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

Case No. 3064
OAH No.
O ORDER
License and Order is hereby adopted by the
rs, as its Decision in this matter.
on <u>July 11, 2007</u> .

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

Ву

WILLIAM POWERS
Board President

	1		
1	EDMUND G. BROWN JR., Attorney General		
2	of the State of California FRANK H. PACOE		
3	Supervising Deputy Attorney General JOSHUA A. ROOM, State Bar No. 214663		
4	Deputy Attorney General California Department of Justice		
5	455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004		
6	Telephone: (415) 703-1299 Facsimile: (415) 703-5480		
7	Attorneys for Complainant		
8	BEFORE 7	ГНЕ	
9	BOARD OF PH. DEPARTMENT OF CON		
10	STATE OF CAL		
11	In the Matter of the Accusation Against:	Case No. 3064	
12	UNITED PHARMACY 2935 Telegraph Avenue	OAH No.	
13	Berkeley, CA 94705	STIPULATED SURRENDER OF LICENSE AND ORDER	
14	Pharmacy Permit No. PHY 45289	EICENSE AND ORDER	
15	Respondent.	•	
16	In the interest of a prompt and speedy	resolution of this matter, consistent with the	
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19	will be submitted to the Board for approval and adop	ption as final disposition of the Accusation.	
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21	PARTIE	<u>85</u> v	
22	1. Virginia Herold (Complainan	t) is the Executive Officer of the Board of	
23	Pharmacy. She brought this action solely in her offi	cial capacity and is represented in this matter	
24	by Edmund G. Brown Jr., Attorney General of the S	tate of California, by Joshua A. Room,	
25	Deputy Attorney General.		
26	2. United Pharmacy, Tengiz Ios	ebashvili, President (Respondent) is	
27	representing itself in this proceeding and has chosen	not to exercise its right to be represented by	
28	counsel.		

3. On or about May 18, 2001, the Board of Pharmacy issued Pharmacy Permit Number PHY 45289 to United Pharmacy, Tengiz Iosebashvili, President (Respondent). The Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein and will expire on May 1, 2007, unless renewed.

JURISDICTION

4. Accusation No. 3064 was filed before the Board of Pharmacy (Board),
Department of Consumer Affairs, and is currently pending against Respondent. The Accusation
and all other statutorily required documents were properly served on Respondent on March 28,
2007. Respondent timely filed its Notice of Defense contesting the Accusation. A copy of
Accusation No. 3064 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

- 5. Respondent has carefully read and understands the charges and allegations in Accusation No. 3064. Respondent also has carefully read and fully understands the effects of this Stipulated Surrender of License and Order.
- 6. Respondent is fully aware of its legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at its own expense; the right to confront and cross-examine the witnesses against them; the right to present evidence and to testify on its own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.
- 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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CULPABILITY

- 8. Respondent admits that the United Pharmacy at 2935 Telegraph Avenue, Berkeley, California, 94705, was not engaged in the ordinary activity for which Pharmacy Permit No. PHY 45289 was issued to that premises for at least one day each calendar week during one or more 120-day period, agrees that cause exists for cancellation of the Pharmacy Permit, and hereby surrenders Pharmacy Permit No. PHY 45289 for the Board's formal acceptance.
- 9. Respondent asserts that there were never any pharmacy operations under Pharmacy Permit No. PHY 45289, and that at no time were any drugs, dangerous drugs, devices or equipment purchased for use under this Permit. Respondent disputes that it failed any duty to notify the Board prior to transferring or selling any such inventory.
- 10. Respondent understands that by signing this stipulation it enables the Board to issue an order accepting the surrender of the Pharmacy Permit without further process.

RESERVATION

11. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that they may not withdraw its agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

OTHER MATTERS

- 13. The parties understand and agree that facsimile copies of this Stipulated Surrender of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.
- 14. In consideration of these admissions and stipulations, the parties agree the Board may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Pharmacy Permit No. PHY 45289, issued to Respondent United Pharmacy, Tengiz Iosebashvili, President (Respondent), is surrendered and accepted by the Board of Pharmacy.

