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

11 In the Matter of the Accusation Against:

Case Nos. 4496 and 4528

12 **PMC PHARMACY**  
901 Campus Drive, # 108  
13 Daly City, CA 94015  
Pharmacy License No. PHY 48762

**A C C U S A T I O N**

14 **ANGELA PO-CHU YEUNG**  
2830 34th Avenue  
15 San Francisco, CA 94116  
Pharmacist License No. RPH 31278

16 **PMC PHARMACY**  
843 Malcolm Road  
17 Burlingame, CA 94010  
Pharmacy License No. PHY 50377

18 **GEORGE A. POOLE**  
1245 Encina Drive  
19 Millbrae, CA 94030  
20 Pharmacist License No. RPH 23729

21 **KIMBERLY MAE DE LUNA**  
246 Dennise Drive  
22 Daly City, CA 94015  
Pharmacist License No. RPH 61593

23 and

24 **BARBARA JIANG**  
901 Campus Drive, # 108  
25 Daly City, CA 94015  
26 Pharmacy Technician License No. TCH 52663

27 Respondents.  
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1 Complainant alleges:  
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3 PARTIES

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

6 2. On or about May 22, 2008, the Board of Pharmacy issued Pharmacy License No.  
7 PHY 48762 to Nursing Care Pharmacies Inc. dba PMC Pharmacy, at 901 Campus Drive, #108,  
8 Daly City, CA 94015, Barbara Jiang, Chief Executive Officer and owner (Respondent PMC Daly  
9 City). The Pharmacy License was in full force and effect at all times relevant to the charges  
10 brought herein and will expire on May 1, 2014, unless renewed.

11 3. On or about August 3, 1977, the Board of Pharmacy issued Pharmacist License No.  
12 RPH 31278 to Angela Po-Chu Yeung (Respondent Yeung). The Pharmacist License was in full  
13 force and effect at all times relevant to the charges brought herein and will expire on January 31,  
14 2014, unless renewed. Between on or about May 22, 2008 and on or about September 1, 2010,  
15 Respondent Yeung served and/or was listed in records maintained with or by the Board as  
16 Pharmacist in Charge (PIC) for Respondent PMC Daly City.

17 4. On or about September 15, 2010, the Board of Pharmacy issued Pharmacy License  
18 No. PHY 50377 to Nursing Care Pharmacies Inc. dba PMC Pharmacy, at 843 Malcolm Road,  
19 Burlingame, CA 94010, Barbara Jiang, Chief Executive Officer and owner (Respondent PMC  
20 Burlingame). The Pharmacy License was in full force and effect at all times relevant to the  
21 charges brought herein and will expire on September 1, 2014, unless renewed.

22 5. On or about August 10, 1964, the Board of Pharmacy issued Pharmacist License No.  
23 RPH 23729 to George A. Poole (Respondent Poole). The Pharmacist License was in full force  
24 and effect at all times relevant to the charges brought herein and will expire on August 31, 2014,  
25 unless renewed. Between on or about November 1, 2010 and on or about January 1, 2012,  
26 Respondent Poole served and/or was listed in records maintained with or by the Board as  
27 Pharmacist in Charge (PIC) for Respondent PMC Burlingame.

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1           6.    On or about October 2, 2008, the Board of Pharmacy issued Pharmacist License No.  
2 RPH 61593 to Kimberly Mae De Luna (Respondent De Luna). The Pharmacist License was in  
3 full force and effect at all times relevant to the charges brought herein and will expire on August  
4 31, 2014, unless renewed. Since on or about January 2, 2012, Respondent De Luna has served  
5 and/or has been listed in records maintained with or by the Board as Pharmacist in Charge (PIC)  
6 for Respondent PMC Burlingame.

7           7.    On or about November 17, 2003, the Board of Pharmacy issued Pharmacy Technician  
8 License No. TCH 52663 to Barbara Jiang (Respondent Jiang). The Pharmacy Technician License  
9 was in full force and effect at all times relevant to the charges brought herein and will expire on  
10 September 30, 2013, unless renewed. At all times relevant to the charges brought herein,  
11 Respondent Jiang has served as officer and part-owner of Respondent PMC Daly City and  
12 Respondent PMC Burlingame.

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14                                JURISDICTION

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

18           9.    Section 4011 of the Code provides that the Board shall administer and enforce both  
19 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances  
20 Act [Health & Safety Code, § 11000 et seq.].

