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

In the Matter of the Statement of Issues Against: **OMNI FAMILY HEALTH, FRANCISCO CASTILLON, CEO/ADMINISTRATOR** **Clinic Permit Applicant** Respondent.	Case No. 6561

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order for Public Reproval 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 December 18, 2019.

It is so ORDERED on November 18, 2019.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

Greg Lippe
Board President

XAVIER BECERRA
Attorney General of California
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BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against: **OMNI FAMILY HEALTH, FRANCISCO CASTILLON, CEO/ADMINISTRATOR** **Clinic Permit Applicant** Respondent.	Case No. 6561 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER FOR PUBLIC REPROVAL** **[Bus. & Prof. Code § 495]**

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

PARTIES

1. Anne Sodergren ("Complainant") is the Interim Executive Officer of the Board of Pharmacy ("Board"). She brought this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Kevin J. Schettig, Deputy Attorney General.

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2. Respondent Omni Family Health, Francisco Castillon, CEO/Administrator ("Respondent") is represented in this proceeding by attorney Gabriel P. Herrera, Esq., whose address is: Kronick, Moskovitz, Tiedemann, & Girard, 400 Capitol Mall, 27th Floor, Sacramento, California, 95814.

JURISDICTION

3. On or about March 15, 2018, the Board received an application for a Clinic Permit from Respondent. On or about July 3, 2018, the Board received a revised application adding Joseph Hayes, M.D., as Respondent's Chief Medical Officer. On or about March 9, 2018, and July 2, 2018, Omni Family Health certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on July 18, 2018. Respondent timely requested a hearing with respect to the denial.

4. Statement of Issues No. 6561 was filed before the Board, Department of Consumer Affairs and is currently pending against Respondent. The Statement of Issues and all other statutorily required documents were properly served on Respondent on November 28, 2018. A copy of Statement of Issues No. 6561 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Statement of Issues No. 6561. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order for Public Reproval.

6. Respondent is fully aware of its legal rights in this matter, including the right to a hearing on the charges and allegations in the Statement of Issues; the right to be represented by counsel at its own expense; the right to confront and cross-examine the witnesses against them; the right to present evidence and to testify on its own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of 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.

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

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Statement of Issues No. 6561.

9. Respondent agrees that its application for a Clinic Permit is subject to denial, and agrees to be bound by the Disciplinary Order below.

CONTINGENCY

10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or its counsel. By signing the stipulation, Respondent understands and agrees that they may not withdraw its 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 Settlement and Disciplinary Order for Public Reproval 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.

11. The parties understand and agree that Portable Document Format ("PDF") and facsimile copies of this Stipulated Settlement and Disciplinary Order for Public Reproval, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

12. This Stipulated Settlement and Disciplinary Order for Public Reproval 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 Settlement and Disciplinary Order for Public Reproval may not be altered, amended, modified,

supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that the Application for Licensure of Respondent Omni Family Health, Francisco Castillon, CEO/Administrator is hereby granted. Upon successful completion of the licensure examination and all other licensing requirements, a license shall be issued to Respondent. Said license shall be publicly reproved by the Board of Pharmacy under Business and Professions Code section 495 in resolution of Statement of Issues No. 6561, attached as Exhibit A.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order for Public Reproval and have fully discussed it with my attorney, Gabriel P. Herrera. I understand the stipulation and the effect it will have on my Clinic Permit. I enter into this Stipulated Settlement and Disciplinary Order for Public Reproval voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 5/31/19

OMNI FAMILY HEALTH, FRANCISCO CASTILLON, CEO/ADMINISTRATOR
Respondent

I have read and fully discussed with Respondent Omni Family Health, Francisco Castillon, CEO/Administrator the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order for Public Reproval. I approve its form and content.

