

1 KAMALA D. HARRIS  
Attorney General of California  
2 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
3 NICOLE R. TRAMA  
Deputy Attorney General  
4 State Bar No. 263607  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2143  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

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. 5393

12 **BORREGO COMMUNITY HEALTH**  
**FOUNDATION**

13 **655 Palm Canyon Drive, Suite B**  
**Borrego Springs, CA 92004**

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

14 **Pharmacy Permit No. PHY 48254**

15 **and**

16 **ELIZABETH MARIE NEWELL**

17 **9777 Cmto Doha**  
**San Diego, CA 92131**

18 **Pharmacist License No. RPH 29746**

19  
20 Respondents.

21 Complainant alleges:

22 **PARTIES**

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

25 2. On or about November 13, 2006, the Board of Pharmacy issued Pharmacy Permit  
26 Number PHY 48254 to Borrego Community Health Foundation (Respondent). The Pharmacy  
27 Permit was in full force and effect at all times relevant to the charges brought herein and will  
28 expire on November 1, 2015, unless renewed.

1 3. On or about August 4, 1975, the Board of Pharmacy issued Pharmacist License  
2 Number PRH 29746 to Elizabeth Marie Newell (Respondent). The Pharmacist License was in  
3 full force and effect at all times relevant to the charges brought herein and will expire on April 30,  
4 2015, unless renewed.

### 5 JURISDICTION

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

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

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

14 7. Section 4300.1 of the Code states:

15 The expiration, cancellation, forfeiture, or suspension of a board-issued  
16 license by operation of law or by order or decision of the board or a court of law,  
17 the placement of a license on a retired status, or the voluntary surrender of a  
18 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.

### 19 STATUTORY PROVISIONS

20 8. Section 4113, subdivision (c) of the Code states: "The pharmacist-in-charge shall be  
21 responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining  
22 to the practice of pharmacy."

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

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

27 .....

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

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(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. Health and Safety Code section 11165 states in pertinent part:<sup>1</sup>

(a) To assist law enforcement and regulatory agencies in their efforts to control the diversion and resultant abuse of Schedule II, Schedule III, and Schedule IV controlled substances, and for statistical analysis, education, and research, the Department of Justice shall, contingent upon the availability of adequate funds from the Contingent Fund of the Medical Board of California, the Pharmacy Board Contingent Fund, the State Dentistry Fund, the Board of Registered Nursing Fund, and the Osteopathic Medical Board of California Contingent Fund, maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of, and Internet access to information regarding, the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances by all practitioners authorized to prescribe or dispense these controlled substances.

....

(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 or clinic shall provide the following information to the Department of Justice on a weekly basis and in a format specified by the Department of Justice:

(1) Full name, address, and the 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.

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<sup>1</sup> This version of Health and Safety Code section 11165 was in operation until December 31, 2013 and required the dispenser to report to the Department of Justice controlled substances dispensed to the patient on “**a weekly basis.**” Effective January 1, 2014, Health and Safety Code section 11165 was amended to require the dispenser to report to the Department of Justice “**as soon as reasonably possible, but not more than seven days after the date a controlled substance is dispensed,**” among other changes. Since the transactions at issue in this matter cover the period of October 2013 to October 2014, both versions of the Health and Safety Code appear in the instant Accusation.

1 (2) The prescriber's category of licensure and license number; federal  
2 controlled substance registration number; and the state medical license number of  
3 any prescriber using the federal controlled substance registration number of a  
4 government-exempt facility.

5 (3) Pharmacy prescription number, license number, and federal controlled  
6 substance registration number.

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

9 (5) Quantity of the controlled substance dispensed.

10 (6) ICD-9 (diagnosis code), if available.

11 (7) Number of refills ordered.

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

14 (9) Date of origin of the prescription.

15 (10) Date of dispensing of the prescription.

16 . . . .

17 11. Health and Safety Code section 11165 states in pertinent part:<sup>2</sup>

18 (a) To assist health care practitioners in their efforts to ensure appropriate  
19 prescribing, ordering, administering, furnishing, and dispensing of controlled  
20 substances, law enforcement and regulatory agencies in their efforts to control the  
21 diversion and resultant abuse of Schedule II, Schedule III, and Schedule IV  
22 controlled substances, and for statistical analysis, education, and research, the  
23 Department of Justice shall, contingent upon the availability of adequate funds in  
24 the CURES Fund, maintain the Controlled Substance Utilization Review and  
25 Evaluation System (CURES) for the electronic monitoring of, and Internet access  
26 to information regarding, the prescribing and dispensing of Schedule II, Schedule  
27 III, and Schedule IV controlled substances by all practitioners authorized to  
28 prescribe, order, administer, furnish, or dispense these controlled substances.

. . . .

(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

<sup>2</sup> As referenced in footnote 1, this version of Health and Safety Code section 11165 became effective January 1, 2014.

1 Department of Justice as soon as reasonably possible, but not more than seven  
2 days after the date a controlled substance is dispensed, in a format specified by the  
Department of Justice:

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

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

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

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

12 (5) Quantity of the controlled substance dispensed.

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

15 (7) Number of refills ordered.

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

17 (9) Date of origin of the prescription.

18 (10) Date of dispensing of the prescription.

19 .....

## 20 COST RECOVERY

21 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
22 administrative law judge to direct a licentiate found to have committed a violation or violations of  
23 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
24 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
25 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
26 included in a stipulated settlement.

1 **FACTUAL ALLEGATIONS**

2 13. At all times mentioned herein and since August 22, 2011, Elizabeth Newell  
3 (Respondent Newell), has been the Pharmacist-in-Charge (PIC) of Borrego Community Health  
4 Foundation (Respondent Pharmacy) located in Borrego Springs, California.

5 14. From October 2013 to October 2014, Respondents did not report the controlled  
6 substances they dispensed to customers to the Department of Justice (DOJ) CURES system. On  
7 October 28, 2014, Respondent Newell admitted to a Board inspector that Respondents did not  
8 report dispensed controlled substances to the DOJ CURES system on a weekly basis. Respondent  
9 Newell was instructed by the inspector to report all CURES data from October 2013.  
10 Respondents' CURES data for October 2013 to October 2014 was transmitted to the DOJ in  
11 November 2014.

12 **CAUSE FOR DISCIPLINE**

13 **(Failure to Report to CURES)**

14 15. Respondents are subject to disciplinary action under Code sections 4301, subdivisions  
15 (j) and (o), for violating Health and Safety Code section 11165 for failing to transmit CURES  
16 data from October 2013 to October 2014, as set forth in paragraphs 13 and 14, which are  
17 incorporated herein by reference.

18 **PRAYER**

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

21 1. Revoking or suspending Pharmacy Permit Number PHY 48254, issued to Borrego  
22 Community Health Foundation;

23 2. Revoking or suspending Pharmacist License Number PRH 29746, issued to Elizabeth  
24 Marie Newell;

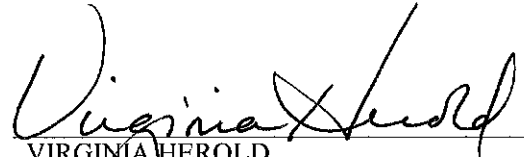
25 3. Ordering Respondents to pay the Board of Pharmacy the reasonable costs of the  
26 investigation and enforcement of this case, pursuant to Business and Professions Code section  
27 125.3;

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

DATED: 3/16/15



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

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