21           10. Section 4300(a) of the Code provides that every license issued by the Board may be  
22 suspended or revoked.

23           11. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or  
24 suspension of a Board-issued license, the placement of a license on a retired status, or the  
25 voluntary surrender of a license by a licensee, shall not deprive the Board of jurisdiction to  
26 commence or proceed with any investigation of, or action or disciplinary proceeding against, the  
27 licensee or to render a decision suspending or revoking the license.

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STATUTORY AND REGULATORY PROVISIONS

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2           12. Section 4301 of the Code provides, in pertinent part, that the Board shall take action  
3 against any holder of a license who is guilty of "unprofessional conduct," defined to include, but  
4 not be limited to, any of the following:

5           (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or  
6 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and  
7 whether the act is a felony or misdemeanor or not.

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

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

14           13. Section 4113, subdivision (c) of the Code states:

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

17           14. Section 4081 of the Code provides, in pertinent part, that all records of manufacture,  
18 sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be kept open to  
19 inspection and retained for at least three years, that a current inventory shall be kept by every  
20 pharmacy that maintains a stock of dangerous drugs or dangerous devices, and that the owner(s),  
21 officer(s), partner(s), and pharmacist in charge or designated representative in charge shall be  
22 jointly responsible for maintaining the records and keeping the inventory.

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

27           16. Section 4332 of the Code makes it unlawful for any person: to fail, neglect, or refuse  
28 to maintain the records required by Section 4081; or, when called upon by an authorized officer

1 or a member of the board, to fail, neglect, or refuse to produce or provide the records within a  
2 reasonable time; or to willfully produce or furnish records that are false.

3 17. California Code of Regulations, title 16, section 1707.1, and subdivision (a)(1)(B)(3)  
4 thereof provide, in pertinent part, that a pharmacy shall maintain medication profiles on all of its  
5 patients who have prescriptions filled therein except when the pharmacist has reasonable belief  
6 that the patient will not continue to obtain prescription medications from that pharmacy, and the  
7 patient medication record shall make immediately retrievable during the pharmacy's normal  
8 operating hours information including the date on which a drug was dispensed or refilled.

9 18. California Code of Regulations, title 16, section 1716 provides, in pertinent part, that  
10 pharmacists shall not deviate from the requirements of a prescription except upon the prior  
11 consent of the prescriber or to select the drug product in accordance with Section 4073 of the  
12 Code [pertaining to substitution of generic for brand name].

13 19. California Code of Regulations, title 16, section 1717, subdivision (b) requires, in  
14 pertinent part, that for each prescription on file, certain information shall be maintained and be  
15 readily retrievable in the pharmacy, including the date dispensed, and the name or initials of the  
16 dispensing pharmacist. All prescriptions filled or refilled by an intern pharmacist must also be  
17 initialed by the supervising pharmacist before they are dispensed.

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

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

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

#### 24 COST RECOVERY

25 21. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
26 administrative law judge to direct a licentiate found to have committed a violation of the licensing  
27 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

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1 FACTUAL BACKGROUND

2 22. On or about August 11, 2011, the Board received a complaint from a family member  
3 of patient R.K.<sup>1</sup> alleging that Respondent PMC Daly City had engaged in mistaken or fraudulent  
4 billing of both patient R.K. (as to co-pays) and his insurance provider(s), with regard to drugs  
5 dispensed to patient R.K. by Respondent PMC Daly City in/via a nearby assisted living facility.

6 23. Board of Pharmacy Inspector(s) conducted an investigation of the complaint, during  
7 which a review was conducted of medications dispensed and billed to patient R.K, as well as a  
8 sample of twenty (20) other patients also resident in the same assisted living facility, and/or their  
9 insurance provider(s), by Respondent PMC Daly City and/or Respondent PMC Burlingame, for  
10 differing time periods between in or about June 2009 and in or about March 2012.

11 24. That review revealed a pattern and practice of billing and dispensing by respondent  
12 pharmacies, under the supervision of their respective pharmacists in charge and shared CEO and  
13 primary owner (Respondent Jiang), that included:

14 a. On several occasions, Respondent PMC Daly City processed a prescription  
15 written for patient R.K. calling for a particular quantity of the prescribed drug (60, 30, or 15  
16 doses, depending on the drug), but actually dispensed to patient R.K. some quantity less than the  
17 prescribed amount (the amount less varying from a shortage of 3 doses to a shortage of 42 doses).

