

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

In the Matter of the Accusation Against:

**MODERN HEALTHCARE, INC., DBA
AD-RX PHARMACY**
6240 Wilshire Blvd.
Los Angeles, CA 90048
IRA HALPERN, Owner and President
RICHARD I. KATZ, Owner and Secretary
ROBERT ANTOINE CHARLES,
Pharmacist-In-Charge
(From 5/4/06 to 7/2/07)
RAMONA EDERY
Pharmacist-In-Charge
(From 7/26/07 to present)

Pharmacy Permit No. PHY 44831,

and

ROBERT ANTOINE CHARLES
5533 Holt Avenue
Los Angeles, CA 90056

Pharmacist License No. RPH 51100

Respondent.

Case No. 3539

OAH No. L-2010040989

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO
ROBERT ANTOINE CHARLES
ONLY**

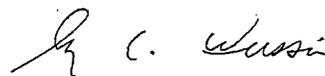
DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary 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 2, 2012.

It is so ORDERED on March 2, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



STANLEY C. WEISSER
Board President

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
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7
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9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

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Pharmacist-In-Charge
17 (From 7/26/07 to present)

OAH No. L-2010040989

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO
RESPONDENT ROBERT ANTOINE
CHARLES ONLY**

18 Pharmacy Permit No. PHY 44831,

19 **and**

20 **ROBERT ANTOINE CHARLES**
5533 Holt Avenue
21 Los Angeles, CA 90056

22 Pharmacist License No. RPH 51100

23 Respondents
24

25
26 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
27 entitled proceedings that the following matters are true:

28 ///

1 court review of an adverse decision; and all other rights accorded by the California
2 Administrative Procedure Act and other applicable laws.

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

5 CULPABILITY

6 8. Respondent understands and agrees that the charges and allegations in Accusation
7 No. 3539, if proven at a hearing, constitute cause for imposing discipline upon his Pharmacist
8 License.

9 9. For the purpose of resolving the Accusation without the expense and uncertainty of
10 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual
11 basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest
12 those charges.

13 10. Respondent agrees that his Pharmacist License is subject to discipline and he agrees
14 to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

15 CONTINGENCY

16 11. This stipulation shall be subject to approval by the Board. Respondent understands
17 and agrees that counsel for Complainant and the staff of the Board may communicate directly
18 with the Board regarding this stipulation and settlement, without notice to or participation by
19 Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he
20 may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board
21 considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order,
22 the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this
23 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not
24 be disqualified from further action by having considered this matter.

25 12. The parties understand and agree that facsimile copies of this Stipulated Settlement
26 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
27 effect as the originals.
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2. Report to the Board

Respondent shall report to the board quarterly, on a schedule as directed by the board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the board.

3. Interview with the Board

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the board or its designee, at such intervals and locations as are determined by the board or its designee. Failure to appear for any scheduled interview without prior notification to board staff, or failure to appear for two (2) or more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

4. Cooperate with Board Staff

Respondent shall cooperate with the board's inspection program and with the board's monitoring and investigation of respondent's compliance with the terms and conditions of his probation. Failure to cooperate shall be considered a violation of probation.

5. Continuing Education

Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the board or its designee.

6. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 3539 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause his direct supervisor,

1 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's
2 tenure of employment) and owner to report to the board in writing acknowledging that the listed
3 individual(s) has/have read the decision in case number 3539, and terms and conditions imposed
4 thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s)
5 submit timely acknowledgment(s) to the board.

6 If respondent works for or is employed by or through a pharmacy employment service,
7 respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity
8 licensed by the board of the terms and conditions of the decision in case number 3539 in advance
9 of the respondent commencing work at each licensed entity. A record of this notification must be
10 provided to the board upon request.