DATED: 5/31/19

GABRIEL P. HERRERA
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order for Public Reproval is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated: 5/31/19

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ARMANDO ZAMBRANO
Supervising Deputy Attorney General

KEVIN J. SCHETTIG
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Statement of Issues No. 6561

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

In the Matter of the Statement of Issues Against: **OMNI FAMILY HEALTH, FRANCISCO CASTILLON, CEO/ADMINISTRATOR** **Clinic Permit Applicant** Respondents.	Case No. 6561 **STATEMENT OF ISSUES**

Complainant alleges:

PARTIES

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

2. On or about March 15, 2018, the Board, Department of Consumer Affairs, received an application for a Clinic Permit from Omni Family Health, Francisco Castillon, CEO/Administrator ("Respondent").[1] On or about July 3, 2018, the Board received a revised

[1] Respondent was initially incorporated as "National Health Services, Inc." on or about January 9, 1978. On or about June 12, 2013, Respondent submitted a request to the California Secretary of State to change its name from "National Health Services, Inc." to "Omni Family Health."

application adding Joseph Hayes, M.D., as Respondent's Chief Medical Officer. On or about March 9, 2018, and July 2, 2018, Omni Family Health certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on July 18, 2018.

3. On or about July 12, 2004, the Board of Pharmacy issued Pharmacy Permit Number PHY 46792 to Respondent. The Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein but expired on July 1, 2017 and has not been renewed. Tadeus B. Tarmidi is and has been the Pharmacist-in-Charge since July 1, 2005. Francisco Castillon is and has been the Chief Executive Officer since January 3, 2011. John Ogborn and Julien Parsons are and have been Chairmen since July 12, 2004. Ruby Payne and Novira Irawan are and have been Treasurer/Chief Financial Officers since July, 12, 2004. Tommy Fowler is and has been the Secretary since July 12, 2004.

JURISDICTION

4. This Statement of Issues is brought before the 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 480 of the Code states:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

". . . .

"(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

"(d) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license."

6. Section 4300 provides, in pertinent part, that every license issued by the Board is subject to discipline, including suspension or revocation.

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7. Section 4300.1 of the Code states:

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

8. Section 4307, subdivision (a), states:

"(a) Any person who has been denied a license or whose license has been revoked or is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a manager, administrator, owner, member, officer, director, associate, partner, or any other person with management or control of any partnership, corporation, trust, firm, or association whose application for a license has been denied or revoked, is under suspension or has been placed on probation, and while acting as the manager, administrator, owner, member, officer, director, associate, partner, or any other person with management or control had knowledge of or knowingly participated in any conduct for which the license was denied, revoked, suspended, or placed on probation, shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, partner, or in any other position with management or control of a licensee as follows:

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

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

STATUTORY REFERENCES

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

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

". . . .

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

". . . .

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

10. Section 4081 of the Code states:

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

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

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

11. Section 4063 states:

"No prescription for any dangerous drug or dangerous device may be refilled except upon authorization of the prescriber. The authorization may be given orally or at the time of giving the

original prescription. No prescription for any dangerous drug that is a controlled substance may be designated refillable as needed."

12. Health and Safety Code section 11162.1 states:

"(a) The prescription forms for controlled substances shall be printed with the following features:

"(1) A latent, repetitive 'void' pattern shall be printed across the entire front of the prescription blank; if a prescription is scanned or photocopied, the word 'void' shall appear in a pattern across the entire front of the prescription.

"(2) A watermark shall be printed on the backside of the prescription blank; the watermark shall consist of the words 'California Security Prescription.'

"(3) A chemical void protection that prevents alteration by chemical washing.

"(4) A feature printed in thermochromic ink.

"(5) An area of opaque writing so that the writing disappears if the prescription is lightened.

"(6) A description of the security features included on each prescription form.

"(7)(A) Six quantity check off boxes shall be printed on the form so that the prescriber may indicate the quantity by checking the applicable box where the following quantities shall appear:

"1-24

"25-49

"50-74

"75-100

"101-150

"151 and over.

"(B) In conjunction with the quantity boxes, a space shall be provided to designate the units referenced in the quantity boxes when the drug is not in tablet or capsule form.

"(8) Prescription blanks shall contain a statement printed on the bottom of the prescription blank that the 'Prescription is void if the number of drugs prescribed is not noted.'

"(9) The preprinted name, category of licensure, license number, federal controlled substance registration number, and address of the prescribing practitioner.

"(10) Check boxes shall be printed on the form so that the prescriber may indicate the number of refills ordered.

