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

10 In the Matter of the Accusation Against:

Case No. 5273

11 **BRETT A. STARK**  
12 **1433 Bay St., Apt 3**  
13 **Eureka, CA 95501**

OAH No. 2015031056

**FIRST AMENDED ACCUSATION**

14 **Pharmacist License No. RPH 44331**

15 Respondent.

16  
17 Complainant alleges:

18 PARTIES

- 19 1. Virginia Herold (Complainant) brings this First Amended Accusation solely in her  
20 official capacity as Executive Officer, Board of Pharmacy, Department of Consumer Affairs.
- 21 2. On or about August 5, 1991, the Board of Pharmacy issued Pharmacist License No.  
22 RPH 44331 to Brett A. Stark (Respondent). The License was in full force and effect at all times  
23 relevant to the charges brought herein and will expire on August 31, 2015, unless renewed.

24 JURISDICTION

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

28 ///

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

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

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

11 **STATUTORY AND REGULATORY PROVISIONS**

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

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

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

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

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

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

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

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

10 10. Section 4060 of the Code provides, in pertinent part, that no person shall possess any  
11 controlled substance, except that furnished upon a valid prescription/drug order.

12 11. Section 4327 of the Code, in pertinent part, makes it unlawful, while on duty, to sell,  
13 dispense or compound any drug while under the influence of any dangerous drug.

14 12. Health and Safety Code section 11170 provides that no person shall prescribe,  
15 administer, or furnish a controlled substance for himself or herself.

16 13. Health and Safety Code section 11173, subdivision (a), provides that no person shall  
17 obtain or attempt to obtain controlled substances, or procure or attempt to procure the  
18 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,  
19 or subterfuge; or (2) by the concealment of a material fact.

20 14. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess  
21 any controlled substance listed in Schedule II (Health and Safety Code section 11055),  
22 subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

23 COST RECOVERY

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

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1 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

2 16. Section 4021 of the Code states:

3 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section  
4 11053) of Division 10 of the Health and Safety Code.”

5 17. Section 4022 of the Code states, in pertinent part:

6 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,  
7 except veterinary drugs that are labeled as such, and includes the following:

8 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without  
9 prescription,’ ‘Rx only,’ or words of similar import.

10 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on  
11 prescription or furnished pursuant to Section 4006.”

12 18. **Ambien** is a brand name for **zolpidem tartrate**, a Schedule IV controlled substance  
13 as designated by Health and Safety Code section 11057(d)(32) and a dangerous drug as  
14 designated by Business and Professions Code section 4022. It is a depressant drug.

15 19. **Vicoprofen** is a brand name for a compound of ibuprofen and **hydrocodone**  
16 **bitartrate**, a Schedule III controlled substance as designated by Health and Safety Code section  
17 11056(e)(4) and a dangerous drug as designated by Business and Professions Code section 4022.  
18 It is also known generically as **Hydrocodone with Ibuprofen**. It is a narcotic drug.

19 20. **Ativan** is a brand name for **lorazepam**, a Schedule IV controlled substance as  
20 designated by Health and Safety Code section 11057(d)(16) and a dangerous drug as designated  
21 by Business and Professions Code section 4022. It is a depressant drug.

22 21. **Adderall** is a brand name for a compound containing **amphetamine** and/or  
23 **dextroamphetamine sulfate**, a Schedule II controlled substance as designated by Health and  
24 Safety Code section 11055(d)(1) and a dangerous drug as designated by Business and Professions  
25 Code section 4022. It is also called **D-amphetamine salt combo**. It is a stimulant drug.

26 22. **OxyContin** and **Roxicodone** are among the brand names for **oxycodone**, a Schedule  
27 II controlled substance as designated by Health and Safety Code section 11055(b)(1)(M) and a  
28 dangerous drug as designated by Business and Professions Code section 4022. It is an opioid.

1 23. **Dolphine/Methadose** is a brand name for **methadone**, a Schedule II controlled  
2 substance as designated by Health and Safety Code section 11055(c)(14) and a dangerous drug as  
3 designated by Business and Professions Code section 4022. It is a narcotic drug.

4 24. **Opana** is a brand name for **oxymorphone**, a Schedule II controlled substance as  
5 designated by Health and Safety Code section 11055(b)(1)(N) and a dangerous drug as designated  
6 by Business and Professions Code section 4022. It is an opioid.

7 25. **Dilaudid** is a brand name for **hydromorphone**, a Schedule II controlled substance as  
8 designated by Health and Safety Code section 11055(b)(1)(J) and a dangerous drug as designated  
9 by Business and Professions Code section 4022. It is an opioid.

#### 10 FACTUAL BACKGROUND

11 26. At all times mentioned herein, Respondent was employed as a staff or a "floating"  
12 pharmacist by Walgreens Pharmacy, working in one or more of its stores.

13 27. On or about November 7 and/or November 16, 2013, Respondent, while on duty as a  
14 pharmacist at Walgreens Pharmacy #09703, dispensed and furnished the following controlled  
15 substances to himself: **zolpidem** 10 mg, **hydrocodone with ibuprofen** 7.5-200 mg, **lorazepam** 2  
16 mg, and/or **D-amphetamine salt combo XR** 20 mg.