11 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
12 (15) days of respondent undertaking any new employment by or through a pharmacy employment
13 service, respondent shall cause his direct supervisor with the pharmacy employment service to
14 report to the board in writing acknowledging that they have read the decision in case number
15 3539 and the terms and conditions imposed thereby. It shall be respondent's responsibility to
16 ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

17 Failure to timely notify present or prospective employer(s) or to cause that/those
18 employer(s) to submit timely acknowledgments to the board shall be considered a violation of
19 probation.

20 "Employment" within the meaning of this provision shall include any full-time,
21 part-time, temporary, relief or pharmacy management service as a pharmacist or any
22 position for which a pharmacist license is a requirement or criterion for employment,
23 whether the respondent is an employee, independent contractor or volunteer.

24 **7. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as**
25 **Designated Representative-in-Charge, or Serving as a Consultant**

26 During the period of probation, respondent shall not supervise any intern pharmacist, be the
27 pharmacist-in-charge or designated representative-in-charge of any entity licensed by the board
28

1 nor serve as a consultant unless otherwise specified in this order. Assumption of any such
2 unauthorized supervision responsibilities shall be considered a violation of probation.

3 **8. Reimbursement of Board Costs**

4 As a condition precedent to successful completion of probation, respondent shall pay to the
5 board its costs of investigation and prosecution in the amount of \$3,000.00 within 90 days of the
6 effective date of this decision. There shall be no deviation from this schedule absent prior written
7 approval by the board or its designee. Failure to pay costs by the deadline(s) as directed shall be
8 considered a violation of probation.

9 The filing of bankruptcy by respondent shall not relieve respondent of his responsibility to
10 reimburse the board its costs of investigation and prosecution.

11 **9. Probation Monitoring Costs**

12 Respondent shall pay any costs associated with probation monitoring as determined by the
13 board each and every year of probation. Such costs shall be payable to the board on a schedule as
14 directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall
15 be considered a violation of probation.

16 **10. Status of License**

17 Respondent shall, at all times while on probation, maintain an active, current license with
18 the board, including any period during which suspension or probation is tolled. Failure to
19 maintain an active, current license shall be considered a violation of probation.

20 If respondent's license expires or is cancelled by operation of law or otherwise at any time
21 during the period of probation, including any extensions thereof due to tolling or otherwise, upon
22 renewal or reapplication respondent's license shall be subject to all terms and conditions of this
23 probation not previously satisfied.

24 **11. License Surrender While on Probation/Suspension**

25 Following the effective date of this decision, should respondent cease practice due to
26 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
27 respondent may tender his license to the board for surrender. The board or its designee shall have
28 the discretion whether to grant the request for surrender or take any other action it deems

1 appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent
2 will no longer be subject to the terms and conditions of probation. This surrender constitutes a
3 record of discipline and shall become a part of the respondent's license history with the board.

4 Upon acceptance of the surrender, respondent shall relinquish his pocket and wall license to
5 the board within ten (10) days of notification by the board that the surrender is accepted.

6 Respondent may not reapply for any license from the board for three (3) years from the effective
7 date of the surrender. Respondent shall meet all requirements applicable to the license sought as
8 of the date the application for that license is submitted to the board, including any outstanding
9 costs.

10 **12. Notification of a Change in Name, Residence Address, Mailing Address or**
11 **Employment**

12 Respondent shall notify the board in writing within ten (10) days of any change of
13 employment. Said notification shall include the reasons for leaving, the address of the new
14 employer, the name of the supervisor and owner, and the work schedule if known. Respondent
15 shall further notify the board in writing within ten (10) days of a change in name, residence
16 address, mailing address, or phone number.

17 Failure to timely notify the board of any change in employer(s), name(s), address(es), or
18 phone number(s) shall be considered a violation of probation.

19 **13. Tolling of Probation**

20 Except during periods of suspension, respondent shall, at all times while on probation, be
21 employed as a pharmacist in California for a minimum of forty (40) hours per calendar month.
22 Any month during which this minimum is not met shall toll the period of probation, i.e., the
23 period of probation shall be extended by one month for each month during which this minimum is
24 not met. During any such period of tolling of probation, respondent must nonetheless comply
25 with all terms and conditions of probation.

