

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

In the Matter of the Petition for Interim  
Suspension Order Against:

SOUTH FIGUEROA DRUGS,  
TONI GAYLE WALKER (Owner),

Original Pharmacy Permit No. PHY 40552,

Respondent.

Case No. 5879

OAH No. 2017020077

**INTERIM SUSPENSION ORDER**

The Petition for Interim Suspension Order (ISO) in this matter was heard by Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings, on February 24, 2017, at Los Angeles, California.

Petitioner Virginia Herold was represented by Susan Melton Wilson, Deputy Attorney General.

Respondent South Figueroa Drugs appeared by its owner, Toni Gayle Walker.

The following documents were marked for identification, received in evidence, and considered by the ALJ:

Notice of Hearing on ISO and Petition for ISO with Memorandum of Points and Authorities (Ex.1);

Declaration of Board Inspector Noelle Randall with attached exhibits (Ex. 2);

Return Receipt for Mailing (Ex. 3); and

E-mail and photos, from Toni Walker to Noelle Randall (Ex. A).

Argument was heard and the matter was submitted for decision on the hearing date. On March 1, 2017, Respondent delivered a hand-written letter to the ALJ, with photocopies of pictures attached to it. There was no indication that it had been served on Petitioner's counsel. The documents, not being timely and apparently not served, were not considered by the ALJ in ruling on the Petition for ISO.

The ALJ hereby makes the following factual findings, legal conclusions, and order. The factual findings that follow were established by a preponderance of the evidence.

### FACTUAL FINDINGS

1. Petitioner brought the Petition for Interim Suspension Order (Petition) in her official capacity as Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, State of California.

2. (A) Respondent South Figueroa Drugs (pharmacy) holds Original Pharmacy Permit Number PHY 40552. The permit was first issued in November 1994, was valid at all times relevant to this matter, and will expire November 1, 2017.

(B) Toni Gayle Walker (Walker, at all relevant times, was 100 percent owner of the pharmacy since the permit was issued, and she has been the Pharmacist-In-Charge (PIC) of the pharmacy at all times. She holds Pharmacist License Number RPH 33235, and has held that license since August 20, 1979. At all times Walker's license was valid, and it will expire on January 31, 2019.

3. Walker has operated the pharmacy by herself since prior to June 2016, and since then.

4. Board Inspector Noelle Randall (Randall) performed an inspection of the pharmacy on June 16, 2016. Randall was accompanied by another Board Inspector, Connie Tang. They found a filthy and disorganized pharmacy. The conditions included, but are not limited to, the following:

(A) Trash bags blocked the rear door of the pharmacy, preventing egress and further blocking access to the back room of the pharmacy. The trash bags contained confidential records. As a result, the inspectors could not do a complete inspection of the back portion of the pharmacy.

(B) Insects, including one perceived by Randall to be a roach, crawled out of a pile of prescription documents that Randall was reviewing.

(C) There was trash and clutter throughout the pharmacy, blocking aisles and partially blocking medication shelves and the counter. The trash and clutter was paperwork, boxes, and trash bags.

(D) The pharmacy was dirty, with a thick layer of dust or dirt covering many inventory shelves, and in other places. An unidentified brown and white substance covered part of the floor.

(E) Reused containers were found in a drawer, some with patient labels from the pharmacy.

(F) A collapsed counter was cluttered with many unorganized prescription documents. Walker told the inspectors that the counter had collapsed, and she was in the process of reorganizing the documents that had fallen or been disorganized as a result of the failed counter. Randall could not discern that the records were in any particular order.

(G) One of the two refrigerators at the premises was filled with rotten food, and it emitted a foul odor. The refrigerator used for drug storage had a large block of ice frozen around the internal freezer.

(H) The bathroom was very dirty. There was dirt crusted in the sink, and when the water was turned on it was yellow in color. The cover for the toilet tank had been removed.

5. Following the inspection, Randall gave Walker verbal and written directives to correct the many deficiencies that the inspectors found. Walker was given a deadline of June 30, 2016, to complete the corrections.

6. On July 6, 2016, Randall and Inspector Tang returned to the pharmacy. At first, they could not obtain access; the pharmacy has a locked security gate that has to be opened from the inside. The door behind the gate was open, and the inspectors heard a radio, but could not find Walker. A phone call to Walker brought no response.

7. The inspectors waited for approximately one hour and fifteen minutes for Walker, from a place where they could see if she returned. Another phone call brought a busy signal. The inspectors then went to the front door and made contact with Walker.

8. During the July 6, 2016 inspection, the inspectors found the pharmacy to be in a condition substantially similar to the condition they found on June 16, 2016, as follows:

(A) Walker had taken away some of the trash bags that had been blocking the back door during the June inspection. But, she did not remove them all, and the rear door remained obstructed. The inspectors were able to get to a file cabinet in the rear portion of the pharmacy, but they were prevented from opening it by the trash bags.

