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

11 In the Matter of the First Amended Accusation
12 Against:

Case No. 3367

13 GUSTAVO ADOLFO LIZARAZO
8995 Jana Street
14 Spring Valley, CA 91977

OAH No. 2009110737

15 Pharmacist License No. RPH 59384

FIRST AMENDED ACCUSATION

16 Respondent.

17
18 Complainant alleges:

19 PARTIES

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

23 2. On or about March 12, 2007, the Board of Pharmacy issued Pharmacist License
24 Number RPH 59384 to Gustavo Adolfo Lizarazo (Respondent). The Pharmacist License was in
25 full force and effect at all times relevant to the charges brought herein, and will expire on
26 September 30, 2012, unless renewed.

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JURISDICTION

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

5 4. Section 4301 of the Code states, in relevant part:

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

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11 (h) The administering to oneself, of any controlled substance, or the
12 use of any dangerous drug or of alcoholic beverages to the extent or in
13 a manner as to be dangerous or injurious to oneself, to a person
14 holding a license under this chapter, or to any other person or to the
15 public, or to the extent that the use impairs the ability of the person to
16 conduct with safety to the public the practice authorized by the license.

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18 (k) The conviction of more than one misdemeanor or any felony
19 involving the use, consumption, or self-administration of any
20 dangerous drug or alcoholic beverage, or any combination of those
21 substances.

22 (l) The conviction of a crime substantially related to the
23 qualifications, functions, and duties of a licensee under this chapter.
24 The record of conviction of a violation of Chapter 13 (commencing
25 with Section 801) of Title 21 of the United States Code regulating
26 controlled substances or of a violation of the statutes of this state
27 regulating controlled substances or dangerous drugs shall be
28 conclusive evidence of unprofessional conduct. In all other cases, the
record of conviction shall be conclusive evidence only of the fact that
the conviction occurred. The board may inquire into the circumstances
surrounding the commission of the crime, in order to fix the degree of
discipline or, in the case of a conviction not involving controlled
substances or dangerous drugs, to determine if the conviction is of an
offense substantially related to the qualifications, functions, and duties
of a licensee under this chapter. A plea or verdict of guilty or a
conviction following a plea of nolo contendere is deemed to be a
conviction within the meaning of this provision. The board may take
action when the time for appeal has elapsed, or the judgment of
conviction has been affirmed on appeal or when an order granting
probation is made suspending the imposition of sentence, irrespective
of a subsequent order under Section 1203.4 of the Penal Code allowing

1 the person to withdraw his or her plea of guilty and to enter a plea of
2 not guilty, or setting aside the verdict of guilty, or dismissing the
3 accusation, information, or indictment.

4

5 5. Section 482 of the Code states:

6 Each board under the provisions of this code shall develop criteria
7 to evaluate the rehabilitation of a person when:

8

9 (b) Considering suspension or revocation of a license under Section 490.

10 Each board shall take into account all competent evidence of
11 rehabilitation furnished by the applicant or licensee.

12 6. Section 490 of the Code states:

13 (a) In addition to any other action that a board is permitted to take
14 against a licensee, a board may suspend or revoke a license on the
15 ground that the licensee has been convicted of a crime, if the crime is
16 substantially related to the qualifications, functions, or duties of the
17 business or profession for which the license was issued.

18 (b) Notwithstanding any other provision of law, a board may
19 exercise any authority to discipline a licensee for conviction of a crime
20 that is independent of the authority granted under subdivision (a) only
21 if the crime is substantially related to the qualifications, functions, or
22 duties of the business or profession for which the licensee's license was
23 issued.

24 (c) A conviction within the meaning of this section means a plea or
25 verdict of guilty or a conviction following a plea of nolo contendere.
26 Any action that a board is permitted to take following the
27 establishment of a conviction may be taken when the time for appeal
28 has elapsed, or the judgment of conviction has been affirmed on
29 appeal, or when an order granting probation is made suspending the
30 imposition of sentence, irrespective of a subsequent order under the
31 provisions of Section 1203.4 of the Penal Code.