17 28. On or about December 18, 2013, Respondent, while on duty as a pharmacist at  
18 Walgreens Pharmacy #09703, dispensed and furnished the following controlled substances to  
19 himself: **zolpidem** 10 mg, **hydrocodone with ibuprofen** 7.5-200 mg, and **lorazepam** 2 mg.

20 29. On or about December 26, 2013, while on duty as a pharmacist at Walgreens  
21 Pharmacy #09703, Respondent was observed to have physical and cognitive symptoms leading to  
22 suspicion that he was under the influence, including slow movements, slurred speech, a blotchy  
23 and pasty face, trembling hands, illegible handwriting, and inability to focus. Respondent was  
24 subjected to drug screening by his employer.

25 30. The drug screens showed positive results for the presence of **oxycodone**, **methadone**  
26 and **benzodiazepines** in his system. Respondent did not possess a prescription for **oxycodone** or  
27 for **methadone**. He also admitted to self-medicating himself with **oxycodone** which had not been  
28 prescribed for him during an interview with Walgreens Pharmacy on or about January 8, 2014.



1 FOURTH CAUSE FOR DISCIPLINE

2 (Possession of Controlled Substance)

3 37. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section  
4 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described  
5 in paragraphs 25 to 32 above, possessed, conspired to possess, and/or assisted in or abetted  
6 possession of, a controlled substance, without a prescription.

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8 FIFTH CAUSE FOR DISCIPLINE

9 (Selling, Dispensing, or Compounding While Under the Influence)

10 38. Respondent is subject to disciplinary action under section 4301(j) and/or (o) and/or  
11 section 4327 of the Code, in that Respondent, as described in paragraphs 25 to 32 above, sold,  
12 dispensed or compounded drug(s) while under the influence of a dangerous drug, and/or directly  
13 or indirectly attempted, conspired, and/or assisted in or abetted such conduct.

14  
15 SIXTH CAUSE FOR DISCIPLINE

16 (Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

17 39. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,  
18 and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs  
19 25 to 32 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a  
20 controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

21  
22 SEVENTH CAUSE FOR DISCIPLINE

23 (Unprofessional Conduct)

24 40. Respondent is subject to discipline under section 4301 of the Code in that  
25 Respondent, as described in paragraphs 25 to 38 above, engaged in unprofessional conduct.

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PRAYER

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

1. Revoking or suspending Pharmacist License No. RPH 44331, issued to Brett A. Stark (Respondent);
2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as is deemed necessary and proper.

DATED: August 12, 2015



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

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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 Accusation Against:

Case No. 5273

12 **BRETT A. STARK**  
13 **1205 Columbus Way**  
14 **Vista, CA 92081**

**ACCUSATION**

15 **Pharmacist License No. RPH 44331**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 22 2. On or about August 5, 1991, the Board of Pharmacy issued Pharmacist License  
23 Number RPH 44331 to Brett A. Stark (Respondent). 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, 2015,  
25 unless renewed.
- 26  
27  
28

## JURISDICTION

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

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

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

6. 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.

## STATUTORY PROVISIONS

7. Section 4059(a) of the Code states in pertinent part:

A person may not furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

8. Section 4060 of the Code states:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either Section 4052.1 or 4052.2. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

1 Nothing in this section authorizes a certified nurse-midwife, a nurse  
2 practitioner, a physician assistant, or a naturopathic doctor, to order his or her own  
3 stock of dangerous drugs and devices.

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

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

9 ...

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

16 ...

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

19 ....

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

25 10. Section 4327 of the Code states:

26 Any person who, while on duty, sells, dispenses or compounds any drug while  
27 under the influence of any dangerous drug or alcoholic beverage shall be guilty of a  
28 misdemeanor.

29 11. Health & Safety Code section 11350 states:

30 Except as otherwise provided in this division, every person who possesses  
31 (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of  
32 subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of  
33 subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section  
34 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled  
35 substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon  
36 the written prescription of a physician, dentist, podiatrist, or veterinarian licensed

1 to practice in this state, shall be punished by imprisonment pursuant to  
2 subdivision (h) of Section 1170 of the Penal Code.

3 . . . .

4 12. Health & Safety Code section 11170 states:

5 No person shall prescribe, administer, or furnish a controlled substance for himself.

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

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

#### 14 COST RECOVERY

15 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
16 administrative law judge to direct a licentiate found to have committed a violation or violations of  
17 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
18 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
19 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
20 included in a stipulated settlement.

#### 21 DRUGS

22 15. D-amphetamine salt combo, is a Schedule II controlled substance pursuant to Health  
23 and Safety Code section 11055(d)(1) and dangerous drug pursuant to Business and Professions  
24 Code section 4022.

25 16. Dolphine/Methadose, the brand name for methadone, is a Schedule II controlled  
26 substance pursuant to Health and Safety Code section 11055(c)(14) and dangerous drug pursuant  
27 to Business and Professions Code section 4022.

28 17. Oxycontin, the brand name for oxycodone is a Schedule II controlled substance  
pursuant to Health and Safety Code section 11055(b)(1)(M) and dangerous drug pursuant to  
Business and Professions Code section 4022.