(B) The bathroom appeared unchanged in condition from the prior inspection.

(C) There was still the unidentified substance on the floor.

(D) There were still insects on the premises, along with spray poison and traps.

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(E) The premises remained dirty, with dirt on inventory shelves, liquid dried on such shelves, and trash on the floor. There were boxes and bags of papers on the floor in the main pharmacy area.

(F) Pharmacy records remained piled up on the counter, and some were piled up on the floor. On the occasion of the second inspection, as well as the first, the records appeared disorganized. Walker acknowledged that it would be difficult to quickly retrieve pharmacy records for a particular patient or drug given the state of the records.

9. Randall gave Walker a copy of a written inspection report. She advised Walker that the pharmacy remained in an unacceptable condition, and that Walker had to remedy the problems as soon as possible. Randall advised that the bathroom had to be a priority, and told Walker that a pharmacy had to have a sink for the pharmacy, as well as one in a functioning restroom.

10. On July 7, 2016, Walker sent 11 photographs showing parts of the pharmacy, including the bathroom. Thereafter, on August 2, 2016, Randall received an e-mail from Walker stating that she had gotten rid of the confidential trash. However, Randall remains of the opinion that the pharmacy has not been properly cleaned up.

11. During the hearing on the ISO, Walker stated that she is in the process of selling the pharmacy business. She provided copies of her July and August 2016 emails to Randall and the photos she previously sent. However, she provided no evidence that the facility has been brought into a clean and wholesome state since then.

12. The record, including the photographic evidence, establishes that the operation of the Respondent's premises in a dirty condition, with disorganized records that cannot be readily retrieved or accessed, threatens the public health, safety, and welfare.

## LEGAL CONCLUSIONS

1. Jurisdiction to proceed in this matter exists under Business and Professions Code sections 494, 4003, 4011, and 4301,<sup>1</sup> based on Factual Findings 1 and 2. Under section 494, subdivision (e), the standard of proof to obtain an interim order of suspension is a preponderance of the evidence.

2. To obtain an ISO pursuant to section 494, Petitioner must establish that the licensee has engaged in acts that constitute grounds for discipline under the Code, and that permitting the licensee to continue to engage in the licensed activity, or to do so without some restrictions, would endanger the public health, safety, and welfare.

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<sup>1</sup> All further statutory citations are to the Business and Professions Code.

3. The Board may discipline a licensee for unprofessional conduct, which includes, but is not limited to, violation of any statutes regulating controlled substances and dangerous drugs. It may also take disciplinary action against a licensee for violating any of the statutes governing pharmacy, or for violating the Board's regulations. (§ 4301, subs. (j) & (o).)

4. California Code of Regulations (CCR), title 16, section 1707.5,<sup>2</sup> subdivision (c), provides that a pharmacy, and its equipment and fixtures, shall be maintained "in a clean and orderly condition. The pharmacy is to be dry, well-ventilated, free from rodents and insects, and properly lighted. The pharmacy shall be equipped with a sink with hot and cold running water for pharmaceutical purposes."

5. CCR section 1714 provides that every pharmacy shall maintain its facilities, space, fixtures, and equipment so that drugs are safely and properly maintained, prepared, secured, and distributed. The pharmacy must be sufficient in size and unobstructed so it can accommodate the safe practice of pharmacy.

6. Section 4105, subdivision (a), provides that all records or other documentation of the acquisition or disposition of dangerous drugs held by a licensed entity, such as a pharmacy, must be retained at the licensed premises "in readily retrievable form."

7. (A) Respondent has violated CCR section 1707.5, subdivision (c), by failing to maintain the pharmacy premises in a clean and orderly condition, based on Factual Findings 4 through 11.

(B) Respondent has violated CCR section 1714, in that the pharmacy is not in a condition where its space is unobstructed so that pharmacy can be safely practiced. Furthermore, this regulation is violated by Respondent's failure to maintain the premises so that drugs can be safely and property maintained, prepared, secured, and distributed. This Conclusion is based on Factual Findings 4 through 11.

8. Respondent has violated section 4105, subdivision (a), by failing to maintain records in a readily retrievable form, based on Factual Findings 4(F), 5, 6, and 8(F).

9. Respondent has violated section 4301, subdivision (o), by its violations of section 4105, subdivision (a), and by the violation of CCR sections 1707.5, subdivision (c), and 1714, based on Legal Conclusions 7 and 8 and their factual predicates.