- 15. The surrender of Respondent's Pharmacy Permit and the acceptance of the surrendered Permit by the Board shall **not** constitute imposition of discipline against Respondent.
- 16. Respondent shall lose all rights and privileges as a Pharmacy in California as of the effective date of the Board's Decision and Order.
- 17. Respondent shall cause to be delivered to the Board both its wall Permit and pocket renewal certificate on or before the effective date of this Decision and Order.
- 18. Prior to the effective date of this Decision and Order, Respondent shall contact the Board in writing regarding its plans for transferring or selling the premises, lease or ownership, equipment, and/or inventory of the premises covered by the Pharmacy Permit. By no later than ten (10) days following the effective date of this Decision and Order, Respondent shall provide the Board with a written statement, made under penalty of perjury, either stating plans to arrange for the transfer of all dangerous drugs and controlled substances or dangerous devices to another licensee authorized to possess the dangerous drugs, controlled substances, or dangerous devices, or stating that no such inventory exists or needs to be transferred. If such a transfer of inventory is to be made, it shall be completed within thirty (30) days of the effective date of this Decision and Order, and within ten (10) days thereof, Respondent shall confirm in writing to the Board, in a writing made under penalty of perjury, that the transfer has taken place.

1	19. Respondent understands and agrees that if it ever applies for incensure or			
2	petitions for reinstatement in the State of California, the Board shall treat it as a new application			
3	for licensure. Respondent must comply with all the laws, regulations and procedures for			
4	licensure in effect at the time the application or petition is filed.			
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6	<u>ACCEPTANCE</u>			
7	I have carefully read the Stipulated Surrender of License and Order. I understan			
8	the stipulation and the effect it will have on my Pharmacy Permit. I enter into this Stipulated			
9	Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound			
10	by the Decision and Order of the Board of Pharmacy.			
11	DATED: 05.01.07			
12	UNITED PHARMACY			
13	Tengiz Iosebashvili, President			
14	Respondent			
15	<u>ENDORSEMENT</u>			
16	The foregoing Stipulated Surrender of License and Order is hereby respectfully			
17	submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.			
18	DATED: 5/4/07			
19	EDMUND G. BROWN JR., Attorney General of the State of California			
20	FRANK H. PACOE			
21	Supervising Deputy Attorney General			
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23	Onla -R			
24	JOSHUA A. ROOM Deputy Attorney General			
25	Attorneys for Complainant			
26	Auomeys for Complanian			
27	DOJ Matter ID: SF2007400501			
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Exhibit A
Accusation No. 3064

	1	EDMUND G. BROWN JR., Attorney General		
	2	of the State of California FRANK H. PACOE		
	3	Supervising Deputy Attorney General JOSHUA A. ROOM, State Bar No. 214663		
	4	Deputy Attorney General California Department of Justice		
	5	455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004		
	6	Telephone: (415) 703-1299 Facsimile: (415) 703-5480		
	7	Attorneys for Complainant		
	8 9	BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
	10	In the Matter of the Accusation Against:	Case No. 3064	
	11	UNITED PHARMACY	OAH No.	
	12	2935 Telegraph Avenue Berkeley, CA 94705	ACCUSATION	
	13	Pharmacy Permit No. PHY 45289		
	14 15	Respondent.		
	16.	Complainant alleges:	•	
	17 PARTIES		E <u>S</u>	
18 1. Virginia Herold (Complainant) brings this Accusation solely in		t) brings this Accusation solely in her officia		
	19	capacity as the Executive Officer of the Board of Ph	armacy, Department of Consumer Affairs.	
20 2. On or about May 18, 2001, the Board of Pharmacy i			e Board of Pharmacy issued Pharmacy	
	21 Permit Number PHY 45289 to United Pharmacy, Tengiz Iosebashvili, President (Respon			
	22	The Pharmacy Permit was in full force and effect at all times relevant to the charges brought		
	herein and will expire on May 1, 2007, unless renewed.			
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	25	25 <u>JURISDICTION</u>		
	26	3. This Accusation is brought be	efore the Board of Pharmacy (Board),	
	Department of Consumer Affairs, under the authority of the following laws. All section			
	28	references are to the Business and Professions Code unless otherwise indicated.		
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- 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(a) of the Code provides that every license issued by the Board may be suspended or revoked.
- 6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not renewed within three years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of the Code provides that any other license issued by the Board may be canceled by the Board if not renewed within sixty (60) days after its expiration.

