

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

In the Matter of the Accusation Against:

Jonathan Martinez
9230 Deeble Street
South Gate, CA 90280

Pharmacy Technician License TCH 71595

Respondent.

Case No. 3675

OAH No. 2011100464

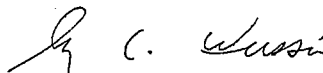
**ORDER DENYING
RECONSIDERATION**

ORDER DENYING RECONSIDERATION

The effective date of the decision in the above-entitled matter, respondent filed a petition for reconsideration of said decision, and no action having been taken by the Board before the Decision and Order took effect, pursuant to Government Code Section 11521, the Petition for Reconsideration is hereby deemed denied by operation of law.

The Decision and Order with an effective date of June 25, 2012, is the Board of Pharmacy's final decision in this matter.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

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

In the Matter of the Accusation Against:

JONATHAN MARTINEZ
9230 Deeble Street
South Gate, CA 90280
Pharmacy Technician Registration
No. TCH 71595

Respondent

Case No. 3675

OAH No. 2011100464

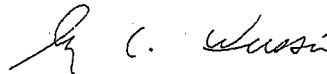
DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on June 25, 2012.

It is so ORDERED on May 25, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

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

In the Matter of the Accusation Against:

JONATHAN MARTINEZ

Pharmacy Technician Registration
No. TCH 71595,

Respondent.

Case No. 3675

OAH No. 201100464

PROPOSED DECISION

Glynda B. Gomez, Administrative Law Judge (ALJ), Office of Administrative Hearings, heard this matter on March 14, 2012, in Los Angeles, California.

Deputy Attorney General Katherine Messana represented Complainant. Respondent Jonathan Martinez (Respondent) was present and represented himself. The matter was submitted on March 14, 2012.

FACTUAL FINDINGS

1. Virginia Herold made and filed the Accusation and First Amended Accusation in her official capacity as Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, State of California on September 1, 2011. At the beginning of the hearing, Complaint requested dismissal of the third cause for discipline, "knowingly making a false statement of fact to a licensing authority." The motion was granted.

2. On March 21, 2007, the Board issued Pharmacy Technician Registration No. TCH 71595 to respondent. Said license is in full force and effect and will expire on March 31, 2013, unless renewed.

3. On August 15, 2006, in the Superior Court of California, County of Los Angeles in Case No. 6DY02284, entitled the *People of the State of California v. Jonathan Martinez*. Respondent was convicted on his plea of nolo contendere to one count of violating Vehicle Code section 23152, subdivision (b), driving with a blood alcohol content of 0.08 or higher (DUI) (August 15, 2006 Conviction). Respondent was sentenced to three years summary probation, a six month first offender alcohol treatment program and payment of

\$1452 in fines.

4. The facts and circumstances of the offense were that on March 6, 2006, Respondent was found asleep in the driver's seat of his vehicle. At the time, the vehicle engine was running and the vehicle was parked near the middle of the roadway, creating a traffic hazard on Ardine Street and Quartz Avenue in South Gate, California. Police officers knocked on the car window and woke Respondent. Respondent admitted to drinking five to six beers. Respondent failed a field sobriety test. His blood alcohol concentration was 0.16 percent, double the legal limit.

5. On July 24, 2009, in the Superior Court of California, County of Los Angeles in Case No. BA350548, entitled the *People of the State of California v. Jonathan Martinez*, Respondent was convicted on his plea of nolo contendere to two felony counts of violating Health and Safety Code section 11379, subdivision (a), sale and transportation of a controlled substance (July 24, 2009 Conviction). Respondent was on probation for the August 15, 2006 conviction at the time of his arrest. Respondent was sentenced to three years probation with terms including enrolling in and completing a drug rehabilitation program, registration as a narcotics offender and a fine of \$200 for his violation of probation.