10. Dirty and filthy premises, where pharmacy records cannot be readily accessed, patently threaten the public health, safety and welfare, and this Conclusion is supported by Factual Findings 1 through 12.

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<sup>2</sup> All citations to the CCR shall be to title 16 thereof.

11. Based on all the forgoing, Petitioner has established cause for the issuance of an ISO, pending a hearing on an accusation.

12. It is expected that the Board will comply with the requirement to file an accusation against Respondent within 15 days. If Respondent requests it, a full evidentiary hearing will take place.

### ORDER

The Petition for an Interim Order of Suspension is granted against Respondent South Figueroa Drugs, Pharmacy Permit Number PHY 40552. Said Pharmacy is suspended from operating as a pharmacy pending the outcome of a hearing on an accusation, or until further orders of this tribunal.

DATED: March 3, 2017

DocuSigned by:  
*Joseph D. Montoya*  
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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 No. 5879

12 **SOUTH FIGUEROA DRUGS,**  
13 **TONI GAYLE WALKER, Owner**  
1503 W. Martin Luther King Jr. Blvd  
Los Angeles, CA 90062

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

14 Original Pharmacy Permit No. PHY 40552

15 **AND**

16 **TONI GAYLE WALKER**  
17 1503 W. Martin Luther King Jr. Blvd.  
Los Angeles, CA 90062

18 Pharmacist License No. RPH 33235

19  
20 Respondent.  
21

22 Complainant alleges:

23 **PARTIES**

- 24 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
25 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 26 2. **South Figueroa Pharmacy** - On or about November 23, 1994, the Board of  
27 Pharmacy issued Original Pharmacy Permit Number PHY 40552 to South Figueroa  
28 Drugs(Respondent Pharmacy). Toni Gayle Walker is and has been 100% owner, as an individual

1 licensed owner, as well as Pharmacist-In-Charge of Respondent Pharmacy at all times since the  
2 permit was issued in 1994. The Original Pharmacy Permit was in full force and effect at all times  
3 relevant to the charges brought herein and will expire on November 1, 2017, unless renewed.

4 3. **Toni Gayle Walker** - On or about August 20, 1979, the Board of Pharmacy issued  
5 Pharmacist License Number RPH 33235 to Toni Gayle Walker (Respondent Walker). The  
6 Pharmacist License was in full force and effect at all times relevant to the charges brought herein  
7 and will expire on January 31, 2019, unless renewed.

### 8 JURISDICTION

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

12 5. Section 118, subdivision (b), of the Code provides that the  
13 suspension/expiration/surrender/cancellation of a license shall not deprive the  
14 Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period  
15 within which the license may be renewed, restored, reissued or reinstated.

16 6. Section 4300 of the Code states:

17 "(a) Every license issued may be suspended or revoked.

18 "(b) The board shall discipline the holder of any license issued by the board, whose default  
19 has been entered or whose case has been heard by the board and found guilty, by any of the  
20 following methods:

21 "(1) Suspending judgment.

22 "(2) Placing him or her upon probation.

23 "(3) Suspending his or her right to practice for a period not exceeding one year.

24 "(4) Revoking his or her license.

25 "(5) Taking any other action in relation to disciplining him or her as the board in its  
26 discretion may deem proper.

27 "(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The  
28 board may, in its sole discretion, issue a probationary license to any applicant for a license who is



1 guilty of unprofessional conduct and who has met all other requirements for licensure. The board  
2 may issue the license subject to any terms or conditions not contrary to public policy, including,  
3 but not limited to, the following:

4 "(1) Medical or psychiatric evaluation.

5 "(2) Continuing medical or psychiatric treatment.

6 "(3) Restriction of type or circumstances of practice.

7 "(4) Continuing participation in a board-approved rehabilitation program.

8 "(5) Abstention from the use of alcohol or drugs.

9 "(6) Random fluid testing for alcohol or drugs.

10 "(7) Compliance with laws and regulations governing the practice of pharmacy.

11 "(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary  
12 certificate of licensure for any violation of the terms and conditions of probation. Upon  
13 satisfactory completion of probation, the board shall convert the probationary certificate to a  
14 regular certificate, free of conditions.

15 "(e) The proceedings under this article shall be conducted in accordance with Chapter 5  
16 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board  
17 shall have all the powers granted therein. The action shall be final, except that the propriety of  
18 the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of  
19 Civil Procedure."

20 7. Section **4301** of the Code states:

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

24 ...

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

27 ...

