

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

In the Matter of the Accusation Against:

**WATERFRONT PHARMACY  
JOSEPH M. HUANTE AND THELMA  
RAMSEYER, OWNERS**  
123 S. Commerce St., #A  
Stockton, CA 95202

**Permit No. PHY 36858**

**and**

**JOSEPH MANUEL HUATE**  
123 S. Commerce St., #A  
Stockton, CA 95202

**Pharmacist License No. RPH 36843**

Respondents.

Case No. 5905

OAH No. 2018010449

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

**(RESPONDENT JOSEPH MANUEL  
HUANTE)**

**DECISION AND ORDER**

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

This Decision shall become effective at 5:00 p.m. on September 20, 2018.

It is so ORDERED on August 21, 2018.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
Victor Law, R.Ph.  
Board President

1 XAVIER BECERRA  
Attorney General of California  
2 JANICE K. LACHMAN  
Supervising Deputy Attorney General  
3 KAREN R. DENVIR  
Deputy Attorney General  
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7 *Attorneys for Complainant*

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

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**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

**(RESPONDENT JOSEPH MANUEL  
HUANTE)**

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

24 PARTIES

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



1 CULPABILITY

2 9. Respondent admits the truth of each and every charge and allegation in Accusation  
3 No. 5905.

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

6 CONTINGENCY

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

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

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

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

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1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Pharmacist License Number RPH 36843 issued to Joseph  
3 Manuel Huante is revoked. However, the revocation is stayed and Respondent is placed on  
4 probation for four (4) years on the following terms and conditions.

5 **1. Suspension**

6 As part of probation, respondent is suspended from the practice of pharmacy beginning on  
7 June 1, 2018, until such time in which he completes at least six (6) hours of remedial education  
8 on the topics of either prescription drug abuse and/or corresponding responsibility, and provides  
9 satisfactory proof. The remedial education program must be approved by the Board or its  
10 designee. If Respondent completes the continuing education course offered jointly by the Board  
11 and the U.S. Drug Enforcement Administration, entitled "CURES, Prescription Drug Abuse and  
12 Preventing Drug Diversion – What a Pharmacist Needs to Know," on May 2018, in San  
13 Francisco, California, then no period of suspension shall be automatically imposed on the  
14 effective date of this decision.

15 During suspension, respondent shall not enter any pharmacy area or any portion of the  
16 licensed premises of a wholesaler, third-party logistics provider, veterinary food-animal drug  
17 retailer, or any other distributor of drugs that is licensed by the board, or any manufacturer, or any  
18 area where dangerous drugs and/or dangerous devices or controlled substances are maintained.

19 Respondent shall not practice pharmacy nor do any act involving drug selection, selection  
20 of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent  
21 manage, administer, or be a consultant to any licensee of the board, or have access to or control  
22 the ordering, distributing, manufacturing or dispensing of dangerous drugs and/or dangerous  
23 devices or controlled substances.

24 Respondent shall not engage in any activity that requires the professional judgment of  
25 and/or licensure as a pharmacist. Respondent shall not direct or control any aspect of the practice  
26 of pharmacy or of the manufacturing, distributing, wholesaling, or retailing of dangerous drugs  
27 and/or dangerous devices or controlled substances.

28 Failure to comply with this suspension shall be considered a violation of probation.

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**2. Obey All Laws**

Respondent shall obey all state and federal laws and regulations. Respondent shall report any of the following occurrences to the board, in writing, within seventy- two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty, or nolo contendere, no contest, or similar, in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- the filing of a disciplinary pleading, issuance of a citation, or initiation of another 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.

**3. 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.

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1           **4. Interview with the Board**

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

7           **5. Cooperate with Board Staff**

8           Respondent shall timely cooperate with the board's inspection program and with the board's  
9 monitoring and investigation of respondent's compliance with the terms and conditions of his  
10 probation, including but not limited to: timely responses to requests for information by board  
11 staff; timely compliance with directives from board staff regarding requirements of any term or  
12 condition of probation; and timely completion of documentation pertaining to a term or condition  
13 of probation. Failure to timely cooperate shall be considered a violation of probation.