6. The facts and circumstances of the conviction are that on December 2, 2008, Respondent replied to an advertisement placed on Craigslist that said "looking to party someone in the area, don't want the all day back and forth, I host you supply love and EEEEEEEEEEEEEEEcitement or open to suggestion" The advertisement was placed by Supervising Detective Arturo Koenig (Koenig) of the Los Angeles Police Department as part of a narcotics investigation by the Los Angeles Police Department. Respondent replied to the advertisement and indicated that he had two grams of "Tina" which is street vernacular for methamphetamine. During this investigation, Koenig posed as a female by the name of Cyndy B. Respondent communicated with Koenig by text message multiple times. Respondent agreed to meet Koenig at a designated location with two grams of methamphetamine. Respondent was arrested at the meeting based on his possession of two grams of methamphetamine. At hearing, Respondent admitted that he had been in possession of methamphetamine and asserted that it had been for his personal use.

7. On January 25, 2010, Respondent completed his drug rehabilitation program and his probation was terminated. At that time, Respondent's nolo contendere pleas to the July 24, 2009 Conviction were set aside and the case dismissed pursuant to Penal Code section 1210.1.

8. Pharmacy technicians perform their duties with a minimum amount of supervision, have access to controlled substances, provide patient information, customer service and assist in drug compounding and assembling prescriptions. Pharmacy technicians have substantial access to pharmacy inventory and good judgment is essential to the

functions, duties and qualifications of a pharmacy technician.

9. Respondent received an honorable discharge from the Navy and Naval Reserve on July 30, 2008. Respondent served two separate tours in the Middle East. Respondent has been enrolled in college courses at East Los Angeles Community College, Cerritos Community College and California State University at Los Angeles. Respondent expects to receive his Bachelor of Arts degree in Psychology in June of 2012. Respondent has participated in two professor-led research projects in college. He plans to attend graduate school and continue his studies in psychology.

10. Respondent has worked part-time as a pharmacy technician at the Mission Road Pharmacy without incident for the last two years.

11. Respondent admitted that he is addicted to alcohol. Although he has gained some insights into his addiction through court ordered rehabilitation programs, he continues to have an occasional social drink. Respondent attends Alcoholics Anonymous meetings on an infrequent basis, does not have a sponsor and does not have an understanding of the 12-step recovery program. Respondent attributes his alcohol abuse to having chosen inappropriate friends and associates. He has changed his associates and activities as a result of his legal problems. Respondent spends time with his girlfriend, studies and exercises every day.

12. Complainant submitted a certification of costs of prosecution in the amount of \$4882.50. The costs of prosecution are reasonable within the meaning of Business and Professions Code Section 125.3.

LEGAL CONCLUSIONS

1. The standard of proof which must be met to establish the charging allegations herein is "clear and convincing" evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) This means the burden rests with Complainant to offer proof that is clear, explicit and unequivocal--so clear as to leave no substantial doubt and sufficiently strong as to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478.)

2. Business and Professions Code section 490 provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

3. Business and Professions Code section 492 provides, in pertinent part, that notwithstanding any other provision of law, successful completion of an alcohol and drug

abuse assessment program shall not prohibit any agency established under Division 2 (Healing Arts) from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

4. Business and Professions Code section 4060 provides, in pertinent part, that no Board licensee shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor, or furnished pursuant to a drug order issued by a certified nurse-midwife, a physician assistant or a naturopathic doctor.

5. "Methamphetamine" is a Schedule II controlled substance as defined in Health and Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug pursuant to Health and Safety code section 4022.

6. Business and Professions Code section 4300 provides, in pertinent part, that every license issued by the Board is subject to discipline, including suspension or revocation.

7. Business and Professions Code section 4301, provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of unprofessional conduct.

8. Business and Professions Code section 4301, subdivision (h), provides, in pertinent part, that the administration 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 or to any other person 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, is unprofessional conduct.

9. Business and Professions Code section 4301, subdivision (j), provides that the violation of any of the statutes of this state, or any other state or of the United States regulating controlled substances and dangerous drugs is unprofessional conduct.

10. Business and Professions Code section 4301, subdivision (l), provides that the conviction of a crime substantially related to the qualifications, functions and duties of a Board licensee is unprofessional conduct. The record of a conviction involving controlled substances or of a violation of the statutes of this state regulating controlled substances or a dangerous drugs shall be conclusive evidence of unprofessional conduct.