18 b. Likewise, on at least two occasions, Respondent PMC Burlingame processed a  
19 prescription written for patient R.K. calling for a particular quantity of the prescribed drug (30 or  
20 15 doses), but actually dispensed to patient R.K. some quantity less than the prescribed amount  
21 (one shortage was 3 doses and the other was 7 doses);

22 c. On each of these occasions, Respondents PMC Daly City and/or PMC  
23 Burlingame billed patient R.K. and/or his insurer(s) for the full amount(s) of the prescribed doses.

24 d. On several other occasions, Respondents PMC Daly City and/or PMC  
25 Burlingame billed patient(s) R.K., D.K., P.S., J.H., M.M., E.R., and/or G.G., and/or their  
26 respective insurer(s), for prescriptions that were never actually dispensed to the patient(s).

27 \_\_\_\_\_  
28 <sup>1</sup> The full name will be revealed to Respondents, if requested, during discovery.

1 e. As a result of the foregoing discrepancy between drugs actually dispensed and  
2 those for which pharmacy records showed dispensing transactions, the inventory records (i.e., the  
3 records of acquisition and disposition) maintained by Respondents PMC Daly City and/or PMC  
4 Burlingame were not maintained in a complete and accurate form.

5 f. On several other occasions, Respondents PMC Daly City and/or PMC  
6 Burlingame dispensed prescriptions to patient(s) R.K., D.K., P.S., J.H., M.M., E.R., and/or G.G.  
7 with labels dated on or about the first of the month dispensed, but in fact the prescriptions were  
8 processed and billed on various dates later in the month, so that the prescription dates maintained  
9 in the pharmacy database(s) did not match the dates on which the prescriptions were dispensed.

10 g. As a result of the foregoing discrepancy between dates labeled as dispensed,  
11 and dates actually dispensed, the patient history/medication profile information maintained by  
12 Respondents PMC Daly City and/or PMC Burlingame for patient(s) R.K., D.K., P.S., J.H., M.M.,  
13 E.R., and/or G.G. was not accurate and/or complete.

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15 **CAUSES FOR DISCIPLINE**

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18 **AS TO ALL RESPONDENTS**

19 **FIRST CAUSE FOR DISCIPLINE**

20 (Incomplete Inventory and/or Records of Acquisition and/or Disposition)

21 25. Respondents are each and severally subject to discipline under section 4301(j) and/or  
22 (o) and/or section 4113(c) of the Code, by reference to section(s) 4081, 4105, and/or 4332 of the  
23 Code, and/or California Code of Regulations, title 16, section 1718, for violating statutes  
24 regulating controlled substances or dangerous drugs, and/or directly or indirectly violating,  
25 attempting to violate, or assisting in or abetting a violation of laws or regulations governing the  
26 practice of pharmacy, in that, as described in paragraph 24 above, Respondents failed to maintain  
27 an accurate, complete, and readily retrievable inventory and/or records of acquisition and  
28 disposition of all dangerous drugs in the pharmacy inventory.

1 SECOND CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct)

3 26. Respondents are each and severally subject to discipline under section 4301 of the  
4 Code in that Respondents, as described above and below, engaged in unprofessional conduct.

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6  
7 **AS TO PMC RESPONDENTS AND RESPONDENT JIANG**

8 THIRD CAUSE FOR DISCIPLINE

9 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)

10 27. Respondents PMC Daly City, PMC Burlingame, and Jiang, are each and severally  
11 subject to discipline under section 4301(f) of the Code, for acts involving moral turpitude,  
12 dishonesty, fraud, deceit, or corruption, in that, as described in paragraph 24 above, Respondents  
13 billed in full for prescriptions only partially dispensed, and/or for prescriptions never delivered.

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15  
16 **AS TO ALL RESPONDENTS EXCEPT RESPONDENT JIANG**

17 FOURTH CAUSE FOR DISCIPLINE

18 (Inaccurate Date(s) in Dispensing Record(s))

19 28. Respondents PMC Daly City, Yeung, PMC Burlingame, Poole, and De Luna are each  
20 and severally subject to discipline under section 4301(j) and/or (o) and/or section 4113(c) of the  
21 Code, by reference to California Code of Regulations, title 16, section 1707.1, for violating  
22 statutes regulating controlled substances or dangerous drugs, and/or directly or indirectly  
23 violating, attempting to violate, or assisting in or abetting a violation of laws or regulations  
24 governing the practice of pharmacy, in that, as described in paragraph 24 above, Respondents  
25 dispensed or were responsible for dispensing medications on dates other than the dates labeled  
26 and maintained in patient medication histories/profiles, resulting in discrepancies therein.

