacy dispensed the following questionable prescriptions:

RX # 6300131—JT received 5200 mg of acetaminophen

RX # 2006722, 2006723—date not written by prescriber

RX # 2005253 and 2005333—JT received 2 prescriptions for oxycodone on the same day.

RX # 2004946 and 2004863—JT received 2 prescriptions for oxycodone on the same day.

The pharmacy did not provide prescription hardcopies for **RX # 2002997 and 2002998.**

(12) **Patient CV**

CV saw 2 prescribers and went to 7 pharmacies from 1/1/2009 to 4/5/2013.

Review of this patient's PAR revealed that CV received multiple prescriptions for HC/AP 10/325mg on or around the same time all prescribed by Dr. Diaz, and went to multiple pharmacies to have them dispensed.

Date	Drug	RX#	Pharmacy	Notes
------	------	-----	----------	-------

12/11/2009	HC/AP 10/325mg #240	128127	Farmacia Estrella	CV received 360-480 tablets of HC/AP within 10-15 days. CV received 60 day's supply within 10-15 day time frame.
12/24/2009	HC/AP 10/325mg #240	6210279	Omac Phy	CV received 5,200mg of acetaminophen per day.
9/18/2010	HC/AP 10/325mg #240	6254220	Omac Phy	
9/28/2010	HC/AP 10/325mg #120	C5005164	The Medicine Shoppe	Note: CV received HC/AP from Dr. Diaz and dispensed at multiple pharmacies occurred most months in 2010
11/16/2010	HC/AP 10/325mg #240	1223569	Leon's Phy	
11/26/2010	HC/AP 10/325mg #240	6254220	Omac Phy	
1/5/2011	HC/AP 10/325mg #240	72656	Walgreens 11707	
1/20/2011	HC/AP 10/325mg #240	6254220	Omac Phy	

Omac Pharmacy dispensed the following questionable prescriptions:

RX # 2004938 and 2004921 - 2 prescriptions for Oxydocone written on the same day.

RX # 2003051 written on 7/9/2009 and dispensed on 2/25/2010.

CV also was dispensed Suboxone and Subutex, indicated for opiate addiction, prescribed by Dr. Diaz in addition to the above medications.

(13) **Patient SV**

SV only saw Dr. Diaz in Santa Barbara and went to 2 pharmacies from 1/1/2009 to 4/5/2013. She went to pharmacies in Oxnard and Ventura.

While going to Omac Pharmacy, SV also went to Farmacia Estrella to have prescriptions by Dr. Diaz dispensed.

Review of PAR also revealed, SV received multiple prescriptions for HC/AP 10/325mg and alprazolam 2mg on or around the same time all prescribed by Dr. Diaz. SV went to two pharmacies to have them dispensed.

Date	Drug	RX#	Pharmacy	Notes
3/1/2011	HC/AP 10/325mg #300	6282935	Omac Phy	SV received 540-840 tablets of HC/AP within 30 days. SV received 60-90 days supply within 30 day time frame.
3/8/2014	HC/AP 10/325mg #240	160605	Farmacia Estrella	SV received 5,850-6,500mg of acetaminophen per day.
8/2/2011	HC/AP 10/325mg #300	6294631	Omac Phy	
8/10/2011	HC/AP 10/325mg #240	186733	Farmacia Estrella	
8/30/2011	HC/AP 10/325mg #300	6310459	Omac Phy	
3/8/2011	Alprazolam 2mg #90	160602	Farmacia Estrella	SV received 190 tablets of alprazolam within 10 days.
3/15/2011	Alprazolam 2mg #100	6273691	Omac Phy	SV received 55 day supply within 10 day time frame
5/9/2011	Alprazolam 2mg #90	177783	Farmacia Estrella	
5/10/2011	Alprazolam 2mg #100	6294628	Omac Phy	
7/1/2011	Alprazolam 2mg #100	6294628	Omac Phy	Notes: SV received HC/AP and alprazolam from Dr. Diaz and dispensed at multiple pharmacies occurred most months in 2011 as summarized in Exhibit 33 pages 5-6
7/6/2011	Alprazolam 2mg #90	177783	Farmacia Estrella	

SV was also known as Sylvia R. (different last name and had a different date of birth 1/10/1976. SV pharmacy patient profile had a date of birth of 5/18/1976. In addition, SV/SR had two medical record numbers at the prescriber's office.

FIRST CAUSE FOR DISCIPLINE

(Failure to Assume Corresponding Responsibility)

21. Respondent OMAC Pharmacy and Respondent Valesek are subject to discipline

1 pursuant to Code section 4300 for unprofessional conduct as defined in section 4301, subdivision
2 (d), (j) and (o), in conjunction with sections 4302, and 4113, in that on dates approximately
3 between January 9, 2010 and April 1, 2013, Respondents failed to assume their corresponding
4 responsibility to ensure that controlled substances are dispensed for a legitimate medical purpose,
5 in violation of Code section 4306.5, Health and Safety Code section 11153, subdivision (a), and
6 California Code of Regulations, title 16, section 1761, subdivision (b). Based on evidence
7 reviewed by Board Inspectors, including but not limited to records of patients, MB, CB, SG, SH,
8 DH, MH, DL, DP, LR, AS, JT, CV and SV, Respondents routinely ignored numerous warning
9 signs or red flags that should put a reasonable and prudent dispensing pharmacist on notice that a
10 prescription may not have been legitimate, including but not limited to the prescribing pattern of
11 Dr. Diaz, cash payments, distance traveled and pattern of early refills. Respondents additionally
12 failed use or access readily available tools such as CURES reports and its own pharmacy records,
13 to meet their corresponding responsibility.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Failure of Respondent Pharmacist to Exercise Best Professional Judgment)**