32 (d) The Legislature hereby finds and declares that the application of
33 this section has been made unclear by the holding in Petropoulos v.
34 Department of Real Estate (2006) 142 Cal.App.4th 554, and that the
35 holding in that case has placed a significant number of statutes and
36 regulations in question, resulting in potential harm to the consumers of
37 California from licensees who have been convicted of crimes.
38 Therefore, the Legislature finds and declares that this section
39 establishes an independent basis for a board to impose discipline upon
40 a licensee, and that the amendments to this section made by Senate

1 Bill 797 of the 2007-08 Regular Session do not constitute a change to,
2 but rather are declaratory of, existing law.

3 7. Section 493 of the Code states:

4 Notwithstanding any other provision of law, in a proceeding
5 conducted by a board within the department pursuant to law to deny an
6 application for a license or to suspend or revoke a license or otherwise
7 take disciplinary action against a person who holds a license, upon the
8 ground that the applicant or the licensee has been convicted of a crime
9 substantially related to the qualifications, functions, and duties of the
10 licensee in question, the record of conviction of the crime shall be
11 conclusive evidence of the fact that the conviction occurred, but only
12 of that fact, and the board may inquire into the circumstances
13 surrounding the commission of the crime in order to fix the degree of
14 discipline or to determine if the conviction is substantially related to
15 the qualifications, functions, and duties of the licensee in question.

16 As used in this section, "license" includes "certificate," "permit,"
17 "authority," and "registration."

18 8. California Code of Regulations, title 16, section 1770, states:

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

27 9. California Code of Regulations, title 16, section 1769, states:

28 (b) When considering the suspension or revocation of a facility or a
personal license on the ground that the licensee or the registrant has
been convicted of a crime, the board, in evaluating the rehabilitation of
such person and his present eligibility for a license will consider the
following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or
offense(s).

(4) Whether the licensee has complied with all terms of parole,

1 probation, restitution or any other sanctions lawfully imposed against
the licensee.

2 (5) Evidence, if any, of rehabilitation submitted by the licensee.

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4 COST RECOVERY

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

9 FIRST CAUSE FOR DISCIPLINE

10 (May 14, 2008 Criminal Conviction for

11 Alcohol-Related Reckless Driving on May 31, 2007)

12 11. Respondent is subject to disciplinary action under Code sections 490 and 4301,
13 subdivision (I), for a criminal conviction that is substantially related to his qualifications,
14 functions, and duties as a pharmacist. The circumstances are as follows:

15 a. On or about May 31, 2007, Respondent drove a vehicle upon a highway in willful or
16 wanton disregard for the safety of persons or property, after consuming alcohol, in violation of
17 Vehicle Code section 23103.

18 b. On or about May 14, 2008, in a criminal proceeding entitled *People v. Gustavo*
19 *Adolfo Lizarazo*, in Monterey County Superior Court, Case No. CRMS258751A, Respondent was
20 convicted by his plea of nolo contendere of violating Vehicle Code section 23103, pursuant to
21 Vehicle Code section 23103.5 [alcohol-related reckless driving], a misdemeanor.

22 c. On or about May 14, 2008, Respondent was sentenced as follows: imposition of
23 sentence suspended and Respondent placed on probation for a period of three years. Respondent
24 was also ordered to serve one day in jail (credit given for time served of one day), enroll in an
25 Alcohol Program, and pay fines and fees.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct for**

3 **Use of Alcohol To Extent Dangerous To Self or Others on May 31, 2007)**

4 12. Respondent is subject to disciplinary action under Business and Professions Code
5 section 4301, subdivision (h), in that he used alcohol to the extent or in a manner as to be
6 dangerous or injurious to himself or to any other person, or to the extent that the use impaired his
7 ability to conduct with safety to the public the practice authorized by his pharmacist license, as set
8 forth in paragraph 11 above.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct for**