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1 FIFTH CAUSE FOR DISCIPLINE

2 (Deviation(s) From Prescription(s))

3 29. Respondents PMC Daly City, Yeung, PMC Burlingame, Poole, and De Luna are each  
4 and severally subject to discipline under section 4301(j) and/or (o) and/or section 4113(c) of the  
5 Code, by reference to California Code of Regulations, title 16, section 1716, for violating statutes  
6 regulating controlled substances or dangerous drugs, and/or directly or indirectly violating,  
7 attempting to violate, or assisting in or abetting a violation of laws or regulations governing the  
8 practice of pharmacy, in that, as described in paragraph 24 above, Respondents dispensed or were  
9 responsible for the dispensing of medications in quantities other than were prescribed.

10  
11 SIXTH CAUSE FOR DISCIPLINE

12 (Inaccurate Date(s) in Dispensing Record(s))

13 30. Respondents PMC Daly City, Yeung, PMC Burlingame, Poole, and De Luna are each  
14 and severally subject to discipline under section 4301(j) and/or (o) and/or section 4113(c) of the  
15 Code, by reference to California Code of Regulations, title 16, section 1717, subdivision (b), for  
16 violating statutes regulating controlled substances or dangerous drugs, and/or directly or  
17 indirectly violating, attempting to violate, or assisting in or abetting a violation of laws or  
18 regulations governing the practice of pharmacy, in that, as described in paragraph 24 above,  
19 Respondents dispensed or were responsible for the dispensing of medications on dates other than  
20 the dates labeled and maintained in the pharmacy database(s), resulting in inaccuracies therein.

21  
22  
23 DISCIPLINE CONSIDERATIONS

24 31. To assist in determining the proper level of discipline, if any, to be imposed on  
25 Respondent PMC Daly City, Respondent PMC Burlingame, and/or Respondent Poole,  
26 Complainant further alleges the following license history for each of these Respondents:

27 a. On or about May 22, 2008, in a prior disciplinary action titled *In the Matter of the*  
28 *Statement of Issues Against Nursing Care Pharmacies, Inc. dba PMC Pharmacy*, Case No. 3025

1 before the Board of Pharmacy, Respondent PMC Daly City's Pharmacy License was subject to  
2 disciplinary action imposed by the Board as follows:

3 i. On or about January 16, 2008, Statement of Issues No. 3025 was filed before  
4 the Board, with regard to Respondent PMC Daly City's application for a Community Pharmacy  
5 Permit submitted on or about July 20, 2007, alleging that the application was subject to denial  
6 pursuant to Business and Professions Code section(s) 480(a)(2), 480(a)(3), 4110, 4300(c), 4301(f)  
7 and/or 4301(o), and/or California Code of Regulations, title 16, section 1709, because  
8 Respondent PMC Daly City had participated in or benefited from a transfer of ownership of the  
9 pharmacy that had taken place on or about January 1, 2006, which had not been reported to the  
10 Board, and by so doing had operated a pharmacy without a valid permit, had failed to notify the  
11 Board of an ownership change, and had engaged in dishonest, fraudulent, or deceitful acts.

12 ii. In or about February 2008, Respondent PMC Daly City agreed to a Stipulated  
13 Settlement and Disciplinary Order admitting to all of the charges and allegations alleged in the  
14 Statement of Issues, and agreeing to accept the stipulated Disciplinary Order, which specified that  
15 upon satisfaction of all statutory and regulatory requirements, a pharmacy license would be issued  
16 to Respondent PMC Daly City and immediately revoked, with the revocation stayed in favor of a  
17 period of probation of five (5) years, on specified terms and conditions.

18 iii. By Decision and Order of the Board effective May 21, 2008, the stipulation was  
19 made the decision of the Board, issuing Pharmacy License No. 48762 to Respondent PMC Daly  
20 City, which was immediately revoked, with revocation stayed in favor of a period of probation of  
21 five (5) years on specified terms and conditions. That Decision and Order is now final and is  
22 incorporated by reference as if fully set forth herein.