STATUTORY PROVISIONS

7. Section 4312 of the Code states, in pertinent part:

"(a) The board may cancel the license of a wholesaler, pharmacy, or veterinary food-animal drug retailer if the licensed premises remain closed, as defined in subdivision (e), other than by order of the board. For good cause shown, the board may cancel a license after a shorter period of closure. To cancel a license pursuant to this subdivision, the board shall make a diligent, good faith effort to give notice by personal service on the licensee. If a written objection is not received within 10 days after personal service is made or a diligent, good faith effort to give notice by personal service on the licensee has failed, the board may cancel the license without the necessity of a hearing. If the licensee files a written objection, the board shall file an accusation based on the licensee remaining closed. Proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted in that chapter.

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"(b) In the event that the license of a wholesaler, pharmacy, or veterinary food-animal drug retailer is cancelled pursuant to subdivision (a) or revoked pursuant to Article 19 (commencing with Section 4300), or a wholesaler, pharmacy, or veterinary food-animal drug retailer notifies the board of its intent to remain closed or to discontinue business, the licensee shall, within 10 days thereafter, arrange for the transfer of all dangerous drugs and controlled substances or dangerous devices to another licensee authorized to possess the dangerous drugs and controlled substances or dangerous devices. The licensee transferring the dangerous drugs and controlled substances or dangerous devices shall immediately confirm in writing to the board that the transfer has taken place.

. . .

"(e) For the purposes of this section, 'closed' means not engaged in the ordinary activity for which a license has been issued for at least one day each calendar week during any 120-day period.

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- 8. California Code of Regulations, title 16, section 1708.2 provides that any permit holder shall contact the Board prior to transferring or selling any dangerous drugs, devices or hypodermics inventory as a result of termination of business or bankruptcy proceedings and shall follow official instructions given by the Board applicable to the transaction.
- 9. Section 4301 of the Code provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of "unprofessional conduct," defined to include, but not be limited to, any of the following:

"(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.

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

FACTUAL BACKGROUND

- 11. On or about September 22, 2006, an Inspector for the Board conducted or attempted to conduct a routine inspection of Respondent's premises, and discovered that at that time Respondent was closed to business and was not engaged in the ordinary activity for which the Pharmacy Permit had been issued. Subsequent investigation revealed that Respondent had not been engaged in the ordinary activity for which the Pharmacy Permit had been issued for up to several years, and/or had not engaged in that ordinary activity for at least one (1) day in each calendar week during at least the prior one hundred twenty (120)-day period.
- 12. On or about September 28, 2006, a Notice of Voiding License of Entity Remaining Closed and/or of Discontinuance of Business was personally served on the President of the entity doing business as Respondent, Tengiz Iosebashvili, per section 4312 of the Code.
- 13. On or about October 4, 2006, Mr. Iosebashvili, on behalf of Respondent, submitted a written Objection to the Board to the proceedings for license cancellation.

FIRST CAUSE FOR DISCIPLINE

(Failure to Engage in Ordinary License Activity)

14. Respondent is subject to disciplinary action under section 4312(a) and/or 4301(o) of the Code, in that during at least one 120-day period prior to September 22, 2006, the pharmacy premises at 2935 Telegraph Avenue, Berkeley, California was not open for business and/or engaged in the ordinary activity for which it was licensed as a pharmacy for at least one (1) day per calendar week, and by so doing violated or attempted to violate the Pharmacy Law.

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SECOND CAUSE FOR DISCIPLINE

(Failure to Notify Board of Discontinuance of Business)

15. Respondent is subject to disciplinary action under section 4312(b) and/or 4301(o) of the Code, and/or California Code of Regulations, title 16, section 1708.2, in that Respondent failed to notify the Board and/or arrange for the disposition of dangerous drugs, devices or hypodermics pursuant to Board instructions, prior to cessation of ordinary operations.

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:

- A. Revoking or suspending Pharmacy Permit Number PHY 45289, issued to United Pharmacy, Tengiz Iosebashvili, President (Respondent);
- B. Cancelling Pharmacy Permit Number PHY 45289, issued to United Pharmacy, Tengiz Iosebashvili, President (Respondent);
- C. Ordering Respondent to pay the Board reasonable costs of investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
 - D. Taking such other and further action as is deemed necessary and proper.

DATED: 3/22/0>

VIRGINIA HEROLD

Executive Officer Board of Pharmacy

Department of Consumer Affairs

State of California Complainant