11 **Use of Alcohol To Extent Dangerous To Self or Others on April 22, 2007)**

12 13. Respondent is subject to disciplinary action under Business and Professions Code
13 section 4301, subdivision (h), in that he used alcohol to the extent or in a manner as to be
14 dangerous or injurious to himself or to any other person, or to the extent that the use impaired his
15 ability to conduct with safety to the public the practice authorized by his pharmacist license. The
16 circumstances are as follows:

17 a. On or about April 22, 2007, Respondent was in a public place (479 Alvarado
18 Street, Monterey, California) under the influence of alcohol in a condition that he was unable to
19 exercise care for his own safety or the safety of others.

20 **FOURTH CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct for**

22 **Use of Alcohol To Extent Dangerous To Self or Others on March 18, 2007)**

23 13. Respondent is subject to disciplinary action under Business and Professions Code
24 section 4301, subdivision (h), in that he used alcohol to the extent or in a manner as to be
25 dangerous or injurious to himself or to any other person, or to the extent that the use impaired his
26 ability to conduct with safety to the public the practice authorized by his pharmacist license. The
27 circumstances are as follows:

1 a. On or about March 18, 2007, Respondent was in a public place (528 F Street,
2 San Diego, California) under the influence of alcohol in a condition that he was unable to exercise
3 care for his own safety or the safety of others.

4 **FIFTH CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct for**

6 **Use of Alcohol To Extent Dangerous To Self or Others on June 5, 2010)**

7 13. Respondent is subject to disciplinary action under Business and Professions Code
8 section 4301, subdivision (h), in that he used alcohol to the extent or in a manner as to be
9 dangerous or injurious to himself or to any other person, or to the extent that the use impaired his
10 ability to conduct with safety to the public the practice authorized by his pharmacist license. The
11 circumstances are as follows:

12 a. On or about June 5, 2010, Respondent was in a public place (400 Island Ave.,
13 San Diego, California) under the influence of alcohol in a condition that he was unable to exercise
14 care for his own safety or the safety of others.

15 **SIXTH CAUSE FOR DISCIPLINE**

16 **(Unprofessional Conduct for**

17 **Use of Alcohol To Extent Dangerous To Self or Others on June 10, 2010)**

18 13. Respondent is subject to disciplinary action under Business and Professions Code
19 section 4301, subdivision (h), in that he used alcohol to the extent or in a manner as to be
20 dangerous or injurious to himself or to any other person, or to the extent that the use impaired his
21 ability to conduct with safety to the public the practice authorized by his pharmacist license. The
22 circumstances are as follows:

23 a. On or about June 10, 2010, Respondent was arrested for and unlawfully drove a
24 vehicle while under the influence of an alcoholic beverage in violation of Vehicle Code section
25 23152, subdivision (a).

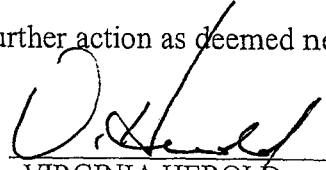
26 **PRAYER**

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

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1. Revoking or suspending Pharmacist License Number RPH 59384 issued to Gustavo Adolfo Lizarazo;
2. Ordering Gustavo Adolfo Lizarazo 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
3. Taking such other and further action as deemed necessary and proper.

DATED: 10/26/10



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

SD2009804175

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8 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 3367

13 **GUSTAVO ADOLFO LIZARAZO**
8995 Jana Ct.
14 Spring Valley, CA 91977

A C C U S A T I O N

15 Pharmacist License No. RPH 59384

16 Respondent.
17

18 Complainant alleges:

19 PARTIES

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

22 2. On or about March 12, 2007, the Board of Pharmacy issued Pharmacist
23 License Number RPH 59384 to Gustavo Adolfo Lizarazo (Respondent). The Pharmacist License
24 was in full force and effect at all times relevant to the charges brought herein, and will expire on
25 September 30, 2010, unless renewed.