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

5           8.     Section 4307 of the Code states at sub-division (a) that :

6           Any person who has been denied a license or whose license has been revoked or is under  
7 suspension, or who has failed to renew his or her license while it was under suspension, or who  
8 has been a manager, administrator, owner member, officer, director, associate, or partner of any  
9 partnership, corporation, firm, or association whose application for a license has been denied or  
10 revoked, is under suspension or has been placed on probation, and while acting as the manager,  
11 administrator, owner, member, officer, director, associate, or partner had knowledge or  
12 knowingly participated in any conduct for which the license was denied, revoked, suspended, or  
13 placed on probation, shall be prohibited from serving as a manager, administrator, owner,  
14 member, officer, director, associate, or partner of a licensee as follows:

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

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

19           9.     Section 4105 of the Code states:

20           "(a) All records or other documentation of the acquisition and disposition of dangerous  
21 drugs and dangerous devices by any entity licensed by the board shall be retained on the licensed  
22 premises in a readily retrievable form.

23           "(b) The licensee may remove the original records or documentation from the licensed  
24 premises on a temporary basis for license-related purposes. However, a duplicate set of those  
25 records or other documentation shall be retained on the licensed premises.

26           "(c) The records required by this section shall be retained on the licensed premises for a  
27 period of three years from the date of making.

28

1           "(d) Any records that are maintained electronically shall be maintained so that the  
2 pharmacist-in-charge, the pharmacist on duty if the pharmacist-in-charge is not on duty, or, in the  
3 case of a veterinary food-animal drug retailer or wholesaler, the designated representative on  
4 duty, shall, at all times during which the licensed premises are open for business, be able to  
5 produce a hard copy and electronic copy of all records of acquisition or disposition or other drug  
6 or dispensing-related records maintained electronically.

7           "(e)(1) Notwithstanding subdivisions (a), (b), and (c), the board, may upon written request,  
8 grant to a licensee a waiver of the requirements that the records described in subdivisions (a), (b),  
9 and (c) be kept on the licensed premises.

10           (2) A waiver granted pursuant to this subdivision shall not affect the board's authority  
11 under this section or any other provision of this chapter."

12           10. Business and Professions Code section **4081** provides in pertinent part:

13           “(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs  
14 or dangerous devices shall be at all times during business hours open to inspection by authorized  
15 officers of the law, and shall be preserved for at least three years from the date of making. A  
16 current inventory shall be kept by every manufacturer, wholesaler, pharmacy ... or establishment  
17 holding a currently valid and unrevoked certificate, license, permit, registration, or exemption  
18 under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4  
19 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who  
20 maintains a stock of dangerous drugs or dangerous devices.

21           (b) The owner, officer, and partner of a pharmacy ... shall be jointly responsible, with the  
22 pharmacist-in-charge or designated representative-in-charge, for maintaining the records and  
23 inventory described in this section.”

24           11. California Code of Regulations, title 16, section **1707.5**, provides in pertinent part:

25           ...

26           (P) If you have pain, take \_\_\_ [insert appropriate dosage form] at a time. Wait at least \_\_\_  
27 hours before taking again. Do not take more than \_\_\_ [appropriate dosage form] in one day

28

1 (b) By October 2011, and updated as necessary, the board shall publish on its Web site  
2 translation of the directions for use listed in subdivision (a)(4) into at least five languages other  
3 than English, to facilitate the use thereof by California pharmacies.

4 (c) The board shall collect and publish on its Web site examples of labels conforming to  
5 these requirements, to aid pharmacies in label design and compliance.

6 (d) The pharmacy shall have policies and procedures in place to help patients with limited  
7 or no English proficiency understand the information on the label as specified in subdivision (a)  
8 in the patient's language. The pharmacy's policies and procedures shall be specified in writing and  
9 shall include, at minimum, the selected means to identify the patient's language and to provide  
10 interpretive services in the patient's language. The pharmacy shall, at minimum, provide  
11 interpretive services in the patient's language, if interpretive services in such language are  
12 available, during all hours that the pharmacy is open, either in person by pharmacy staff or by use  
13 of a third-party interpretive service available by telephone at or adjacent to the pharmacy counter.

14 . . .

15 12. California Code of Regulations, title 16, section 1714 provides:

16 (a) All pharmacies (except hospital inpatient pharmacies as defined by Business and  
17 Professions Code section 4029 which solely or predominantly furnish drugs to inpatients of the  
18 hospital) shall contain an area which is suitable for confidential patient counseling.

19 (b) Each pharmacy licensed by the board shall maintain its facilities, space, fixtures, and  
20 equipment so that drugs are safely and properly prepared, maintained, secured and distributed.  
21 The pharmacy shall be of sufficient size and unobstructed area to accommodate the safe practice  
22 of pharmacy.

23 (c) The pharmacy and fixtures and equipment shall be maintained in a clean and orderly  
24 condition. The pharmacy shall be dry, well-ventilated, free from rodents and insects, and properly  
25 lighted. The pharmacy shall be equipped with a sink with hot and cold running water for  
26 pharmaceutical purposes.