11. Business and Professions Code section 4301, subdivision (o), provides that 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 constitutes unprofessional conduct.

12. California Code of Regulations, title 16, section 1770, provides that a crime or act shall be considered substantially related to the qualifications, functions or duties of a Board licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant consistent with the public health, safety, or welfare.

13. Grounds exist to discipline respondent's pharmacy technician registration under Business and Professions Code section 4301, subdivision (l), and section 490, in conjunction with California Code of Regulations, title 16, section 1770, for his conviction of a crime substantially related to the qualifications, functions and duties of a licensed pharmacy technician by reason of factual findings 3, 4 and 8.

14. Grounds exist to discipline respondent's pharmacy technician registration under Business and Professions Code section 4301, subdivision (h), for unprofessional conduct by reason of factual findings 3, 4 and 8.

15. Grounds exist to discipline respondent's pharmacy technician registration under Business and Professions Code section 4301, subdivisions (j) and (o), for unprofessional conduct by reason of factual findings 5, 6, 7 and 8.

16. The Board has the responsibility to protect the public. As set forth in California Code of Regulations, title 16, section 1760, the Board has promulgated guidelines which set forth factors to be considered in determining whether the minimum, maximum, or an intermediate penalty is to be imposed in a given case. These guidelines provide as follows:

- (1) *Actual or potential harm to the public Actual or potential harm to any consumer*
- (2) *Prior disciplinary record, including level of compliance with disciplinary order(s)*
- (3) *Prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s)*
- (4) *Number and/or variety of current violations*
- (5) *Nature and severity of the act(s), offense(s) or crime(s) under consideration*
- (6) *Aggravating evidence*
- (7) *Mitigating evidence*

- (8) *Rehabilitation evidence*
- (9) *Compliance with terms of any criminal sentence, parole, or*
- (10) *Overall criminal record*
- (11) *If applicable, evidence of proceedings for case being set aside and dismissed pursuant to Section 1203.4 of the Penal Code.*
- (12) *Time passed since the act(s) or offense(s)*
- (13) *Whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct*
- (14) *Financial benefit to the respondent from the conduct*

17. Considering the above enumerated factors, Respondent did not commit actual harm to the public by reason of his convictions as his driving with a blood alcohol content greater than 0.08 did not result in an accident, nor has he ever actually furnished drugs to a third party. However, his conduct in both instances presented potential grave harm to the public. Respondent has no prior disciplinary history, warnings or admonishments. The violations at issue here are serious and involve the abuse of alcohol and the possession and sales of illicit drugs. These violations are fundamental lapses in judgment and breaches directly related to the functions, qualifications and duties of a pharmacy technician. There were no mitigating factors. Respondent has completed probation on both convictions and received a dismissal of the July 24, 2009 Conviction. To Respondent's credit, he has continued his education and expects to receive his Bachelor of Arts degree in June of 2012, has changed his associates and has worked part-time as a pharmacy technician without reported incident. These are steps in the right direction and demonstrate some efforts toward rehabilitation. However, Respondent admits an addiction to alcohol but continues to drink socially and does not have any formal alcohol prevention support network in place. At this juncture, Respondent's rehabilitation is a work in progress, at best.

18. In its guidelines, the Board has established four categories of misconduct for which license discipline may be imposed. Each category has a range of recommended discipline. A category I violation is for a relatively minor offense with a minimum penalty of one year probation. A category IV violation is considered the most serious offense, which should result in revocation of a license. Respondent's conviction for DUI is considered a category III offense because it involved misuse of alcohol and presented a serious potential for harm. Possession of a controlled substance for sale is a category IV offense. In

consideration of all of the facts and circumstances of this case, the interests of public protection require that Respondent's pharmacy technician registration be revoked.

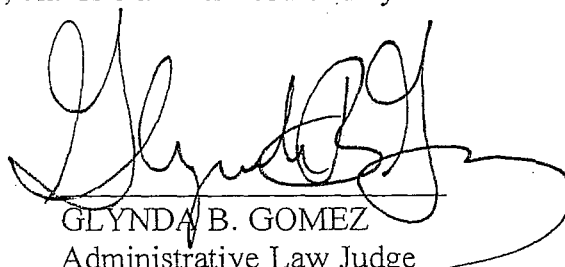
19. The Board is entitled to recover from Respondent the sum of \$4882.50 for its costs of investigation and prosecution of this matter, by reason of factual finding 12.