26 Should respondent, regardless of residency, for any reason (including vacation) cease
27 practicing as a pharmacist for a minimum of forty (40) hours per calendar month in California,
28 respondent must notify the board in writing within ten (10) days of the cessation of practice, and

1 must further notify the board in writing within ten (10) days of the resumption of practice. Any
2 failure to provide such notification(s) shall be considered a violation of probation.

3 It is a violation of probation for respondent's probation to remain tolled pursuant to the
4 provisions of this condition for a total period, counting consecutive and non-consecutive months,
5 exceeding thirty-six (36) months.

6 "Cessation of practice" means any calendar month during which respondent is
7 not practicing as a pharmacist for at least forty (40) hours, as defined by Business and
8 Professions Code section 4000 et seq. "Resumption of practice" means any calendar
9 month during which respondent is practicing as a pharmacist for at least forty (40)
10 hours as a pharmacist as defined by Business and Professions Code section 4000 et
11 seq.

12 **14. Violation of Probation.**

13 If a respondent has not complied with any term or condition of probation, the board shall
14 have continuing jurisdiction over respondent, and probation shall automatically be extended, until
15 all terms and conditions have been satisfied or the board has taken other action as deemed
16 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and
17 to impose the penalty that was stayed.

18 If respondent violates probation in any respect, the board, after giving respondent notice
19 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
20 was stayed. If a petition to revoke probation or an accusation is filed against respondent during
21 probation, the board shall have continuing jurisdiction and the period of probation shall be
22 automatically extended until the petition to revoke probation or accusation is heard and decided.

23 **15. Completion of Probation**

24 Upon written notice by the board or its designee indicating successful completion of
25 probation, respondent's license will be fully restored.

26 **16. Community Services Program**

27 Within sixty (60) days of the effective date of this decision, respondent shall submit to the
28 board or its designee, for prior approval, a community service program in which respondent shall

1 provide free health-care related services on a regular basis to a community or charitable facility or
2 agency for at least two hundred (200) hours during the first three (3) years of probation. Within
3 thirty (30) days of board approval thereof, respondent shall submit documentation to the board
4 demonstrating commencement of the community service program. A record of this notification
5 must be provided to the board upon request. Respondent shall report on progress with the
6 community service program in the quarterly reports. Failure to timely submit, commence, or
7 comply with the program shall be considered a violation of probation.

8 **17. Remedial Education**

9 Within 60 days of the effective date of this decision, respondent shall submit to the board or
10 its designee, for prior approval, an appropriate program of remedial education related to the
11 identification and prevention of drug diversion losses. The program of remedial education shall
12 consist of at least twenty (20) hours, which shall be completed within two (2) years of the
13 effective date of this decision at respondent's own expense. All remedial education shall be in
14 addition to, and shall not be credited toward, continuing education (CE) courses used for license
15 renewal purposes.

16 Failure to timely submit or complete the approved remedial education shall be considered a
17 violation of probation. The period of probation will be automatically extended until such
18 remedial education is successfully completed and written proof, in a form acceptable to the board,
19 is provided to the board or its designee.

20 Following the completion of each course, the board or its designee may require the
21 respondent, at their own expense, to take an approved examination to test the respondent's
22 knowledge of the course. If the respondent does not achieve a passing score on the examination,
23 this failure shall be considered a violation of probation. Any such examination failure shall
24 require respondent to take another course approved by the board in the same subject area.

25 **18. No Ownership of Licensed Premises**

26 Respondent shall not own, have any legal or beneficial interest in, or serve as a manager,
27 administrator, member, officer, director, trustee, associate, or partner of any business, firm,
28 partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell

1 or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90)
2 days following the effective date of this decision and shall immediately thereafter provide written
3 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide
4 documentation thereof shall be considered a violation of probation.

5 ACCEPTANCE

6 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
7 discussed it with my attorney, Daniel H. Willick. I understand the stipulation and the effect it
8 will have on my Pharmacist License. I enter into this Stipulated Settlement and Disciplinary
9 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
10 of the Board.