14           **6. Continuing Education**

15           Respondent shall provide evidence of efforts to maintain skill and knowledge as a  
16 pharmacist as directed by the board or its designee.

17           **7. Reporting of Employment and Notice to Employers**

18           During the period of probation, respondent shall notify all present and prospective  
19 employers of the decision in case number 5905 and the terms, conditions and restrictions imposed  
20 on respondent by the decision, as follows:

21           Within thirty (30) days of the effective date of this decision, and within ten (10) days of  
22 undertaking any new employment, respondent shall report to the board in writing the name,  
23 physical address, and mailing address of each of his employer(s), and the name(s) and telephone  
24 number(s) of all of his direct supervisor(s), as well as any pharmacist(s)-in-charge, designated  
25 representative(s)-in-charge, responsible manager, or other compliance supervisor(s) and the work  
26 schedule, if known. Respondent shall also include the reason(s) for leaving the prior  
27 employment. Respondent shall sign and return to the board a written consent authorizing the  
28 board or its designee to communicate with all of respondent's employer(s) and supervisor(s), and

1 authorizing those employer(s) or supervisor(s) to communicate with the board or its designee,  
2 concerning respondent's work status, performance, and monitoring. Failure to comply with the  
3 requirements or deadlines of this condition shall be considered a violation of probation.

4       Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of  
5 respondent undertaking any new employment, respondent shall cause (a) his direct supervisor, (b)  
6 his pharmacist-in-charge, designated representative-in-charge, responsible manager, or other  
7 compliance supervisor, and (c) the owner or owner representative of his employer, to report to the  
8 board in writing acknowledging that the listed individual(s) has/have read the decision in case  
9 number 5905, and terms and conditions imposed thereby. If one person serves in more than one  
10 role described in (a), (b), or (c), the acknowledgment shall so state. It shall be the respondent's  
11 responsibility to ensure that these acknowledgment(s) are timely submitted to the board. In the  
12 event of a change in the person(s) serving the role(s) described in (a), (b), or (c) during the term  
13 of probation, respondent shall cause the person(s) taking over the role(s) to report to the board in  
14 writing within fifteen (15) days of the change acknowledging that he or she has read the decision  
15 in case number 5905, and the terms and conditions imposed thereby.

16       If respondent works for or is employed by or through an employment service, respondent  
17 must notify the person(s) described in (a), (b), and (c) above at every entity licensed by the board  
18 of the decision in case number 5905, and the terms and conditions imposed thereby in advance of  
19 respondent commencing work at such licensed entity. A record of this notification must be  
20 provided to the board upon request.

21       Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen  
22 (15) days of respondent undertaking any new employment by or through an employment service,  
23 respondent shall cause the person(s) described in (a), (b), and (c) above at the employment service  
24 to report to the board in writing acknowledging that he or she has read the decision in case  
25 number, and the terms and conditions imposed thereby. It shall be respondent's responsibility to  
26 ensure that these acknowledgment(s) are timely submitted to the board.

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

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

8 **8. Notification of Change(s) in Name, Address(es), or Phone Number(s)**

9 Respondent shall further notify the board in writing within ten (10) days of any change in  
10 name, residence address, mailing address, e-mail address or phone number.

11 Failure to timely notify the board of any change in employer, name, address, or phone  
12 number shall be considered a violation of probation.

13 **9. Restrictions on Supervision and Oversight of Licensed Facilities**

14 During the period of probation, respondent shall not supervise any intern pharmacist, be the  
15 pharmacist-in-charge, designated representative-in-charge, responsible manager or other  
16 compliance supervisor of any entity licensed by the board, nor serve as a consultant. Assumption  
17 of any such unauthorized supervision responsibilities shall be considered a violation of probation.

18 **10. Reimbursement of Board Costs**

19 As a condition precedent to successful completion of probation, respondent shall pay to the  
20 board its costs of investigation and prosecution in the amount of \$15,000.00. Respondent shall  
21 make said payments as follows:

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

25 Respondent shall be permitted to pay these costs in a payment plan approved by the board  
26 or its designee, so long as full payment is completed no later than one (1) year prior to the end  
27 date of probation.