27 (d) Each pharmacist while on duty shall be responsible for the security of the prescription  
28 department, including provisions for effective control against theft or diversion of dangerous

1 drugs and devices, and records for such drugs and devices. Possession of a key to the pharmacy  
2 where dangerous drugs and controlled substances are stored shall be restricted to a pharmacist.

3 (e) The pharmacy owner, the building owner or manager, or a family member of a  
4 pharmacist owner (but not more than one of the aforementioned) may possess a key to the  
5 pharmacy that is maintained in a tamper evident container for the purpose of 1) delivering the key  
6 to a pharmacist or 2) providing access in case of emergency. An emergency would include fire,  
7 flood or earthquake. The signature of the pharmacist-in-charge shall be present in such a way that  
8 the pharmacist may readily determine whether the key has been removed from the container.

9 (f) The board shall require an applicant for a licensed premise or for renewal of that license  
10 to certify that it meets the requirements of this section at the time of licensure or renewal.

11 (g) A pharmacy shall maintain a readily accessible restroom. The restroom shall contain a  
12 toilet and washbasin supplied with running water.

13 13. California Code of Regulations, title 16, section **1715**. (Self-Assessment of a  
14 Pharmacy by the Pharmacist-in-Charge) provides:

15 (a) The pharmacist-in-charge of each pharmacy as defined under section 4029 or section  
16 4037 of the Business and Professions Code shall complete a self-assessment of the pharmacy's  
17 compliance with federal and state pharmacy law. The assessment shall be performed before July 1  
18 of every odd-numbered year. The primary purpose of the self-assessment is to promote  
19 compliance through self-examination and education.

20 (b) In addition to the self-assessment required in subdivision (a) of this section, the  
21 pharmacist-in-charge shall complete a self-assessment within 30 days whenever:

22 (1) A new pharmacy permit has been issued, or

23 (2) There is a change in the pharmacist-in-charge, and he or she becomes the new  
24 pharmacist-in-charge of a pharmacy.

25 (3) There is a change in the licensed location of a pharmacy to a new address.

26 (c) The components of this assessment shall be on Form 17M-13 (Rev. 01/11) entitled  
27 "Community Pharmacy Self-Assessment Hospital Outpatient Pharmacy Self-Assessment" and on  
28

1 Form 17M-14 (Rev. 01/11) entitled "Hospital Pharmacy Self-Assessment" which are hereby  
2 incorporated by reference to evaluate compliance with federal and state laws and regulations.

3 (d) Each self-assessment shall be kept on file in the pharmacy for three years after it is  
4 performed.

5 14. Code of Federal Regulations, title 21, section 1304.11 states in pertinent part :

6 (b) Every person required to keep records shall take an inventory of all stocks of controlled  
7 substances on hand on the date he/she first engages in the manufacture, distribution, or dispensing  
8 of controlled substances, in accordance with paragraph (3) of this section as applicable. In the  
9 event a person commences business with no controlled substances on hand, he/she shall record  
10 this fact as the initial inventory.

11 (c) After the initial inventory is taken, the registrant shall take a new inventory of all stocks  
12 of controlled substances on hand at least every two years. The biennial inventory may be taken  
13 on any date which is within two years of the previous biennial inventory date.

14 15. Code of Federal Regulations, title 21, section 1304.04(h) states in pertinent part, that  
15 each registered pharmacy shall maintain the inventories and records of controlled substances as  
16 follows: (1) Inventories and records of all controlled substances listed in Schedule I and II shall  
17 be maintained separately from all other records of the pharmacy. (2) Paper prescriptions for  
18 Schedule II controlled substances shall be maintained at the registered location in a separate  
19 prescriptions file.

#### 20 COST RECOVERY

21 16. Section 125.3 of the Code states, 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.

#### 25 FACTS COMMON TO ALL CAUSES FOR DISCIPLINE

26 17. The following allegations are common to all causes for discipline in this matter:  
27  
28

1           A.     Respondent South Figueroa Drugs (Respondent Pharmacy) is a small retail pharmacy  
2 in the city of Los Angeles, which Toni Gayle Walker has solely owned and operated as  
3 pharmacist-in-charge since 1994.

4           **June 16, 2016 Inspection**

5           B.     During a routine Board inspection on June 16, 2016, Board Inspectors observed and  
6 documented the following conditions at South Figueroa Pharmacy:

7           1.     **Trash Bags Blocked Rear Door** - There were many trash bags piled in the back  
8 room. The pile of trash bags blocked the back door to the pharmacy and obstructed access  
9 to most of the back room, so that the Inspectors were not able to inspect the portion of the  
10 pharmacy blocked by the pile of trash bags. Respondent Walker stated the bags contained  
11 confidential HIPAA documents to be shredded.