11 DATED: 10/11/2011 Robert A. Charles
12 ROBERT ANTOINE CHARLES
Respondent

13 I have read and fully discussed with Respondent the terms and conditions and other matters
14 contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and
15 content.

16 DATED: 10/11/2011 Daniel H. Willick
17 Daniel H. Willick
Attorney for Respondent

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ENDORSEMENT

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The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs
Dated: Respectfully submitted,

10/11/11

KAMALA D. HARRIS
Attorney General of California
MARC D. GREENBAUM
Supervising Deputy Attorney General



MICHAEL A. CACCIOTTI
Deputy Attorney General
Attorneys for Complainant

LA2009604651
Stipulation.rtf

Exhibit A

Accusation No. 3539

1 EDMUND G. BROWN JR.
Attorney General of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 MICHAEL A. CACCIOTTI
Deputy Attorney General
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5 Los Angeles, CA 90013
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7 *Attorneys for Complainant*

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(From 7/26/07 to present)
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Pharmacy Permit No. PHY 44831
19
and
20 **ROBERT ANTOINE CHARLES**
21 6240 Wilshire Blvd.
Los Angeles, CA 90048
22
Pharmacist License No. RPH 51100
23
24 Respondents.

A C C U S A T I O N

25 Complainant alleges:

26 **PARTIES**

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

1 “(b) The owner, officer, and partner of a pharmacy, wholesaler, or veterinary food-animal
2 drug retailer shall be jointly responsible, with the pharmacist-in-charge or representative-in-
3 charge, for maintaining the records and inventory described in this section.”

4 7. Section 4113, subdivision (a) states:

5 “Every pharmacy shall designate a pharmacist-in-charge and within 30 days thereof, shall
6 notify the board in writing of the identity and license number of that pharmacist and the date he or
7 she was designated.”

8 8. Section 4300 provides, in pertinent part, that every license issued by the Board is
9 subject to discipline, including suspension or revocation.

10 9. Section 4301 states, in pertinent part:

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

14
15 “(j) The violation of any of the statutes of this state, of any other state, or of the United
16 States regulating controlled substances and dangerous drugs.

17
18 “(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
19 violation of or conspiring to violate any provision or term of this chapter or of the applicable
20 federal and state laws and regulations governing pharmacy, including regulations established by
21 the board or by any other state or federal regulatory agency.”

22 10. Section 4401 states:

23 “Every pharmacist who desires to retain his or her license on the books of the board shall
24 biennially pay to the executive officer of the board the renewal fee, established by the board,
25 within the limits prescribed by this chapter. In return for the payment of the renewal fee, a
26 certificate of renewal shall be issued.”

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1 FIRST CAUSE FOR DISCIPLINE

2 (Failure to Maintain Adequate Security for Dangerous Drugs)

3 15. Respondents, Pharmacy and Charles and each of them, are subject to disciplinary
4 action under section 4301, subdivisions (j) and (o), as defined in California Code of Regulations,
5 title 16, section 1714, subdivisions (b) and (d), in that Respondents failed to maintain adequate
6 security for dangerous drugs, as follows:

7 a. On or about June 20, 2007, Respondents notified the Board of a loss of approximately
8 470,000 tablets of hydrocodone with acetaminophen 10mg./325mg., due to employee pilferage.
9 An audit of Respondent Pharmacy's records of acquisition and disposition revealed that from on
10 or about December 27, 2006 to on or about June 14, 2007, Respondents had a shortage of at least
11 343,378 tablets of hydrocodone with acetaminophen 10mg./325mg.