"(11) The date of origin of the prescription.

"(12) A check box indicating the prescriber's order not to substitute.

"(13) An identifying number assigned to the approved security printer by the Department of Justice.

"(14)(A) A check box by the name of each prescriber when a prescription form lists multiple prescribers.

"(B) Each prescriber who signs the prescription form shall identify himself or herself as the prescriber by checking the box by his or her name.

"(b) Each batch of controlled substance prescription forms shall have the lot number printed on the form and each form within that batch shall be numbered sequentially beginning with the numeral one.

"(c)(1) A prescriber designated by a licensed health care facility, a clinic specified in Section 1200, or a clinic specified in subdivision (a) of Section 1206 that has 25 or more physicians or surgeons may order controlled substance prescription forms for use by prescribers when treating patients in that facility without the information required in paragraph (9) of subdivision (a) or paragraph (3) of this subdivision.

"(2) Forms ordered pursuant to this subdivision shall have the name, category of licensure, license number, and federal controlled substance registration number of the designated prescriber and the name, address, category of licensure, and license number of the licensed health care facility the clinic specified in Section 1200, or the clinic specified in Section 1206 that has 25 or more physicians or surgeons preprinted on the form. Licensed health care facilities or clinics exempt under Section 1206 are not required to preprint the category of licensure and license number of their facility or clinic.

"(3) Forms ordered pursuant to this section shall not be valid prescriptions without the name, category of licensure, license number, and federal controlled substance registration number of the prescriber on the form.

"(4)(A) Except as provided in subparagraph (B), the designated prescriber shall maintain a record of the prescribers to whom the controlled substance prescription forms are issued, that shall include the name, category of licensure, license number, federal controlled substance registration number, and quantity of controlled substance prescription forms issued to each prescriber. The record shall be maintained in the health facility for three years.

"(B) Forms ordered pursuant to this subdivision that are printed by a computerized prescription generation system shall not be subject to subparagraph (A) or paragraph (7) of subdivision (a). Forms printed pursuant to this subdivision that are printed by a computerized prescription generation system may contain the prescriber's name, category of professional licensure, license number, federal controlled substance registration number, and the date of the prescription.

"(d) This section shall become operative on January 1, 2012. Prescription forms not in compliance with this division shall not be valid or accepted after July 1, 2012."

13. Health and Safety Code section 11164 states:

"Except as provided in Section 11167, no person shall prescribe a controlled substance, nor shall any person fill, compound, or dispense a prescription for a controlled substance, unless it complies with the requirements of this section.

"(a) Each prescription for a controlled substance classified in Schedule II, III, IV, or V, except as authorized by subdivision (b), shall be made on a controlled substance prescription form as specified in Section 11162.1 and shall meet the following requirements:

"(1) The prescription shall be signed and dated by the prescriber in ink and shall contain the prescriber's address and telephone number; the name of the ultimate user or research subject, or contact information as determined by the Secretary of the United States Department of Health and Human Services; refill information, such as the number of refills ordered and whether the prescription is a first-time request or a refill; and the name, quantity, strength, and directions for use of the controlled substance prescribed.

"(2) The prescription shall also contain the address of the person for whom the controlled substance is prescribed. If the prescriber does not specify this address on the prescription, the

pharmacist filling the prescription or an employee acting under the direction of the pharmacist shall write or type the address on the prescription or maintain this information in a readily retrievable form in the pharmacy.

"(b) (1) Notwithstanding paragraph (1) of subdivision (a) of Section 11162.1, any controlled substance classified in Schedule III, IV, or V may be dispensed upon an oral or electronically transmitted prescription, which shall be produced in hard copy form and signed and dated by the pharmacist filling the prescription or by any other person expressly authorized by provisions of the Business and Professions Code. Any person who transmits, maintains, or receives any electronically transmitted prescription shall ensure the security, integrity, authority, and confidentiality of the prescription.

"(2) The date of issue of the prescription and all the information required for a written prescription by subdivision (a) shall be included in the written record of the prescription; the pharmacist need not include the address, telephone number, license classification, or federal registry number of the prescriber or the address of the patient on the hard copy, if that information is readily retrievable in the pharmacy.