1 18. Hydrocodone/ibuprofen, is a Schedule III controlled substance pursuant to Health and  
2 Safety Code section 11056(e)(4) and dangerous drug pursuant to Business and Professions Code  
3 section 4022.

4 19. Lorazepam, is a Schedule IV controlled substance pursuant to Health and Safety Code  
5 section 11057(d) and dangerous drug pursuant to Business and Professions Code section 4022.

6 20. Zolpidem, is a Schedule IV controlled substance pursuant to Health and Safety Code  
7 section 11057(d) and dangerous drug pursuant to Business and Professions Code section 4022.

### 8 **FACTUAL ALLEGATIONS**

9 21. At all times mentioned herein, Respondent was employed as a "floating" pharmacist  
10 at Walgreens Pharmacy #09703 located in Fortuna, California.

11 22. On or about November 7, and 16, 2013, Respondent, while on duty as a pharmacist at  
12 Walgreens Pharmacy #09703, dispensed and furnished the following controlled substances to  
13 himself: zolpidem 10 mg, hydrocodone/ibuprofen 7.5-200 mg, lorazepam 2 mg and/or D-  
14 amphetamine salt combo XR 20 mg.

15 23. On or about December 18, 2013, Respondent, while on duty as a pharmacist at  
16 Walgreens Pharmacy #09703, dispensed and furnished the following controlled substances to  
17 himself: zolpidem 10 mg, hydrocodone/ibuprofen 7.5-200 mg and lorazepam 2 mg.

18 24. On or about December 26, 2013, commencing at approximately 8:30 a.m.,  
19 Respondent while on duty as a pharmacist at Walgreens Pharmacy #09703, was observed to have  
20 slow physical actions and possess slurred speech, a blotchy and pasty face and trembling hands.  
21 He required a high level of concentration to complete basic tasks and he made multiple errors  
22 while dispensing medications. Respondent was then screened for the presence of drugs in his  
23 system.

24 25. On December 26, 2013, Respondent tested positive for the presence of oxycodone,  
25 methadone and benzodiazepines in his system. Respondent did not possess a prescription for  
26 oxycodone or methadone. He also admitted to self-medicating himself with oxycodone during an  
27 interview conducted by a Special Investigations Supervisor for Walgreens Pharmacy on January  
28 8, 2014.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Administration of Controlled Substance to Extent Use Impaired Ability to Conduct**  
3 **Practice Safely)**

4 26. Respondent is subject to disciplinary action under Code section 4301(h), in that he  
5 administered controlled substances to himself, to the extent that his use impaired his ability to  
6 conduct with safety the practice authorized by his license, as set forth in paragraphs 21 through  
7 25, which are incorporated herein by reference.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Violations of Drug Laws)**

10 27. Respondent is subject to disciplinary action under Code section 4301(j), for  
11 violating statutes regulating controlled substances and dangerous drugs, including Health &  
12 Safety Code sections 11350(a) and 11170, in that he possessed and administered controlled  
13 substances to himself, without prescriptions on December 26, 2013 and furnished controlled  
14 substances to himself on November 7, and 16, 2013 and December 18, 2013, as set forth in  
15 paragraphs 21 through 25, which are incorporated herein by reference.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Violations of Pharmacy Law)**

18 28. Respondent is subject to disciplinary action under Code section 4301(o) for  
19 violating Pharmacy Law, in that Respondent furnished and possessed controlled substances  
20 without prescriptions in violation of Code sections 4059(a) and 4060, as set forth in paragraphs  
21 21 through 25, which are incorporated herein by reference.

22 **FOURTH CAUSE FOR DISCIPLINE**

23 **(Violations of Pharmacy Law)**

24 29. Respondent is subject to disciplinary action under Code section 4301(o) for  
25 violating Pharmacy Law, in that Respondent sold and dispensed controlled substances while  
26 under the influence of dangerous drugs in violation of Code section 4327, as set forth in  
27 paragraphs 21 through 25, which are incorporated herein by reference.

28

1 FIFTH CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct)

3 30. Respondent is subject to disciplinary action under Code section 4301 for  
4 unprofessional conduct in that he engaged in the activities described in paragraphs 21 through 25  
5 above, which are incorporated herein by reference.

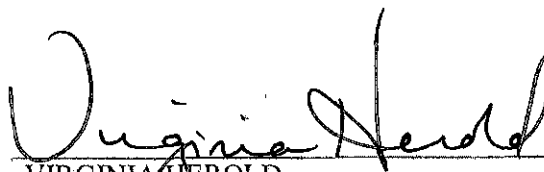
6 PRAYER

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

- 9 1. Revoking or suspending Pharmacist License Number RPH 44331, issued to Brett A.  
10 Stark;
- 11 2. Ordering Brett A. Stark to pay the Board of Pharmacy the reasonable costs of the  
12 investigation and enforcement of this case, pursuant to Business and Professions Code section  
13 125.3;
- 14 3. Taking such other and further action as deemed necessary and proper.
- 15

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17  
18 DATED: \_\_\_\_\_

12/3/14



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

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