12          2.     **Insects** – The Inspector observed several insects in the pharmacy, including spiders,  
13 spider webs, gnats (particularly in the area where black trash bags were piled) and a large  
14 insect she believed was a cockroach.

15          3.     **Trash and Clutter** - Piles of paperwork, boxes, and trash bags cluttered the aisles,  
16 partially blocking medication shelves and what appeared to be the dispensing counter.

17          4.     **Dust and Dirt** - There was a thick layer of dirt or dust coating many of the  
18 pharmacy's medication inventory shelves. There was also a layer of dirt or dust on the right  
19 side of the counter in the main pharmacy area, on and surrounding a computer, which  
20 appeared unused. Additionally, there was a significant amount of dirt on a white plastic  
21 shelving unit in the main pharmacy area on a plastic set of drawers under the pharmacy  
22 counter.

23          5.     **Reused Containers** - One of the drawers in the plastic set of drawers under the main  
24 counter contained empty prescription containers, possibly retained for re-use (prohibited  
25 under California Code of Regulations Section 1717 (a)).

26          6.     **Collapsed Counter/ Disorganized Records** - The counter in the main pharmacy area  
27 was very cluttered with many unorganized prescription documents. The counter was also  
28 slanted downward. Respondent Walker stated the counter had collapsed and she was in the

1 process of reorganizing prescription documents that had fallen or become disorganized in  
2 the collapse. Many prescription documents were rubber banded in large stacks that did not  
3 seem to be in order by date or prescription number.

4 7. **Unidentified Substance** - There was an unidentified brown and white substance on  
5 the floor adjacent to one of the pharmacy shelves.

6 8. **Foul Order/Rotted Food** - There were two refrigerators in the pharmacy, one behind  
7 the front counter and one under the counter in the main pharmacy area. The refrigerator  
8 behind the front counter was full of food and had a strong foul odor when opened.  
9 Respondent Walker stated this refrigerator was not used for drug storage. The refrigerator  
10 under the counter in the main pharmacy area had a large block of ice frozen around the  
11 internal freezer. Respondent Walker stated the second refrigerator was used for drug  
12 storage.

13 9. **Foul Bathroom** - The pharmacy bathroom was extremely unclean. The tank cover of  
14 the un-flushed toilet was off. There was a significant amount of crusted dirt in the bathroom  
15 sink. Water that flowed from the faucet was yellow in color.

16 C. Respondent Walker was alone at the pharmacy during the inspection – and advised  
17 Inspectors that Respondent Pharmacy had no other employees.

18 D. Verbal and written instructions were given to Respondent Walker to correct  
19 deficiencies referenced above which were observed during the June 16, 2016 inspection and to  
20 clean up the pharmacy by June 30, 2016.

21 E. **Additional violations** observed during the June 16 inspection included the following:

22 1. Respondent Pharmacy did not have, and/or Respondent Walker could not locate, a  
23 current self-assessment completed, per requirements of California Code of Regulations, title  
24 16, section 1715(a)).

25 2. Respondent Pharmacy did not have, and/or Respondent Walker could not locate, a  
26 biennial inventory of controlled substances completed after September 23, 2013 (per  
27 requirements of Code of Federal Regulations, title 21, section 1304.11).  
28



1 3. Respondent Pharmacy did not have any policy or procedure in place to address the  
2 provision of interpretative services, a posted sign or other means to identify a patient's  
3 language, or the ability to provide translations services(per requirements of title 16,  
4 California Code of Regulations, section 1707.5(d)).

5 4. Respondents did not maintain inventories and records for all Schedule I and II  
6 controlled substances separately from all other records in the pharmacy; nor were paper  
7 prescriptions for Schedule II controlled substances maintained in a separate prescription  
8 file. Rather, Inspectors observed that prescription documents for Schedule II controlled  
9 substances were commingled with prescription documents for other schedules (violating  
10 requirements of Code of Federal Regulations, title 21, section 1304.04(h)).

#### 11 **July 6, 2016 Inspection**

12 F. On or about July 6, 2016, Board Inspectors returned to Respondent Pharmacy to  
13 determine whether the premises had been brought into compliance. However, Inspectors found  
14 the pharmacy premises in a *substantially similar condition*, and documented the following  
15 observations of the premises at that time:

16 1. **Trash Bags Blocking Back Door** – Respondent Walker stated she had removed  
17 some of the boxes and bags from the floor in the main pharmacy, and removed a portion of  
18 the black trash bags. However – black bags *still* obstructed the rear door. Because a portion  
19 of the trash bags were removed from the back room, Inspectors were able to reach a file  
20 cabinet which had been previously completely blocked – but could not open it because it  
21 was still partially obstructed by the filled trash bags.