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1           **11. Probation Monitoring Costs**

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

6           **12. Status of License**

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

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

14          **13. License Surrender While on Probation/Suspension**

15          Following the effective date of this decision, should respondent cease practice due to  
16 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,  
17 respondent may relinquish his license, including any indicia of licensure issued by the board,  
18 along with a request to surrender the license. The board or its designee shall have the discretion  
19 whether to accept the surrender or take any other action it deems appropriate and reasonable.  
20 Upon formal acceptance of the surrender of the license, respondent will no longer be subject to  
21 the terms and conditions of probation. This surrender constitutes a record of discipline and shall  
22 become a part of the respondent's license history with the board.

23          Upon acceptance of the surrender, respondent shall relinquish his pocket and/or wall  
24 license, including any indicia of licensure not previously provided to the board within ten (10)  
25 days of notification by the board that the surrender is accepted if not already provided.  
26 Respondent may not reapply for any license from the board for three (3) years from the effective  
27 date of the surrender. Respondent shall meet all requirements applicable to the license sought as  
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1 of the date the application for that license is submitted to the board, including any outstanding  
2 costs.

3 **14. Practice Requirement – Extension of Probation**

4 Except during periods of suspension, respondent shall, at all times while on probation, be  
5 employed as a pharmacist in California for a minimum of 32 hours per calendar month. Any  
6 month during which this minimum is not met shall extend the period of probation by one month.  
7 During any such period of insufficient employment, respondent must nonetheless comply with all  
8 terms and conditions of probation, unless respondent receives a waiver in writing from the board  
9 or its designee.

10 If respondent does not practice as a pharmacist in California for the minimum number of  
11 hours in any calendar month, for any reason (including vacation), respondent shall notify the  
12 board in writing within ten (10) days of the conclusion of that calendar month. This notification  
13 shall include at least: the date(s), location(s), and hours of last practice; the reason(s) for the  
14 interruption or reduction in practice; and the anticipated date(s) on which respondent will resume  
15 practice at the required level. Respondent shall further notify the board in writing within ten (10)  
16 days following the next calendar month during which respondent practices as a pharmacist in  
17 California for the minimum of hours. Any failure to timely provide such notification(s) shall be  
18 considered a violation of probation.

19 It is a violation of probation for respondent's probation to be extended pursuant to the  
20 provisions of this condition for a total period, counting consecutive and non-consecutive months,  
21 exceeding thirty-six (36) months. The board or its designee may post a notice of the extended  
22 probation period on its website.

23 **15. Violation of Probation**

24 If respondent has not complied with any term or condition of probation, the board shall  
25 have continuing jurisdiction over respondent, and the board shall provide notice to respondent  
26 that probation shall automatically be extended, until all terms and conditions have been satisfied  
27 or the board has taken other action as deemed appropriate to treat the failure to comply as a  
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1 violation of probation, to terminate probation, and to impose the penalty that was stayed. The  
2 board or its designee may post a notice of the extended probation period on its website.

3 If respondent violates probation in any respect, the board, after giving respondent notice  
4 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that  
5 was stayed. If a petition to revoke probation or an accusation is filed against respondent during  
6 probation, or the preparation of an accusation or petition to revoke probation is requested from  
7 the Office of the Attorney General, the board shall have continuing jurisdiction and the period of  
8 probation shall be automatically extended until the petition to revoke probation or accusation is  
9 heard and decided.

#### 10 **16. Completion of Probation**

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

#### 13 **17. Community Services Program**

14 Within sixty (60) days of the effective date of this decision, respondent shall submit to the  
15 board or its designee, for prior approval, a community service program in which respondent shall  
16 provide free health-care related services on a regular basis to a community or charitable facility or  
17 agency for at least 80 hours to be completed no later than one (1) year prior to the end date of  
18 probation. Within thirty (30) days of board approval thereof, respondent shall submit  
19 documentation to the board or its designee demonstrating commencement of the community  
20 service program. Respondent shall report on progress with the community service program in the  
21 quarterly reports and provide satisfactory documentary evidence of such progress to the board or  
22 its designee upon request. Failure to timely submit, commence, or comply with the program shall  
23 be considered a violation of probation.