16 22. Respondent Valesek is subject to disciplinary action under Business and
17 Professions Code section 4300 for unprofessional conduct as defined in section 4301,
18 subdivisions (j) and (o) in conjunction with section 4306.5 subdivisions (b), in that on dates
19 approximately between January 9, 2010 and April 1, 2013, as an owner and/or pharmacist in
20 charge and/or dispensing pharmacist, Respondent failed to exercise or implement his or her best
21 professional judgment or corresponding responsibility with regard to the dispensing or furnishing
22 of controlled substances, in connection with Dr. Diaz's controlled substance prescriptions.
23 Allegations of paragraphs 19 and 20 above are realleged as though fully set forth.

24 **THIRD CAUSE FOR DISCIPLINE**

25 **(Failure to Maintain Required Records)**

26 24. Respondent OMAC Pharmacy and Respondent Valesek are subject to disciplinary
27 action under Business and Professions Code section 4300 for unprofessional conduct as defined
28 in section 4301, subdivisions (j) and (o), in conjunction with section 4081, subdivisions (a) and

1 (b) and 4105; subdivision (a), by failing to maintain the required records of sale, acquisition and
2 disposition of dangerous drugs. Specifically, Respondents failed to account for prescription hard
3 copies for RX# 6239683, 6266004, 6275829, 2002918, 2002919, 2002920, 2002991, 2002990,
4 2002992, 6270192, 6268131, 6266924, 6274544, 2007157, 2002965, 6266058, 6270130,
5 6266057, 2002968, 2002969, 20022970, 6264331, 6318058, 2002997 and 2002998, which
6 Respondents dispensed approximately between January 9, 2010 and January 1, 2013.

7 **OTHER MATTERS**

8 25. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit
9 Number Permit Number PHY 48314 issued to Omac Pharmacy, Inc.; dba Omac Pharmacy, Omac
10 Pharmacy, Inc. shall be prohibited from serving as a manager, administrator, owner, member,
11 officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number
12 PHY 48314 is placed on probation or until PharmacyPermit Number PHY 48314 is reinstated if
13 it is revoked.

14 26. Pursuant to Code section 4307, if discipline is imposed on Permit Number PHY
15 48314 issued to Omac Pharmacy, Inc. while Robert Eric Valusek has been an officer and owner
16 and had knowledge of or knowingly participated in any conduct for which the licensee was
17 disciplined, Robert Eric Valusek shall be prohibited from serving as a manager, administrator,
18 owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy
19 Permit Number PHY 48314 is placed on probation or until Pharmacy Permit Number PHY 48314
20 is reinstated if it is revoked.

21 **PRAYER**

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

24 1. Revoking or suspending Pharmacy Permit Number PHY 48314, issued to Omac
25 Pharmacy, Inc.; dba Omac Pharmacy, Robert Eric Valusek, CEO/Treasurer/CFO, and April
26 Valusek, Secretary;

27 2. Revoking or suspending Pharmacist Number RPH 55766, issued to Robert Eric
28

1 Valusek;

2 3. Prohibiting Omac Pharmacy, Inc. from serving as a manager, administrator, owner,
3 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit
4 Number PHY 48314 is placed on probation or until Pharmacy Permit Number PHY 48314 is
5 reinstated if Pharmacy Permit Number PHY 48314 issued to Omac Pharmacy, Inc. is revoked;

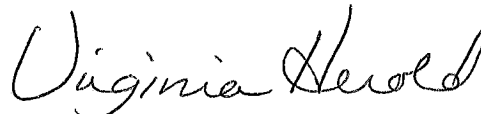
6 4. Prohibiting Robert Eric Valusek from serving as a manager, administrator, owner,
7 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit
8 Number PHY 48314 is placed on probation or until Pharmacy Permit Number PHY 48314 is
9 reinstated if Pharmacy Permit Number PHY 48314 issued to Omac Pharmacy, Inc. is revoked;

10 5. Ordering Omac Pharmacy, Inc. dba Omac Pharmacy, Robert Eric Valusek,
11 CEO/Treasurer/CFO, and April Valusek, Secretary to pay the Board of Pharmacy the reasonable
12 costs of the investigation and enforcement of this case, pursuant to Business and Professions
13 Code section 125.3;

14 6. Ordering Robert Eric Valusek to pay the Board of Pharmacy the reasonable costs of
15 the investigation and enforcement of this case, pursuant to Business and Professions Code section
16 125.3;

17 7. Taking such other and further action as deemed necessary and proper.

18
19 DATED: 2/4/17



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

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