22 2. **Bathroom** - The bathroom appeared unchanged from the previous inspection.

23 3. **Unidentified Substance** - There was still a pile of an unidentified substance on the  
24 floor adjacent to the inventory shelves.

25 4. **Insects** - The Inspector observed several spider webs, several ant traps, and two  
26 bottles of Raid Ant and Roach spray. There were also flat black insects in the internal  
27 freezer sections of the front refrigerator.

28 5. **Filthy Premises and Storage Areas** - One of the pharmacy's inventory shelves

1 contained dirt and what appeared to be dried liquid in a drop formation. The Inspector  
2 observed trash on the floor near Respondent Walker's desk including soda bottles. Some of  
3 the pharmacy's inventory shelves remained very dusty and dirty. There were still boxes and  
4 bags containing papers on the floor in the main pharmacy area. The Inspector also observed  
5 and photographed an unknown black substance in an upper corner of the pharmacy, which  
6 was directly overhead as she stood in the patient accessible entry area.

7 **6. Prescription Records on the Floor** - The prescription documents and records on the  
8 main pharmacy counter seemed unchanged from the previous inspection. The Inspector also  
9 noticed several prescription documents were on the floor under the pharmacy counter.

10 G. Inspectors provided written and verbal instructions to Respondent Walker at the time  
11 of the July 6, 2016 inspection – including a written Inspection Report specifying items in need of  
12 correction. Respondent Walker was asked to provide photos to Inspectors showing that the  
13 pharmacy had been brought to a clean and orderly condition by July 8, 2016, and provide a  
14 written statement with a plan to promptly address any of the cleanliness issues she was unable to  
15 resolve by July 8, 2016.

16 H. On or about July 7, 2016, Board Inspectors received a set of eleven (11) photographs  
17 from Respondents, which were not sufficient to show substantial changes or compliance. On or  
18 about August 2, 2016, Respondent Walker sent an electronic mail message stating she had  
19 disposed of "the confidential trash." However, no written statement or plan addressing all issues  
20 of concern identified in the Inspection Report was received prior to the filing of this accusation.

## 21 CAUSES FOR DISCIPLINE

### 22 **FIRST CAUSE FOR DISCIPLINE**

#### 23 **(Failed to Maintain Pharmacy in a Clean and Orderly Condition )**

24 18. Respondent Pharmacy is subject to disciplinary action under Code section 4300 for  
25 unprofessional conduct as defined in section 4301, subdivisions (j) and (o), in conjunction with  
26 California Code of Regulations, title 16, section 1714 (b) and (c) as follows:  
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1 A. June 16, 2016 – During an inspection on June 16, 2016, Board Inspectors found that  
2 the fixtures and equipment on the pharmacy premises were not maintained in a clean and orderly  
3 condition.

4 B. July 6, 2016 – Despite specific instructions to remediate problems identified during  
5 the June 16, 2016 inspection, Respondent failed to provide documentation indicating she brought  
6 fixtures and equipment on the pharmacy premises into a clean and orderly condition.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Failed to Comply With Self Assessment Form Requirements)**

9 19. Respondents Walker and Pharmacy are subject to disciplinary action under Code  
10 section 4300 for unprofessional conduct as defined in section 4301, subdivisions (j) and (o), in  
11 conjunction with California Code of Regulations, title 16, section 1715, subdivision (a) (which  
12 requires that a pharmacy must complete a new self-assessment form before July 1 or every odd  
13 numbered year) in that during a Board inspection on or about June 16, 2016, Respondents were  
14 unable to produce a current, properly completed self assessment form.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Failed to Comply With Requirement to Provide Interpretive Services)**

17 20. Respondents Walker and Pharmacy are subject to disciplinary action under Code  
18 section 4300 for unprofessional conduct as defined in section 4301, subdivisions (j) and (o), in  
19 conjunction with California Code of Regulations, title 16, section 1707.5(d) (requiring the  
20 pharmacy to implement procedures to assist patients with limited English language proficiency)  
21 in that during a Board inspection on or about June 16, 2016, Respondents admitted that no  
22 policies or procedures were in place to address the provision of interpretative services, no sign or  
23 other means was used to identify a patient's language, and that Respondent had no ability to  
24 provide translations services.