#### 24 **18. Remedial Education**

25 Within ninety (90) days of the effective date of this decision, respondent shall submit to the  
26 board or its designee, for prior approval, an appropriate program of remedial education related to  
27 prescription drug abuse and pharmacy security and controls. The program of remedial education  
28 shall consist of at least six (6) hours, which shall be completed every year of probation at

1 Respondent's own expense. Fifty percent of the training must be in-person training. All remedial  
2 education shall be in addition to, and shall not be credited toward, continuing education (CE)  
3 courses used for license renewal purposes for pharmacists.

4 Failure to timely submit for approval or complete the approved remedial education shall be  
5 considered a violation of probation. The period of probation will be automatically extended until  
6 such remedial education is successfully completed and written proof, in a form acceptable to the  
7 board, is provided to the board or its designee.

8 Following the completion of each course, the board or its designee may require the  
9 respondent, at Entity own expense, to take an approved examination to test the respondent's  
10 knowledge of the course. If the respondent does not achieve a passing score on the examination  
11 that course shall not count towards satisfaction of this term. Respondent shall take another course  
12 approved by the board in the same subject area.

#### 13 **19. Ethics Course**

14 Within sixty (60) calendar days of the effective date of this decision, respondent shall enroll  
15 in a course in ethics, at respondent's expense, approved in advance by the board or its designee  
16 that complies with Title 16 California Code of Regulations section 1773.5. Respondent shall  
17 provide proof of enrollment upon request. Within five (5) days of completion, respondent shall  
18 submit a copy of the certificate of completion to the board or its designee. Failure to timely enroll  
19 in an approved ethics course, to initiate the course during the first year of probation, to  
20 successfully complete it before the end of the second year of probation, or to timely submit proof  
21 of completion to the board or its designee, shall be considered a violation of probation.

#### 22 **20. No Ownership or Management of Licensed Premises**

23 Respondent shall not own, have any legal or beneficial interest in, nor serve as a manager,  
24 administrator, member, officer, director, trustee, associate, or partner of any business, firm,  
25 partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell  
26 or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90)  
27 days following the effective date of this decision and shall immediately thereafter provide written  
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1 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide  
2 documentation thereof shall be considered a violation of probation.

3 ACCEPTANCE

4 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
5 discussed it with my attorney, Gregory P. Matzen. I understand the stipulation and the effect it  
6 will have on my Pharmacist License. I enter into this Stipulated Settlement and Disciplinary  
7 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order  
8 of the Board of Pharmacy.

9  
10 DATED: 4/5/2018 Joseph Manuel Huante  
11 JOSEPH MANUEL HUANTE  
12 Respondent

13 I have read and fully discussed with Respondent Joseph Manuel Huante the terms and  
14 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.  
15 I approve its form and content.

16 DATED: 4/5/18 Gregory P. Matzen  
17 GREGORY P. MATZEN  
18 Attorney for Respondent

19 ENDORSEMENT

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

22 Dated: 4/5/18 , Respectfully submitted,  
23 XAVIER BECERRA  
24 Attorney General of California  
25 JANICE K. LACHMAN  
26 Supervising Deputy Attorney General  
27 Karen Denvir  
28 KAREN R. DENVER  
Deputy Attorney General  
Attorneys for Complainant

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**Exhibit A**

**Accusation No. 5905**

1 XAVIER BECERRA  
Attorney General of California  
2 JANICE K. LACHMAN  
Supervising Deputy Attorney General  
3 KAREN R. DENVIR  
Deputy Attorney General  
4 State Bar No. 197268  
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6 Telephone: (916) 324-5333  
Facsimile: (916) 327-8643  
7 *Attorneys for Complainant*

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**Stockton, CA 95202**

**ACCUSATION**

15 **Permit No. PHY 36858,**

16 **and**

17 **JOSEPH MANUEL HUANTE**  
18 **123 S. Commerce Street, Suite A**  
**Stockton, CA 95202**

19 **Pharmacist License No. RPH 36843**

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 November 13, 1990, the Board of Pharmacy issued Permit Number PHY  
27 36858 to Waterfront Pharmacy with Joseph M. Huante designated as the Pharmacist-in-Charge,  
28 Thelma Ramseyer as a fifty percent Partner and Joseph M. Huante as a fifty percent Partner

1 (hereinafter "Respondent Waterfront Pharmacy"). The Permit was in full force and effect at all  
2 times relevant to the charges brought herein and will expire on November 1, 2017, unless  
3 renewed.