"(3) Pursuant to an authorization of the prescriber, any agent of the prescriber on behalf of the prescriber may orally or electronically transmit a prescription for a controlled substance classified in Schedule III, IV, or V, if in these cases the written record of the prescription required by this subdivision specifies the name of the agent of the prescriber transmitting the prescription.

"(c) The use of commonly used abbreviations shall not invalidate an otherwise valid prescription.

"(d) Notwithstanding any provision of subdivisions (a) and (b), prescriptions for a controlled substance classified in Schedule V may be for more than one person in the same family with the same medical need.

"(e) This section shall become operative on January 1, 2005."

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14. Health and Safety Code section 11165 states in relevant part:

". . . .

"(d) For each prescription for a Schedule II, Schedule III, or Schedule IV controlled substance, as defined in the controlled substances schedules in federal law and regulations, specifically Sections 1308.12, 1308.13, and 1308.14, respectively, of Title 21 of the Code of Federal Regulations, the dispensing pharmacy, clinic, or other dispenser shall report the following information to the Department of Justice as soon as reasonably possible, but not more than seven days after the date a controlled substance is dispensed, in a format specified by the Department of Justice:

"(1) Full name, address, and, if available, telephone number of the ultimate user or research subject, or contact information as determined by the Secretary of the United States Department of Health and Human Services, and the gender, and date of birth of the ultimate user.

"(2) The prescriber's category of licensure, license number, national provider identifier (NPI) number, if applicable, the federal controlled substance registration number, and the state medical license number of any prescriber using the federal controlled substance registration number of a government-exempt facility.

"(3) Pharmacy prescription number, license number, NPI number, and federal controlled substance registration number.

"(4) National Drug Code (NDC) number of the controlled substance dispensed.

"(5) Quantity of the controlled substance dispensed.

"(6) International Statistical Classification of Diseases, 9th revision (ICD-9) or 10th revision (ICD-10) Code, if available.

"(7) Number of refills ordered.

"(8) Whether the drug was dispensed as a refill of a prescription or as a first-time request.

"(9) Date of origin of the prescription.

"(10) Date of dispensing of the prescription.

". . . .

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REGULATORY PROVISIONS

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

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

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

16. California Code of Regulations, title 16, section 1717, states:

"(a) No medication shall be dispensed on prescription except in a new container which conforms with standards established in the official compendia.

"Notwithstanding the above, a pharmacist may dispense and refill a prescription for non-liquid oral products in a clean multiple-drug patient medication package (patient med pak), provided:

"(1) a patient med pak is reused only for the same patient;

"(2) no more than a one-month supply is dispensed at one time; and

"(3) each patient med pak bears an auxiliary label which reads, store in a cool, dry place.

"(b) In addition to the requirements of Section 4040, Business and Professions Code, the following information shall be maintained for each prescription on file and shall be readily retrievable:

"(1) The date dispensed, and the name or initials of the dispensing pharmacist. All prescriptions filled or refilled by an intern pharmacist must also be initialed by the supervising pharmacist before they are dispensed.

"(2) The brand name of the drug or device; or if a generic drug or device is dispensed, the distributor's name which appears on the commercial package label; and

"(3) If a prescription for a drug or device is refilled, a record of each refill, quantity dispensed, if different, and the initials or name of the dispensing pharmacist.

"(4) A new prescription must be created if there is a change in the drug, strength, prescriber or directions for use, unless a complete record of all such changes is otherwise maintained.

"(c) Promptly upon receipt of an orally transmitted prescription, the pharmacist shall reduce it to writing, and initial it, and identify it as an orally transmitted prescription. If the prescription is then dispensed by another pharmacist, the dispensing pharmacist shall also initial the prescription to identify him or herself.

"All orally transmitted prescriptions shall be received and transcribed by a pharmacist prior to compounding, filling, dispensing, or furnishing.

"Chart orders as defined in Section 4019 of the Business and Professions Code are not subject to the provisions of this subsection.

"(d) A pharmacist may furnish a drug or device pursuant to a written or oral order from a prescriber licensed in a State other than California in accordance with Business and Professions Code Section 4005.

