

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

In the Matter of the Accusation Against:

Case No. 3275

SYLVIA SAWYER
2501 England Street
Huntington Beach, CA 92648

Original Pharmacy Technician
Registration No. TCH 27671

Respondent.

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on April 8, 2010.

It is so ORDERED on March 9, 2010.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

Kenneth H. Schell

KENNETH H. SCHELL
Board President

1 EDMUND G. BROWN JR.
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
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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. 3275

12 **SYLVIA SAWYER**
13 **2501 England Street**
14 **Huntington Beach, CA 92648**
Pharmacy Technician License No. TCH
15 **27671**

STIPULATED SURRENDER OF
LICENSE AND ORDER

16 Respondent.

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18 In the interest of a prompt and speedy resolution of this matter, consistent with the public
19 interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs
20 the parties hereby agree to the following Stipulated Surrender of License and Order which will be
21 submitted to the Board for approval and adoption as the final disposition of the Accusation.

22 PARTIES

23 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
24 She brought this action solely in her official capacity and is represented in this matter by Edmund
25 G. Brown Jr., Attorney General of the State of California, by Marichelle S. Tahimic, Deputy
26 Attorney General.

27 2. Sylvia Sawyer (Respondent) is representing herself in this proceeding and has chosen
28 not to exercise her right to be represented by counsel.

1 3. On or about November 16, 1998, the Board of Pharmacy issued Pharmacy Technician
2 License No. TCH 27671 to Sylvia Sawyer (Respondent). The Pharmacy Technician license was
3 in full force and effect at all times relevant to the charges brought in Accusation No. 3275 and
4 will expire on October 31, 2010, unless renewed.

5 JURISDICTION

6 4. Accusation No. 3275 was filed before the Board of Pharmacy (Board), Department of
7 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other
8 statutorily required documents were properly served on Respondent on May 28, 2009.
9 Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation
10 No. 3275 is attached as exhibit A and incorporated herein by reference.

11 ADVISEMENT AND WAIVERS

12 5. Respondent has carefully read, and understands the charges and allegations in
13 Accusation No. 3275. Respondent also has carefully read, and understands the effects of this
14 Stipulated Surrender of License and Order.

15 6. Respondent is fully aware of her legal rights in this matter, including the right to a
16 hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at
17 her own expense; the right to confront and cross-examine the witnesses against her; the right to
18 present evidence and to testify on her own behalf; the right to the issuance of subpoenas to
19 compel the attendance of witnesses and the production of documents; the right to reconsideration
20 and court review of an adverse decision; and all other rights accorded by the California
21 Administrative Procedure Act and other applicable laws.

22 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
23 every right set forth above.

24 CULPABILITY

25 8. Respondent admits the truth of each and every charge and allegation in Accusation
26 No. 3275, agrees that cause exists for discipline and hereby surrenders her Pharmacy Technician
27 License No. TCH 27671 for the Board's formal acceptance.
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1 9. Respondent understands that by signing this stipulation she enables the Board to issue
2 an order accepting the surrender of her Pharmacy Technician License without further process.

3 CONTINGENCY

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

13 11. The parties understand and agree that facsimile copies of this Stipulated Surrender of
14 License and Order, including facsimile signatures thereto, shall have the same force and effect as
15 the originals.

16 12. This Stipulated Surrender of License and Order is intended by the parties to be an
17 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
18 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
19 negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order
20 may not be altered, amended, modified, supplemented, or otherwise changed except by a writing
21 executed by an authorized representative of each of the parties.

22 13. In consideration of the foregoing admissions and stipulations, the parties agree that
23 the (Board) may, without further notice or formal proceeding, issue and enter the following
24 Order:

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ORDER

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IT IS HEREBY ORDERED that Pharmacy Technician License No. TCH 27671, issued to Respondent Sylvia Sawyer is surrendered and accepted by the Board of Pharmacy.

1. The surrender of Respondent's Pharmacy Technician License and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

2. Respondent shall lose all rights and privileges as a Pharmacy Technician in California as of the effective date of the Board's Decision and Order.

3. Respondent shall cause to be delivered to the Board both her wall license certificate and, if one was issued, pocket license on or before the effective date of the Decision and Order.

4. Respondent may not apply, reapply or petition for any licensure or registration of the Board for three (3) years from the effective date of the Decision and Order.

5. If she ever applies for licensure or petitions for reinstatement in the State of California, the Board shall treat it as a new application for licensure. Respondent must comply with all the laws, regulations and procedures for licensure in effect at the time the application or petition is filed, and all of the charges and allegations contained in Accusation No. 3275 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the application or petition.