ORDER

1. Pharmacy technician registration no. TCH 71595 issued to respondent Jonathan Martinez is revoked.

2. As a condition precedent to reinstatement of his revoked technician license, Respondent shall reimburse the Board its costs of investigation and prosecution in the amount of \$4882.50. Said amount shall be paid in full prior to the reapplication or reinstatement of his or her revoked technician license, unless otherwise ordered by the Board.

DATED: April 13, 2012


GLYNDA B. GOMEZ
Administrative Law Judge
Office of Administrative Hearings

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Attorney General of California
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Attorneys for Complainant

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

10 In the Matter of the Accusation Against:

Case No. 3675

11 **JONATHAN MARTINEZ**

ACCUSATION

12 9230 Deeble St.
13 South Gate, CA 90280

14 Pharmacy Technician License No. TCH
15 71595

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about March 21, 2007, the Board of Pharmacy ("Board") issued Pharmacy
22 Technician License No. TCH 71595 to Jonathan Martinez ("Respondent"). The Pharmacy
23 Technician License was in full force and effect at all times relevant to the charges brought herein
24 and will expire on March 31, 2013, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the following
27 laws. All section references are to the Business and Professions Code unless otherwise indicated.
28

1 physician assistant, when in stock in containers correctly labeled with the name and
address of the supplier or producer.”

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

4 9. Section 4301 states, in pertinent part:

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

8 ...
9 (g) Knowingly making or signing any certificate or other document that
falsely represents the existence or nonexistence of a state of facts.

10 (h) The administering to oneself, of any controlled substance, or the use
11 of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be
12 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.

13 ...
14 (j) The violation of any of the statutes of this state, or any other state, or
15 of the United States regulating controlled substances and dangerous drugs.

16 ...
17 (l) The conviction of a crime substantially related to the qualifications,
18 functions, and duties of a licensee under this chapter. The record of conviction of a
19 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
20 States Code regulating controlled substances or of a violation of the statutes of this
21 state regulating controlled substances or dangerous drugs shall be conclusive
22 evidence of unprofessional conduct. In all other cases, the record of conviction shall
23 be conclusive evidence only of the fact that the conviction occurred. The board may
24 inquire into the circumstances surrounding the commission of the crime, in order to
25 fix the degree of discipline or, in the case of a conviction not involving controlled
26 substances or dangerous drugs, to determine if the conviction is of an offense
substantially related to the qualifications, functions, and duties of a licensee under this
chapter. A plea or verdict of guilty or a conviction following a plea of nolo
contendere is deemed to be a conviction within the meaning of this provision. The
board may take action when the time for appeal has elapsed, or the judgment of
conviction has been affirmed on appeal or when an order granting probation is made
suspending the imposition of sentence, irrespective of a subsequent order under
Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
dismissing the accusation, information, or indictment.

27 ...
28 (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

1 chapter or of the applicable federal and state laws and regulations governing
2 pharmacy, including regulations established by the board or by any other state or
3 federal regulatory agency.”

4 **REGULATORY PROVISIONS**

5 10. California Code of Regulations, title 16, section 1770 states, in pertinent part:

6 “For the purpose of denial, suspension, or revocation of a personal or
7 facility license pursuant to Division 1.5 (commencing with Section 475) of the
8 Business and Professions Code, a crime or act shall be considered substantially
9 related to the qualifications, functions or duties of a licensee or registrant if to a
10 substantial degree it evidences present or potential unfitness of a licensee or registrant
11 to perform the functions authorized by his license or registration in a manner
12 consistent with the public health, safety, or welfare.”

13 **COST RECOVERY**

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

18 **CONTROLLED SUBSTANCE**

19 12. “Methamphetamine,” is a Schedule II controlled substance as defined in Health and
20 Safety Code section 11055, subdivision (d)(2) and is categorized as a dangerous drug pursuant to
21 Health and Safety Code section 4022.