"(e) A pharmacist may transfer a prescription for Schedule III, IV, or V controlled substances to another pharmacy for refill purposes in accordance with Title 21, Code of Federal Regulations, section 1306.26.

"Prescriptions for other dangerous drugs which are not controlled substances may also be transferred by direct communication between pharmacists or by the receiving pharmacist=s access to prescriptions or electronic files that have been created or verified by a pharmacist at the transferring pharmacy. The receiving pharmacist shall create a written prescription; identifying it as a transferred prescription; and record the date of transfer and the original prescription number. When a prescription transfer is accomplished via direct access by the receiving pharmacist, the receiving pharmacist shall notify the transferring pharmacy of the transfer. A pharmacist at the transferring pharmacy shall then assure that there is a record of the prescription as having been transferred, and the date of transfer. Each pharmacy shall maintain inventory accountability and pharmacist accountability and dispense in accordance with the provisions of section 1716 of this Division. Information maintained by each pharmacy shall at least include:

"(1) Identification of pharmacist(s) transferring information;

"(2) Name and identification code or address of the pharmacy from which the prescription was received or to which the prescription was transferred, as appropriate;

"(3) Original date and last dispensing date;

"(4) Number of refills and date originally authorized;

"(5) Number of refills remaining but not dispensed;

"(6) Number of refills transferred.

"(f) The pharmacy must have written procedures that identify each individual pharmacist responsible for the filling of a prescription and a corresponding entry of information into an automated data processing system, or a manual record system, and the pharmacist shall create in his/her handwriting or through hand-initializing a record of such filling, not later than the beginning of the pharmacy's next operating day. Such record shall be maintained for at least three years."

CONTROLLED SUBSTANCES/DANGEROUS DRUGS

17. Hydrocodone and acetaminophen, the generic name for Norco, is a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e)(4) and is a dangerous drug pursuant to Code section 4022. As of October 6, 2014, hydrocodone combination products were classified as Schedule II controlled substances under federal law pursuant to United States Code, title 21, section 812.

18. Alprazolam, the generic name for Xanax, is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d)(1) and is a dangerous drug pursuant to Code section 4022.

19. Carisoprodol, the generic name for Soma, is a Schedule IV controlled substance pursuant to Title 21, Code of Federal Regulations section 1308.14 subdivision (c)(6) and is a dangerous drug pursuant to Code section 4022.

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FACTS[2]

20. The Board analyzed pharmacy dispensing data reported to the Controlled Substance Utilization Review and Evaluation System ("CURES") and reviewed the information along with the Respondent's acquisition data obtained from some California licensed wholesalers. The review determined the need for a drug audit at Respondent Pharmacy to determine the possible existence of a drug loss or inventory overage.

21. On September 9, 2015, the Board conducted an audit inspection of Respondent. The audit determined drug losses of approximately 21,666 hydrocodone/acetaminophen 10 mg/325 mg tablets; 6,248 alprazolam 2 mg tablets; and 416 carisoprodol 350 mg tablets over a period of sixteen months.

22. The inspection also revealed the failure to transmit CURES data on a weekly basis, the dispensing of controlled drug prescriptions in the absence of documented prescriber authorization (refill or newly-issued prescriptions), the dispensing of controlled drug prescriptions issued on non-compliant controlled substance prescription forms, and the failure to comply with the requirements of transcribing telephoned-in prescriptions.

CAUSE FOR DENIAL OF APPLICATION

(Commission of Acts that Constitute Grounds for Suspension or Revocation if Done by Licentiate)

23. Respondent's application is subject to denial under section 480, subdivision (a)(3), of the Code, in that Respondent committed acts which, if done by a licentiate, would be grounds for suspension or revocation of the license. Respondent violated the following provisions of the Business and Professions Code The circumstances are as follows:

a. Section 4081, subdivision (a), as related to California Code of Regulations section 1718 and 1714(b), on the grounds of unprofessional conduct, in that Respondent failed to keep a proper inventory of controlled substances and failed to account for all controlled substances at Respondent's pharmacy. A

[2] The facts alleged herein gave rise to Accusation No. 5976, filed against, *inter alia*, Respondent. Accusation No. 5976, which seeks the suspension or revocation of Respondent's pharmacy permit, is currently pending against Respondent.