25 **FOURTH CAUSE FOR DISCIPLINE**

26 **(Failed to Comply With Requirements for Storage of Controlled Substance Records)**

27 21. Respondent Pharmacy is subject to disciplinary action under Code section 4300 for  
28 unprofessional conduct as defined in section 4301, subdivisions (j) and (o), in conjunction with

1 Code of Federal Regulations, title 21, section 1304.04(h), in that Respondent did not maintain  
2 inventories and records for all Schedule I and II controlled substances separately from all other  
3 records in the pharmacy; nor were paper prescriptions for Schedule II controlled substances  
4 maintained in a separate prescription file. Rather, Inspectors observed that prescription documents  
5 for Schedule II controlled substances were comingled with prescription documents for other  
6 schedules.

7 **FIFTH CAUSE FOR DISCIPLINE**

8 **(Failed to Comply With Inventory Requirements for Controlled Substances)**

9 22. Respondents Walker and Pharmacy are subject to disciplinary action under Code  
10 section 4300 for unprofessional conduct as defined in section 4301, subdivisions (j) and (o), in  
11 conjunction with Code of Federal Regulations, title 21, section 1304.11, in that Respondent  
12 Pharmacy did not have or could not locate, a biennial inventory of controlled substances  
13 completed after September 23, 2013.

14 **OTHER MATTERS**

15 23. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit  
16 Number PHY 40552 issued to South Figueroa Drugs, Toni Gayle Walker, as the individual  
17 licensed owner, shall be prohibited from serving as a manager, administrator, owner, member,  
18 officer, director, associate or partner of a licensee for five years if Pharmacy Permit Number PHY  
19 40552 is placed on probation or until Pharmacy Permit Number PHY 40552 is reinstated if it is  
20 revoked.

21 24. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit  
22 Number PHY 40552 issued to South Figueroa Drugs, while Toni Gayle Walker has been the  
23 individual licensed owner, and had knowledge of or knowingly participated in any conduct for  
24 which the licensee was disciplined, she shall be prohibited from serving as a manager,  
25 administrator, owner, member, officer, director, associate, or partner of a licensee for five years if  
26 Pharmacy Permit Number PHY 40552 is placed on probation or until Pharmacy Permit Number  
27 PHY 40552 is reinstated if it is revoked.

1 **DISCIPLINE CONSIDERATIONS**

2 25. **Prior Citation – Respondent Walker** - On or about May 6, 2010 Administrative  
3 Citation/Assessment of Fine No. **CI 2009 44168** was issued to Respondent Walker for violating  
4 codes and regulations as set forth below, resulting in the issuance of a fine exceeding  
5 \$52,300,000.00. The citation matter was resolved and is now final.

6

Code/Regulation(s) Violated	Description
Business and Professions Code section 4067	Internet dispensing without a prescription
California Code of Regulations, title 16, section 1761(a)	Dispensing pursuant to a prescription with significant error or omission
Business and Professions Code section 4105(a)	Failure to retain prescription records on the licensed premises in a retrievable form

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11 26. **Prior Citation – Respondent South Figueroa Drugs** - On or about May 6, 2010  
12 Administrative Citation/Assessment of Fine No. **CI 2009 40588** was issued to Respondent South  
13 Figueroa Drugs for violating codes and regulations as set forth below, resulting in the issuance of  
14 a fine exceeding \$52,305,000. The citation matter was resolved and is now final

15

Code/Regulation(s) Violated	Description
Business and Professions Code section 4067	Internet dispensing without a prescription
California Code of Regulations, title 16, section 1761(a)	Dispensing pursuant to a prescription with significant error or omission
Business and Professions Code section 4105(a)	Failure to retain prescription records on the licensed premises in a retrievable form

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21 **PRAYER**

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

- 24
- 25 1. Revoking or suspending Original Pharmacy Permit Number PHY 40552, issued to  
26 South Figueroa Drugs, Toni Gayle Walker, Owner;
  - 27 2. Revoking or suspending Pharmacist License Number RPH 33235, issued to Toni  
28 Gayle Walker;

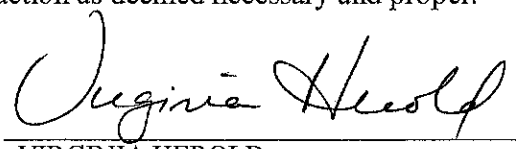
1           3.     Prohibiting Toni Gayle Walker from serving as a manager, administrator, owner,  
2 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit  
3 number PHY 40552 is placed on probation or until Pharmacy Permit Number PHY 40552 is  
4 reinstated if Pharmacy Permit Number 40552 issued to South Figueroa Pharmacy is revoked;

5           4.     Ordering South Figueroa Drugs, Toni Gayle Walker, Owner to pay the reasonable  
6 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
7 Code section 125.3;

8           5.     Ordering Toni Gayle Walker, as an individual licensee, to pay the Board of Pharmacy  
9 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
10 Professions Code section 125.3;

11          6.     Taking such other and further action as deemed necessary and proper.

12  
13 DATED: 3/16/17



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

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