22 **FIRST CAUSE FOR DISCIPLINE**

23 **(Conviction of a Substantially Related Crime)**

24 13. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
25 490 of the Code, in conjunction with California Code of Regulations, title 16, section 1770, in
26 that Respondent was convicted of a crime substantially related to the qualifications, functions or
27 duties of a licensed pharmacy technician.

28 14. On or about August 15, 2006, after pleading nolo contendere, Respondent was
convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b)
[driving while having 0.08% and more, by weight, of alcohol in his blood] in the criminal
proceeding entitled *The People of the State of California v. Jonathan Martinez* (Super. Ct. Los

1 Angeles County, 2006, No. 6DY02284). The Court placed Respondent on 36 months probation,
2 with terms and conditions.

3 15. The circumstances surrounding the conviction are that on or about March 5, 2006,
4 during an investigation by the South Gate Police Department, Respondent was contacted. He was
5 observed to be asleep in the driver's seat of his vehicle, with the engine running near the middle
6 of the roadway, creating a traffic hazard on Ardine St. and Quartz Ave., in South Gate, CA.
7 When asked if he had been drinking, Respondent admitted to drinking five to six Pacifico Beers.
8 During the booking procedure, Respondent submitted to a breath test that resulted in a blood-
9 alcohol content of 0.16% on the first reading and 0.16% on the second reading.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Dangerous Use of Alcohol)**

12 16. Respondent is subject to disciplinary action under section 4301, subdivision (h), in
13 that on or about March 5, 2006, Respondent used alcoholic beverages to an extent or in a manner
14 dangerous or injurious to himself, any person, or the public, when he operated a vehicle while
15 having 0.16% of alcohol in his blood. The conduct is more particularly described in paragraphs
16 14 and 15, inclusive, above, and herein incorporated by reference.

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(Knowingly Made a False Statement of Fact to Licensing Authority)**

19 18. Respondent is subject to disciplinary action under section 4301, subdivision (g) of the
20 Code in that on or about June 7, 2006, Respondent knowingly made a false statement of fact to
21 the Board by failing to disclose his 2006 conviction on his initial application for licensure. The
22 conduct is more particularly described in paragraphs 14 and 15, inclusive, above, and herein
23 incorporated by reference.

24 **FOURTH CAUSE FOR DISCIPLINE**

25 **(Possession of a Controlled Substance)**

26 17. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and
27 (o), in that Respondent was found to be in possession of a controlled substance.
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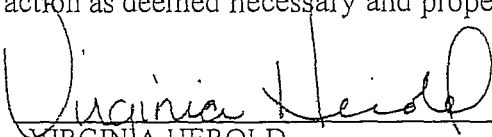
- 1 a) On or about December 2, 2008, during a narcotics investigation by the Los
2 Angeles Police Department, Respondent was contacted through Craigslist. He
3 replied to an advertisement and indicated that he had "Tina," a street name for
4 Methamphetamine and two (2) grams of narcotics.
- 5 b) Respondent arrived at the agreed location to conduct the transaction and was
6 arrested for violating Penal Code section 664/Health and Safety Code section
7 11379 [attempt to transport a controlled substance/transportation with intent to
8 furnish].
- 9 c) When asked if there was anything that the officer should be aware of in his
10 vehicle, Respondent stated, "No." When the officer called for a K-9 narcotics
11 search dog to search the vehicle, Respondent stated, "I have some stuff in the
12 center console area." The officer removed a plastic bag which contained a crystal
13 like substance resembling Crystal Methamphetamine.
- 14 d) Respondent was re-arrested for violating Health and Safety Code section 11379
15 [transportation of methamphetamine to furnish].

16 **PRAYER**

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

- 19 1. Revoking or suspending Pharmacy Technician License No. TCH 71595, issued to
20 Respondent;
- 21 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
22 enforcement of this case, pursuant to section 125.3; and
- 23 3. Taking such other and further action as deemed necessary and proper.

24 DATED: 9/11/11

25 
26 VIRGINIA HEROLD
27 Executive Officer
28 Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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