Board Inspector audited Respondent's records and determined drug losses of approximately 21,666 hydrocodone/acetaminophen 10 mg/325 mg tablets; 6,248 alprazolam 2 mg tablets and 416 carisoprodol 350 mg tablets for the period between May 1, 2014 and September 9, 2015.

b. Section 4301, subdivision (j), in that on multiple occasions between January 24, 2014, and September 18, 2015, Respondent failed to submit within seven days after the date of dispensing, the required pharmacy controlled substance dispensing information to the Department of Justice. The longest delay in the submission of the reports occurred between October 26, 2014 and June 4, 2015, which involved approximately 25 weeks of data (2,290 record counts from November 25, 2014 to April 28, 2015). This was in violation of Health and Safety Code section 11165, subdivision (d).

c. Section 4301, subdivision (o), for violating California Code of Regulations, title 16, section 1717(c), in that the Board's inspection conducted at Respondent's pharmacy determined that one of Respondent's staff pharmacists failed to initial the hardcopies of at least three orally transmitted controlled substance prescriptions (Rx No. 706-5466, Rx No. 709-3641, Rx No. 713-7455, and Rx No. 713-7453).

d. Section 4301, subdivision (j), for violating Health and Safety Code section 11164, in that a review of prescription documents collected on or about September 9, 2015, during an inspection conducted at Respondent's pharmacy, and subsequent prescription documents received by mail determined Respondent Pharmacy reviewed and dispensed controlled substance prescriptions issued on prescription forms which did not meet the requirements of Health and Safety Code section 11162.1 as follows:

i. At least nine controlled substance prescriptions issued by a Dr. A.[3] lacked the following requirements: written date and prescriber's

[3] Only the doctor's initial is used to protect his or her confidentiality.

signature, the watermark printed on the backside of the prescription forms consisting of the words "California Security Prescription," the identifying number assigned to the approved security printer by the Department of Justice, and the statement: "Prescription is void if the number of drugs prescribed is not noted" printed on the bottom.

ii. At least eleven controlled substance prescription documents were non-compliant pharmacy prescription forms (plain white paper) and lacked all the security features specified under Health and Safety Code section 11162.1. Four of the twelve prescription documents lacked a written prescriber's signature and issue date (Rx Nos. 710-7219, 710-7218, 707-6353, 710-5799, 710-5798).

iii. Respondent's pharmacist-in-charge reviewed and passed for filling/dispensing, prescriptions issued on a controlled substance prescription form which lacked the following required features: written issue date and prescriber's signature, the watermark printed on the backside of the prescription forms consisting of the words "California Security Prescription," the identifying number assigned to the approved security printer by the Department of Justice, and the statement: "Prescription is void if the number of drugs prescribed is not noted" printed on the bottom.

iv. Respondent's pharmacist-in-charge reviewed and passed for filling/dispensing, prescriptions issued in three non-compliant pharmacy prescription forms (plain white paper) which lacked all the security features specified under Health and Safety Code section 11162.1.

v. One of Respondent's staff pharmacists reviewed and passed for filling/dispensing, prescriptions issued on eight controlled substance prescription forms which lacked the following required features:

written issue date and prescriber's signature, the watermark printed on the backside of the prescription forms consisting of the words "California Security Prescription," the identifying number assigned to the approved security printer by the Department of Justice, and the statement: "Prescription is void if the number of drugs prescribed is not noted" printed on the bottom.

e. Section 4063, in that the inspection conducted on September 9, 2015, at Respondent's pharmacy and review of subsequent pharmacy documents received, determined that Respondent refilled at least 104 controlled substance prescriptions without obtaining prescriber authorization or documentation thereof. One of Respondent's staff pharmacists refilled most of the 36 prescription numbers reviewed more than once.

24. Complainant refers to, and by this reference incorporates, the allegations set forth in paragraphs 17 through 22, above, as though fully set forth herein.

PRAYER

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

1. Denying the application of Omni Family Health, Francisco Castillon, CEO/Administrator, for a Clinic Permit;

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

DATED: 10/25/18

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

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