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JURISDICTION

1
2 3. This Accusation is brought before the Board of Pharmacy (Board),
3 Department of Consumer Affairs, under the authority of the following laws. All section
4 references are to the Business and Professions Code (Code) unless otherwise indicated.

5 4. Section 4301 of the Code states, in relevant part:

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

10
11 (h) The administering to oneself, of any controlled substance, or the use of any
12 dangerous drug or of alcoholic beverages to the extent or in a manner as to be
13 dangerous or injurious to oneself, to a person holding a license under this chapter, or
14 to any other person or to the public, or to the extent that the use impairs the ability
15 of the person to conduct with safety to the public the practice authorized by the
16 license.

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18 (i) The conviction of a crime substantially related to the qualifications,
19 functions, and duties of a licensee under this chapter. The record of conviction of a
20 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
21 States Code regulating controlled substances or of a violation of the statutes of this
22 state regulating controlled substances or dangerous drugs shall be conclusive evidence
23 of unprofessional conduct. In all other cases, the record of conviction shall be
24 conclusive evidence only of the fact that the conviction occurred. The board may
25 inquire into the circumstances surrounding the commission of the crime, in order to
26 fix the degree of discipline or, in the case of a conviction not involving controlled
27 substances or dangerous drugs, to determine if the conviction is of an offense
28 substantially related to the qualifications, functions, and duties of a licensee under this
chapter. A plea or verdict of guilty or a conviction following a plea of nolo
contendere is deemed to be a conviction within the meaning of this provision. The
board may take action when the time for appeal has elapsed, or the judgment of
conviction has been affirmed on appeal or when an order granting probation is made
suspending the imposition of sentence, irrespective of a subsequent order under
Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
dismissing the accusation, information, or indictment.

23
24 5. Section 482 of the Code states:

25 Each board under the provisions of this code shall develop criteria to evaluate
26 the rehabilitation of a person when:

27
28 (b) Considering suspension or revocation of a license under Section 490.

///

1 Each board shall take into account all competent evidence of rehabilitation
2 furnished by the applicant or licensee.

3 6. Section 490 of the Code states:

4 (a) In addition to any other action that a board is permitted to take against a
5 licensee, a board may suspend or revoke a license on the ground that the licensee has
6 been convicted of a crime, if the crime is substantially related to the qualifications,
7 functions, or duties of the business or profession for which the license was issued.

8 (b) Notwithstanding any other provision of law, a board may exercise any
9 authority to discipline a licensee for conviction of a crime that is independent of the
10 authority granted under subdivision (a) only if the crime is substantially related to the
11 qualifications, functions, or duties of the business or profession for which the
12 licensee's license was issued.

13 (c) A conviction within the meaning of this section means a plea or verdict of
14 guilty or a conviction following a plea of nolo contendere. Any action that a board is
15 permitted to take following the establishment of a conviction may be taken when the
16 time for appeal has elapsed, or the judgment of conviction has been affirmed on
17 appeal, or when an order granting probation is made suspending the imposition of
18 sentence, irrespective of a subsequent order under the provisions of Section 1203.4
19 of the Penal Code.

20 (d) The Legislature hereby finds and declares that the application of this
21 section has been made unclear by the holding in *Petropoulos v. Department of Real
22 Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a
23 significant number of statutes and regulations in question, resulting in potential harm
24 to the consumers of California from licensees who have been convicted of crimes.
25 Therefore, the Legislature finds and declares that this section establishes an
26 independent basis for a board to impose discipline upon a licensee, and that the
27 amendments to this section made by Senate Bill 797 of the 2007-08 Regular Session
28 do not constitute a change to, but rather are declaratory of, existing law.

7. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a
board within the department pursuant to law to deny an application for a license or
to suspend or revoke a license or otherwise take disciplinary action against a person
who holds a license, upon the ground that the applicant or the licensee has been
convicted of a crime substantially related to the qualifications, functions, and duties
of the licensee in question, the record of conviction of the crime shall be conclusive
evidence of the fact that the conviction occurred, but only of that fact, and the board
may inquire into the circumstances surrounding the commission of the crime in order
to fix the degree of discipline or to determine if the conviction is substantially related
to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority,"
and "registration."

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

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

9. California Code of Regulations, title 16, section 1769, states:

....

(b) When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

COST RECOVERY

10. Section 125.3 of the Code states, in pertinent 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.

FIRST CAUSE FOR DISCIPLINE

(May 14, 2008 Criminal Conviction for Alcohol-Related Reckless Driving on May 31, 2007)

11. Respondent is subject to disciplinary action under Code sections 490 and 4301, subdivision (l), for a criminal conviction that is substantially related to his qualifications, functions, and duties as a pharmacist. The circumstances are as follows:

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1 a. On or about May 31, 2007, Respondent drove a vehicle upon a highway in
2 willful or wanton disregard for the safety of persons or property, after consuming alcohol, in
3 violation of Vehicle Code section 23103.

4 b. On or about May 14, 2008, in a criminal proceeding entitled *People v.*
5 *Gustavo Adolfo Lizarazo*, in Monterey County Superior Court, Case No. CRMS258751A,
6 Respondent was convicted by his plea of nolo contendere of violating Vehicle Code section
7 23103, pursuant to Vehicle Code section 23103.5 [alcohol-related reckless driving], a
8 misdemeanor.

9 c. On or about May 14, 2008, Respondent was sentenced as follows:
10 imposition of sentence suspended and Respondent placed on probation for a period of three
11 years. Respondent was also ordered to serve one day in jail (credit given for time served of one
12 day), enroll in an Alcohol Program, and pay fines and fees.

13 **SECOND CAUSE FOR DISCIPLINE**

14 (Unprofessional Conduct for

15 Use of Alcohol To Extent Dangerous To Self or Others on May 31, 2007)

16 12. Respondent is subject to disciplinary action under Business and Professions
17 Code section 4301, subdivision (h), in that he used alcohol to the extent or in a manner as to be
18 dangerous or injurious to himself or to any other person, or to the extent that the use impaired his
19 ability to conduct with safety to the public the practice authorized by his pharmacist license, as set
20 forth in paragraph 11 above.

21 **THIRD CAUSE FOR DISCIPLINE**

22 (Unprofessional Conduct for

23 Use of Alcohol To Extent Dangerous To Self or Others on April 22, 2007)

24 13. Respondent is subject to disciplinary action under Business and Professions
25 Code section 4301, subdivision (h), in that he used alcohol to the extent or in a manner as to be
26 dangerous or injurious to himself or to any other person, or to the extent that the use impaired his
27 ability to conduct with safety to the public the practice authorized by his pharmacist license. The
28 circumstances are as follows:

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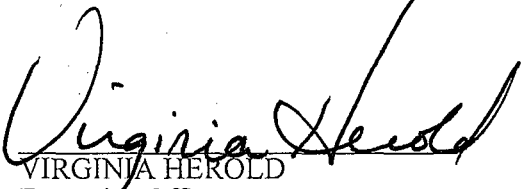
a. On or about April 22, 2007, Respondent was in a public place (479 Alvarado Street, Monterey, California) under the influence of alcohol in a condition that he was unable to exercise care for his own safety or the safety of others.

PRAYER

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

1. Revoking or suspending Pharmacist License Number RPH 59384, issued to Gustavo Adolfo Lizarazo;
2. Ordering Gustavo Adolfo Lizarazo 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
3. Taking such other and further action as deemed necessary and proper.

DATED: 10/3/09



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

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