4 3. On or about January 27, 1982, the Board of Pharmacy issued Pharmacist License  
5 Number RPH 36843 to Joseph Manuel Huante (hereinafter "Respondent Huante"). The  
6 Pharmacist License was in full force and effect at all times relevant to the charges brought herein  
7 and will expire on January 31, 2018, unless renewed.

#### 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 4011 of the Code provides that the Board shall administer and enforce both  
13 the Pharmacy Law [Bus. & Prof. Code, § 4000 *et seq.*] and the Uniform Controlled Substances  
14 Act [Health & Safety Code, § 11000 *et seq.*]

15 6. Section 4300, subdivision (a), of the Code provides that every license issued by the  
16 Board may be suspended or revoked.

17 7. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or  
18 suspension of a Board-issued license, the placement of a license on a retired status, or the  
19 voluntary surrender of a license by a licensee shall not deprive the Board of jurisdiction to  
20 commence or proceed with any investigation of, or action or disciplinary proceeding against, the  
21 licensee or to render a decision suspending or revoking the license.

#### 22 STATUTORY AND REGULATORY PROVISIONS

23 8. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous  
24 drug or dangerous device except upon the prescription of an authorized prescriber.

25 9. Section 4081 of the Code states, in pertinent part:

26 (a) All records of manufacture and of sale, acquisition, receipt, shipment or disposition of  
27 dangerous drugs or dangerous devices shall be at all times during business hours open to  
28 inspection by authorized officers of the law, and shall be preserved for at least three years from

1 the date of making. A current inventory shall be kept by every manufacturer, wholesaler, third-  
2 party logistics provider, pharmacy, veterinary food-animal drug retailer, physician, dentist,  
3 podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a  
4 currently valid and unrevoked certificate, license, permit, registration, or exemption under  
5 Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4  
6 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who  
7 maintains a stock of dangerous drugs or dangerous devices.

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

12 ...

13 10. Section 4105 of the Code requires, in pertinent part, that unless a waiver is granted by  
14 the Board, all records and other documentation of the acquisition and disposition of dangerous  
15 drugs and devices by any entity licensed by the Board be retained on the licensed premises, in a  
16 readily retrievable form, for three years from the date of making.

17 11. Section 4113, subdivision (c), of the Code states:

18 The pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state  
19 and federal laws and regulations pertaining to the practice of pharmacy.

20 12. Section 4301 of the Code states, in pertinent part:

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

24 ...

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

27 ...

28

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

5 ...

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

7 Any person who has been denied a license or whose license has been revoked or is under  
8 suspension, or who has failed to renew his or her license while it was under suspension, or who  
9 has been a manager, administrator, owner, member, officer, director, associate, or partner of any  
10 partnership, corporation, firm, or association whose application for a license has been denied or  
11 revoked, is under suspension or has been placed on probation, and while acting as the manager,  
12 administrator, owner, member, officer, director, associate, or partner had knowledge of or  
13 knowingly participated in any conduct for which the license was denied, revoked, suspended, or  
14 placed on probation, shall be prohibited from serving as a manager, administrator, owner,  
15 member, officer, director, associate, or partner of a licensee as follows:

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

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

20 ...

21 14. Section 4126.5 of the Code states:

22 (a) A pharmacy may furnish dangerous drugs only to the following:

23 (1) A wholesaler owned or under common control by the wholesaler from whom the  
24 dangerous drug was acquired.

25 (2) The pharmaceutical manufacturer from whom the dangerous drug was acquired.

26 (3) A licensed wholesaler acting as a reverse distributor.

27 ///

28 ///

1 (4) Another pharmacy or wholesaler to alleviate a temporary shortage of a dangerous drug  
2 that could result in the denial of health care. A pharmacy furnishing dangerous drugs pursuant to  
3 this paragraph may only furnish a quantity sufficient to alleviate the temporary shortage.

4 (5) A patient or to another pharmacy pursuant to a prescription or as otherwise authorized  
5 by law.