23 b. On or about June 22, 2011, Citation No. CI 2010 46206, with a fine of \$2,000.00, was  
24 issued to Respondent PMC Daly City alleging violations of (i) California Code of Regulations,  
25 title 16, section 1714, subdivisions (d) and (e), because on one or more dates in August 2010 only  
26 Respondent Jiang and her relative were in possession of keys to the pharmacy, and neither the  
27 pharmacist in charge nor the staff pharmacist on duty were ever allowed possession of the key to  
28 the pharmacy and (ii) Business and Professions Code section 4115, subdivision (f)(1), because on

1 one or more dates in August 2010, there was only one pharmacist scheduled or on duty while the  
2 number of pharmacy technicians scheduled or on duty exceeded one. That citation is now final  
3 and is incorporated by reference as if fully set forth herein.

4 c. On or about June 16, 2011, Citation No. CI 2010 47415, with a fine of \$2,000.00, was  
5 issued to Respondent PMC Burlingame alleging violations of (i) California Code of Regulations,  
6 title 16, section 1714, subdivision (e), because on one or more dates in February 2011, the key to  
7 the pharmacy was in the possession of a non-pharmacist manager who used the key to open the  
8 pharmacy, and the key was not maintained in a tamper-evident container reserved for delivery to  
9 a pharmacist or use to provide emergency access, (ii) Business and Professions Code section  
10 4115, subdivision (f)(1), because on one or more dates in February 2011, there was only one  
11 pharmacist scheduled or on duty while the number of pharmacy technicians scheduled or on duty  
12 exceeded one, and (iii) Business and Professions Code section 4115, subdivision (e), because on  
13 one or more dates in or between December 2010 and February 2011, an individual acted as a  
14 pharmacy technician without a valid pharmacy technician license issued by the Board. That  
15 citation is now final and is incorporated by reference as if fully set forth herein.

16 d. On or about June 16, 2011, Citation No. CI 2010 48547, with a fine of \$1,250.00, was  
17 issued to Respondent Poole, in his capacity as Pharmacist in Charge (PIC) for Respondent PMC  
18 Burlingame, alleging violations of i) California Code of Regulations, title 16, section 1714,  
19 subdivision (e), because on one or more dates in February 2011, the key to the pharmacy was in  
20 the possession of a non-pharmacist manager who used the key to open the pharmacy, and the key  
21 was not maintained in a tamper-evident container reserved for delivery to a pharmacist or use to  
22 provide emergency access, (ii) Business and Professions Code section 4115, subdivision (f)(1),  
23 because on one or more dates in February 2011, there was only one pharmacist scheduled or on  
24 duty while the number of pharmacy technicians scheduled or on duty exceeded one, and (iii)  
25 Business and Professions Code section 4115, subdivision (e), because on one or more dates in or  
26 between December 2010 and February 2011, an individual acted as a pharmacy technician  
27 without a valid pharmacy technician license issued by the Board. That citation is now final and is  
28 incorporated by reference as if 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. Revoking or suspending Pharmacy License No. PHY 48762, issued to Nursing Care Pharmacies Inc. dba PMC Pharmacy, at 901 Campus Drive, #108, Daly City, CA 94015, Barbara Jiang, Chief Executive Officer and owner (Respondent PMC Daly City);

2. Revoking or suspending Pharmacist License No. RPH 31278, issued to Angela Po-Chu Yeung (Respondent Yeung);

3. Revoking or suspending Pharmacy License No. PHY 50377, issued to Nursing Care Pharmacies Inc. dba PMC Pharmacy, at 843 Malcolm Road, Burlingame, CA 94010, Barbara Jiang, Chief Executive Officer and owner (Respondent PMC Burlingame);

4. Revoking or suspending Pharmacist License No. RPH 23729, issued to George A. Poole (Respondent Poole).

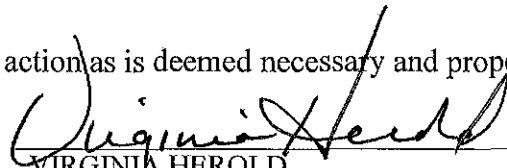
5. Revoking or suspending Pharmacist License No. RPH 61593, issued to Kimberly Mae De Luna (Respondent De Luna);

6. Revoking or suspending Pharmacy Technician License No. TCH 52663, issued to Barbara Jiang (Respondent Jiang);

7. Ordering Respondents, jointly and severally, 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;

8. Taking such other and further action as is deemed necessary and proper.

DATED: 10/21/13



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

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