6. Should Respondent ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation, No. 3275 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

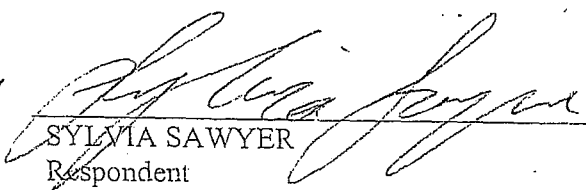
7. Respondent shall pay the Board its costs of investigation and enforcement in the amount of \$2,317.00 prior to issuance of a new or reinstated license.

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ACCEPTANCE


I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Pharmacy Technician License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 10/26/2009 
SYLVIA SAWYER
Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated: Oct. 30, 2009

Respectfully submitted,
EDMUND G. BROWN JR.
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General

MARICHELLE S. TAHIMIC
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 3275

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 MARICHELLE S. TAHIMIC, State Bar No. 147392
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7 Facsimile: (619) 645-2061

8 Attorneys for Complainant

9
10 BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
11 STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. 3275

13 SYLVIA SAWYER
16702 Bartlet Lane #2
14 Huntington Beach, CA 92647

ACCUSATION

15 Pharmacy Technician License No. TCH 27671

16 Respondent.

17
18 Complainant alleges:

19 PARTIES

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

23 2. On or about November 16, 1998, the Board of Pharmacy issued Pharmacy
24 Technician license number TCH 27671 to Sylvia Sawyer (Respondent). The Pharmacy
25 Technician license was in full force and effect at all times relevant to the charges brought herein
26 and will expire on October 31, 2010, unless renewed.

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28 ///

JURISDICTION

1
2 3. This Accusation is brought before the Board of Pharmacy (Board),
3 Department of Consumer Affairs, under the authority of the following laws. All section
4 references are to the Business and Professions Code unless otherwise indicated.

5 4. Section 4300 of the Code states:

6 “(a) Every license issued may be suspended or revoked.

7 “(b) The board shall discipline the holder of any license issued by the board,
8 whose default has been entered or whose case has been heard by the board and found guilty, by
9 any of the following methods:

10 “(1) Suspending judgment.

11 “(2) Placing him or her upon probation.

12 “(3) Suspending his or her right to practice for a period not exceeding one
13 year.

14 “(4) Revoking his or her license.

15 “(5) Taking any other action in relation to disciplining him or her as the
16 board in its discretion may deem proper.

17 “....”

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

23 5. Section 118, subdivision (b), of the Code provides that the suspension,
24 expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to
25 proceed with a disciplinary action during the period within which the license may be renewed,
26 restored, reissued or reinstated.

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STATUTORY PROVISIONS AND REGULATIONS

6. Code section 4301 provides in part:

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

"...

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

"...

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

"...

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

"...

"(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving

1 controlled substances or dangerous drugs, to determine if the conviction is of an offense
2 substantially related to the qualifications, functions, and duties of a licensee under this chapter.
3 A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a
4 conviction within the meaning of this provision...

5 "....

6 7. Section 490 of the Code states:

7 "(a) In addition to any other action that a board is permitted to take against a
8 licensee, a board may suspend or revoke a license on the ground that the licensee has been
9 convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties
10 of the business or profession for which the license was issued.

11 "(b) Notwithstanding any other provision of law, a board may exercise any
12 authority to discipline a licensee for conviction of a crime that is independent of the authority
13 granted under subdivision (a) only if the crime is substantially related to the qualifications,
14 functions, or duties of the business or profession for which the licensee's license was issued.

15 "(c) A conviction within the meaning of this section means a plea or verdict of
16 guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted
17 to take following the establishment of a conviction may be taken when the time for appeal has
18 elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting
19 probation is made suspending the imposition of sentence, irrespective of a subsequent order
20 under the provisions of Section 1203.4 of the Penal Code.

21 "(d) The Legislature hereby finds and declares that the application of this section
22 has been made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142
23 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and
24 regulations in question, resulting in potential harm to the consumers of California from licensees
25 who have been convicted of crimes. Therefore, the Legislature finds and declares that this
26 section establishes an independent basis for a board to impose discipline upon a licensee, and
27 that the amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do
28 not constitute a change to, but rather are declaratory of, existing law."