12 b. On or about February 11, 2008, the Board conducted a routine inspection and
13 investigation at Respondent Pharmacy. The inspection revealed that the controlled substances,
14 Schedules II, III, IV, and V were dispersed throughout the pharmacy. A review of the Drug
15 Enforcement Administration (DEA) 222 forms and the Schedule II controlled substance order
16 forms revealed the date and quantities received were not documented on the DEA 222 forms upon
17 receiving the Schedule II controlled substance deliveries. The inspection further revealed that
18 re-ordering of prescription drugs was not designated to a specific person. The pharmacy
19 technicians and pharmacists were allowed to order drugs from AmerisourceBergen. When the
20 drugs were delivered, a pharmacist did not always sign for the deliveries and the invoices were
21 not always reviewed or signed by the pharmacist. A correction was ordered by the Board.

22 SECOND CAUSE FOR DISCIPLINE

23 (Failure to Maintain Current Inventory and Complete Accountability)

24 16. Respondents, Pharmacy and Charles and each of them, are subject to disciplinary
25 action under section 4301, subdivisions (j) and (o), for violating section 4081, subdivisions (a)
26 and (b), as defined in California Code of Regulations, title 16, section 1718, in that Respondents

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1 failed to maintain current inventory and complete accountability for all dangerous drugs handled
2 by every licensee. Complainant refers to, and by this reference incorporates, the allegations set
3 forth above in paragraph 15, subparagraphs (a) through (b), inclusive, as though set forth fully.

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Failure to Renew Pharmacist License)**

6 17. Respondent Charles is subject to disciplinary action under section 4401, in that on or
7 about July 31, 2009; Respondent's Pharmacist License No. RPH 51100 expired and has not been
8 renewed. On or about August 22, 2009, the Board mailed Respondent a delinquency notice, with
9 no response from Respondent.

10 **FOURTH CAUSE FOR DISCIPLINE**

11 **(Failure to Timely Notify the Board of a Designated Pharmacist-in-Charge)**

12 18. Respondent Pharmacy is subject to disciplinary action under section 4113,
13 subdivision (a), in that Respondent failed to timely notify the Board in writing within 30 days of
14 designation, of the identity and license number of the designated Pharmacist-in-Charge and the
15 date of designation. On or about July 2, 2007, Respondent Charles disassociated, as the
16 Pharmacist-in-Charge of Respondent Pharmacy. On or about July 26, 2007, Ramona Ederly was
17 associated, as the new Pharmacist-in-Charge of Respondent Pharmacy. On or about August 15,
18 2007, the Board sent a letter addressed to Pharmacist-in-Charge Respondent Charles, requesting
19 information regarding the loss or theft of controlled substances that occurred from June 2006
20 through May 2007, with a reply requested by August 31, 2007. However, due to Respondent
21 Charles no longer being the Pharmacist-in-Charge of Respondent Pharmacy, there was a delay in
22 the Board's letter getting to the correct person. On or about September 18, 2007, Sherri
23 Cherman, Pharm.D., EVP/CCO of Respondent Pharmacy, received the Board's letter and sent a
24 response to the Board, dated September 20, 2007.

25 **DISCIPLINARY CONSIDERATIONS**

26 19. In order to determine the degree of discipline, if any, to be imposed on Respondent,
27 Complainant alleges that on or about March 7, 2007, the Board issued Citation No. CI 2006

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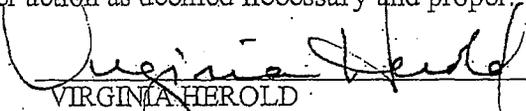
1 32299, against Respondent AD-RX Pharmacy for violating California Code of Regulations, title
2 16, section 1716 (variation from prescription). The citation and order is now final.

3 PRAYER

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the Board issue a decision:

- 6 1. Revoking or suspending Pharmacy Permit No. PHY 44831, issued to Respondent
7 Pharmacy;
8 2. Revoking or suspending Pharmacist License No. RPH 51100, issued to Respondent
9 Charles;
10 3. Ordering Respondents, Pharmacy and Charles to pay the Board the reasonable costs
11 of the investigation and enforcement of this case, pursuant to section 125.3;
12 4. Taking such other and further action as deemed necessary and proper.

13 DATED: 1/6/10



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

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28 Jz-12/17/09