6 (6) A health care provider that is not a pharmacy but that is authorized to purchase  
7 dangerous drugs.

8 (7) To another pharmacy under common control.

9 (b) Notwithstanding any other provision of law, a violation of this section may subject the  
10 person or persons who committed the violation to a fine not to exceed the amount specified  
11 in Section 125.9 for each occurrence pursuant to a citation issued by the board.

12 (c) Amounts due from any person under this section on or after January 1, 2005, shall be  
13 offset as provided under Section 12419.5 of the Government Code. Amounts received by the  
14 board under this section shall be deposited into the Pharmacy Board Contingent Fund.

15 (d) For purposes of this section, "common control" means the power to direct or cause the  
16 direction of the management and policies of another person whether by ownership, by voting  
17 rights, by contract, or by other means.

18 15. Section 4306.5 of the Code states:

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

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

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

28 (c) Acts or omissions that involve, in whole or in part, the failure to consult appropriate

1 patient, prescription, and other records pertaining to the performance of any pharmacy function.

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

5 16. Section 4332 of the Code states:

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

10 17. California Code of Regulations, title 16, section 1714, states in pertinent part:

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

15 ...

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

20 18. California Code of Regulations, title 16, section 1718, states:

21 "Current Inventory" as used in Sections 4081 and 4332 of the Business and Professions  
22 Code shall be considered to include complete accountability for all dangerous drugs handled by  
23 every licensee enumerated in Sections 4081 and 4332. The controlled substances inventories  
24 required by Title 21, CFR, Section 1304 shall be available for inspection upon request for at least  
25 3 years after the date of the inventory.

26 **CONTROLLED SUBSTANCES/DANGEROUS DRUGS**

27 19. Section 4021 of the Code provides that a "controlled substance" means any substance  
28 listed in Schedules I through V contained in Health and Safety Code section 11053 *et seq.*



1 San Leandro, California. The two dangerous drugs furnished by Respondents to Getwell  
2 Pharmacy and Medical Supply were not in shortage during this time period.

3 25. On December 1, 2014, a Board of Pharmacy inspector informed Waterfront  
4 Pharmacy owner and Pharmacist-in-Charge Huante that furnishing hydrocodone/acetaminophen  
5 and promethazine with codeine syrup to another pharmacy was not permitted by law because  
6 there were no shortages of either drug. Invoices dated January 27, 2015, February 3, 2015 and  
7 February 4, 2015 indicate that Respondents provided a total of 156 pints of promethazine with  
8 codeine to Getwell Pharmacy and Medical Supply, even after being specifically advised against  
9 this activity by the Board inspector.

10 26. An audit conducted by Board of Pharmacy inspectors for the audit period from  
11 November 27, 2012 through December 1, 2014, revealed that Waterfront Pharmacy did not  
12 account for approximately 160,058 tablets of hydrocodone/acetaminophen 10/325 mg. and  
13 approximately 1,421 pints of promethazine with codeine syrup.

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Illegally Furnishing Dangerous Drugs to Another Pharmacy)**

16 27. Respondents are each and severally subject to disciplinary action under Code sections  
17 4126.5(a)(4) and 4301, subsections (j) and (o), in that they furnished dangerous drugs to Getwell  
18 Pharmacy and Medical Supply during a time period where there was no shortage of the dangerous  
19 drugs, in violation of pharmacy law, as set forth above in paragraphs 24-25.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Failure to Exercise Due Caution)**

22 28. Respondents are each and severally subject to disciplinary action under Code sections  
23 4306.5(b), and 4301, subsections (j) and (o), in that Respondents failed to exercise professional  
24 judgment or corresponding responsibility with regard to the dispensing or furnishing of controlled  
25 substances and dangerous drugs, as set forth above in paragraphs 24-25.

26 ///

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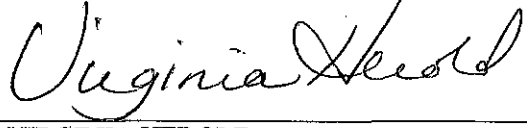


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6. Ordering Waterfront Pharmacy and Joseph M. Huante to jointly and severally be responsible to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: 7/19/17



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

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