1 8. Section 493 of the Code states:

2 "Notwithstanding any other provision of law, in a proceeding conducted by a
3 board within the department pursuant to law to deny an application for a license or to suspend or
4 revoke a license or otherwise take disciplinary action against a person who holds a license, upon
5 the ground that the applicant or the licensee has been convicted of a crime substantially related
6 to the qualifications, functions, and duties of the licensee in question, the record of conviction of
7 the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that
8 fact, and the board may inquire into the circumstances surrounding the commission of the crime
9 in order to fix the degree of discipline or to determine if the conviction is substantially related to
10 the qualifications, functions, and duties of the licensee in question.

11 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
12 'registration.'"

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

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

20 10. Section 482 of the Code states:

21 "Each board under the provisions of this code shall develop criteria to evaluate
22 the rehabilitation of a person when:

23 "(a) Considering the denial of a license by the board under Section 480; or

24 "(b) Considering suspension or revocation of a license under Section 490.

25 "Each board shall take into account all competent evidence of rehabilitation
26 furnished by the applicant or licensee."

27 11. Title 16, Code of Regulations, section 1769 provides in part:

28 "(b) When considering the suspension or revocation of a facility or a personal

1 license on the ground that the licensee or the registrant has been convicted of a crime, the board,
2 in evaluating the rehabilitation of such person and his present eligibility for a license will
3 consider the following criteria:

4 "(1) Nature and severity of the act(s) or offense(s).

5 "(2) Total criminal record.

6 "(3) The time that has elapsed since commission of the act(s) or
7 offense(s).

8 "(4) Whether the licensee has complied with all terms of parole, probation,
9 restitution or any other sanctions lawfully imposed against the licensee.

10 "(5) Evidence, if any, of rehabilitation submitted by the licensee."

11 COST RECOVERY

12 12. Section 125.3 of the Code states, in pertinent part, that the Board may
13 request the administrative law judge to direct a licensee found to have committed a violation or
14 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
15 and enforcement of the case.

16 DRUGS

17 13. Methamphetamine, is a Schedule II controlled substance as designated by
18 Health and Safety Code section 11055(d)(2), and is a dangerous drug pursuant to Business and
19 Professions Code section 4022.

20 FACTS

21 14. On or about May 8, 2007, in the matter of *People of the State of California*
22 *v. Sylvia Marie Sawyer*, Orange County Superior Court-West Justice Center, Case No.
23 07WM05126, Respondent was charged with: 1) child abuse and endangerment (Penal Code
24 section 273a(b); 2) driving under the influence of alcohol/drugs (Vehicle Code section
25 23152(a); 3) being under the influence of a controlled substance (Health and Safety Code
26 section 11550); and, 4) possession of controlled substance paraphernalia (Health and Safety
27 Code section 11364). On or about October 4, 2007, Respondent pled guilty to counts one, two
28 and four and count three was dismissed. Respondent was convicted on her plea of guilty to

1 violation of Penal Code section 273a(b) (Child Abuse and Endangerment); violation of Vehicle
2 Code section 23152(a) (Driving Under the Influence of Alcohol/Drugs), and violation of Health
3 and Safety Code section 11364 (Possession of Controlled Substance Paraphernalia), all
4 misdemeanors.

5 15. The circumstances that led to Respondent's conviction are as follows: On
6 or about May 5, 2007, at about 4:03 p.m., a police officer with the Huntington Beach Police
7 Department responded to a family disturbance call in which a 10-year old calling from a
8 neighbor's house reported that his 15-year old brother and his mother were involved in a
9 physical fight and that his brother had hit his mother on the head. The responding police officer
10 parked directly west of the residence. As the officer was approaching the rear of the residence
11 from the north/south alleyway, he saw Respondent driving a motor vehicle and pull into her
12 driveway. When Respondent stopped the car, she appeared visibly upset and requested the
13 police officer's assistance. The officer heard a small child crying in the backseat of
14 Respondent's vehicle. Respondent identified the child as her daughter. At Respondent's
15 request, the officer made contact with her son who was inside the residence while Respondent
16 was instructed to wait outside with her daughter.

17 16. A large round table sat in the entry way of Respondent's residence and
18 prevented the front door from opening more than 16 inches. When the officer entered the
19 residence, he observed that the floor surfaces were covered with dirt, dirty clothing, old rotting
20 food and other debris. Although it was about 70 degrees outside, all the windows were shut and
21 covered with sheets and blankets. The kitchen was full of dirty dishes. Old, rotten food covered
22 the counter tops and the floor. There were children's toys, dirty clothes, trash and other
23 miscellaneous items covering almost all surfaces. An open scissor lay on the floor. The
24 condition of the home led the officer to be concerned about the safety of the children, especially
25 because of unsanitary and potentially dangerous conditions for Respondent's two-year old
26 daughter. The officer observed that Respondent's children were dirty and was informed that the
27 15-year old had not bathed or showered in two days.

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1 17. During the course of the officer's interview with Respondent and her son,
2 the officer observed that Respondent's behavior ranged from nervous, fidgety and emotional to
3 calm in just a few seconds. The officer performed a field sobriety test on Respondent and
4 concluded that she was under the influence of a central nervous system stimulant. Respondent
5 eventually admitted to using methamphetamine at 9 a.m. and 10 a.m. that morning and every 4
6 hours throughout the preceding night. Respondent also surrendered a methamphetamine-
7 smoking pipe that she kept in a cabinet under the sink of the bathroom she shared with all her of
8 children.

9 18. In a misdemeanor complaint, Respondent was charged with: 1) child
10 abuse and endangerment (Penal Code section 273a(b); 2) driving under the influence of
11 alcohol/drugs (Vehicle Code section 23152(a); 3) being under the influence of a controlled
12 substance (Health and Safety Code section 11550); and, 4) possession of controlled substance
13 paraphernalia (Health and Safety Code section 11364). Respondent pled guilty to counts one,
14 two and four and count three was dismissed.

15 19. Pursuant to Respondent's guilty plea on October 4, 2007, Respondent was
16 sentenced to three years of informal probation and was required to pay fines and penalties of
17 \$727.00 for driving under the influence and possessing drug paraphernalia. Respondent was
18 concurrently sentenced to four years of informal probation, was required to pay \$660 in fines and
19 penalties, was sent to jail for 90 days and was required to perform 8 hours of community service
20 for child abuse and endangerment.

21 FIRST CAUSE FOR DISCIPLINE

22 (Unprofessional Conduct - Conviction of Crimes Substantially Related
23 to Qualifications, Functions and Duties as Pharmacy Technician)

24 20. Respondent is subject to disciplinary action under Code sections 490 and
25 4301(l) for unprofessional conduct in that Respondent pled guilty to, and was convicted of,
26 crimes substantially related to the qualifications, functions and duties of a pharmacy technician,
27 as more fully set forth above in paragraphs 14-19.

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1 SECOND CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct - Use of Controlled Substance)

3 21. Respondent is subject to disciplinary action under section 4301(h) for
4 unprofessional conduct in that she used a dangerous drug, methamphetamine, in a manner as to
5 be dangerous or injurious to herself, or to any other person or to the public, as more fully set
6 forth above in paragraphs 14-19.

7 THIRD CAUSE FOR DISCIPLINE

8 (Unprofessional Conduct - Child Abuse and Endangerment)

9 22. Respondent is subject to disciplinary action under Code section 4301(f)
10 for unprofessional conduct in the commission of any act involving moral turpitude, dishonesty,
11 fraud, deceit or corruption in that she pled guilty to, and was convicted of, child abuse and
12 endangerment on October 4, 2007, as more fully set forth above in paragraphs 14-19.

13 FOURTH CAUSE FOR DISCIPLINE

14 (Unprofessional Conduct - Possession of Drug Paraphernalia)

15 23. Respondent is subject to disciplinary action under Code section 4301(j)
16 for unprofessional conduct in that Respondent pled guilty to, and was convicted of, possessing
17 drug paraphernalia on October 4, 2007, as more fully set forth above in paragraphs 14-19.

18 PRAYER

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

21 1. Revoking or suspending Pharmacy Technician License Number TCH
22 27671, issued to Sylvia Sawyer Sylvia Sawyer;

23 2. Ordering Sylvia Sawyer to pay the Board of Pharmacy the reasonable
24 costs of the investigation and enforcement of this case, pursuant to Business and Professions
25 Code section 125.3;

26 ///

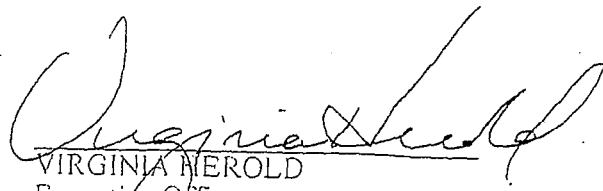
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3. Taking such other and further action as deemed necessary and proper.

DATED: 5/14/09



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

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