

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

In the Matter of the Accusation Against:

Case No. 3926

**STEVE HERRERA
338 Conlon Avenue
La Puente, CA 91744**

**Pharmacy Technician License No.
TCH 68927**

Respondent.

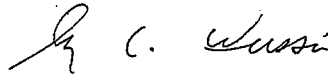
DECISION AND ORDER

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 May 25, 2012.

It is so ORDERED on April 25, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

1 KAMALA D. HARRIS
Attorney General of California
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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 **STEVE HERRERA**
338 Conlon Avenue
14 La Puente, CA 91744
Pharmacy Technician License No. TCH
68927

15 Respondent.

Case No. 3926

OAH No. L-2011080963

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

17 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
18 proceeding that the following matters are true:

19 **PARTIES**

20 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
21 She brought this action solely in her official capacity and is represented in this matter by Kamala
22 D. Harris, Attorney General of the State of California, by William D. Gardner, Deputy Attorney
23 General.

24 2. Steve Herrera (Respondent) is representing himself in this proceeding and has chosen
25 not to exercise his right to be represented by counsel.

26 3. On or about July 10, 2006, the Board of Pharmacy issued Pharmacy Technician
27 License No. TCH 68927 to Steve Herrera (Respondent). The Pharmacy Technician License was

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1 in full force and effect at all times relevant to the charges brought in Accusation No. 3926 and
2 will expire on July 31, 2012, unless renewed.

3 **JURISDICTION**

4 4. Accusation No. 3926 was filed before the Board of Pharmacy (Board), Department of
5 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other
6 statutorily required documents were properly served on Respondent on June 9, 2011. Respondent
7 timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 3926 is
8 attached as Exhibit A and incorporated by reference.

9 **ADVISEMENT AND WAIVERS**

10 5. Respondent has carefully read, and understands the charges and allegations in
11 Accusation No. 3926. Respondent also has carefully read, and understands the effects of this
12 Stipulated Surrender of License and Order.

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

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

22 **CULPABILITY**

23 8. Respondent admits the truth of each and every charge and allegation in Accusation
24 No. 3926, agrees that cause exists for discipline and hereby surrenders his Pharmacy Technician
25 License No. TCH 68927 for the Board's formal acceptance.

26 9. Respondent understands that by signing this stipulation he enables the Board to issue
27 an order accepting the surrender of his Pharmacy Technician License without further process.

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CONTINGENCY

1
2 10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent
3 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may
4 communicate directly with the Board regarding this stipulation and surrender, without notice to or
5 participation by Respondent. By signing the stipulation, Respondent understands and agrees that
6 he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board
7 considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order,
8 the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this
9 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not
10 be disqualified from further action by having considered this matter.

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

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

20 13. In consideration of the foregoing admissions and stipulations, the parties agree that
21 the Board may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

22
23 IT IS HEREBY ORDERED that Pharmacy Technician License No. TCH 68927, issued to
24 Respondent Steve Herrera, is surrendered and accepted by the Board of Pharmacy.

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

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

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

5 4. Respondent understands and agrees that if he ever files an application for licensure or
6 a petition for reinstatement in the State of California, the Board shall treat it as a new application
7 for licensure.

8 5. Respondent may not apply for any license, permit, or registration from the Board for
9 three (3) years from the effective date of this decision. Respondent stipulates that should he apply
10 for any license from the Board on or after the effective date of this decision, all allegations set
11 forth in the accusation shall be deemed to be true, correct and admitted by respondent when the
12 Board determines whether to grant or deny the application. Respondent shall satisfy all
13 requirements applicable to that license as of the date the application is submitted to the Board,
14 including, but not limited to certification by a nationally recognized body prior to the issuance of
15 a new license. Respondent is required to report this surrender as disciplinary action.

16 6. Respondent stipulates that should he apply for any license from the Board on or after
17 the effective date of this decision, investigation and prosecution costs in the amount of \$2,562.00
18 shall be paid to the Board prior to issuance of the license.

19 7. If Respondent should ever apply or reapply for a new license or certification, or
20 petition for reinstatement of a license, by any other health care licensing agency in the State of
21 California, all of the charges and allegations contained in Accusation, No. 3926 shall be deemed
22 to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any
23 other proceeding seeking to deny or restrict licensure.

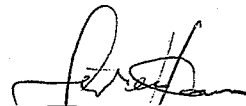
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ACCEPTANCE

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: 2/28/12

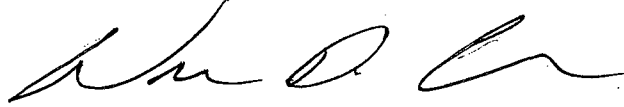

STEVE HERRERA
Respondent

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: 3/5/12

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
KAREN B. CHAPPELLE
Supervising Deputy Attorney General


WILLIAM D. GARDNER
Deputy Attorney General
Attorneys for Complainant

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13 **338 Conlon Avenue**
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14 **Pharmacy Technician License No. TCH**
68927

OAH No. L-2011080963

FIRST AMENDED ACCUSATION

15 Respondent.

16
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 July 10, 2006, the Board of Pharmacy issued Pharmacy Technician
22 License Number TCH 68927 to Steve Herrera (Respondent). The Pharmacy Technician License
23 was in full force and effect at all times relevant to the charges brought herein and will expire on
24 July 31, 2012, unless renewed.

25 **JURISDICTION**

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

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

5 5. Section 4300 of the Code states, in pertinent part:

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

7

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

13 6. Section 4301 of the Code states, in pertinent part:

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

17

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

23

24 "(k) The conviction of more than one misdemeanor or any felony involving the use,
25 consumption, or self-administration of any dangerous drug or alcoholic beverage, or any
26 combination of those substances.

27 "(l) The conviction of a crime substantially related to the qualifications, functions, and
28 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13

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

16
17 7. California Code of Regulations, title 16, section 1770, states:

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

24 **OTHER RELEVANT STATUTES AND LAWS**

25 8. California Penal Code section 243, subdivision (b), states, in pertinent part:

26 "When a battery is committed against the person of a peace officer . . . engaged in the
27 performance of his or her duties, whether on or off duty, including when the peace officer is in a
28 police uniform and is concurrently performing the duties required of him or her as a peace officer

1 while also employed in a private capacity as a part-time or casual private security guard or
2 patrolman . . . and the person committing the offense knows or reasonably should know that the
3 victim is a peace officer . . . the battery is punishable by a fine not exceeding two thousand dollars
4 (\$2,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and
5 imprisonment.”

6 9. California Penal Code section 148, subdivision (a), states:

7 “Every person who willfully resists, delays, or obstructs any public officer, peace officer, or
8 an emergency medical technician, as defined in Division 2.5 (commencing with Section 1797) of
9 the Health and Safety Code, in the discharge or attempt to discharge any duty of his or her office
10 or employment, when no other punishment is prescribed, shall be punished by a fine not
11 exceeding one thousand dollars (\$1,000), or by imprisonment in a county jail not to exceed one
12 year, or by both that fine and imprisonment.”

13 10. California Vehicle Code section 20002 states, in pertinent part:

14 (a) The driver of any vehicle involved in an accident resulting only in damage to any
15 property, including vehicles, shall immediately stop the vehicle at the nearest location that will
16 not impede traffic or otherwise jeopardize the safety of other motorists. . . .

17 (c) Any person failing to comply with all the requirements of this section is guilty of a
18 misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail
19 not exceeding six months, or by a fine not exceeding one thousand dollars (\$1,000), or by both
20 that imprisonment and fine.

21 11. California Vehicle Code section 23152, subdivision (b), states:

22 “It is unlawful for any person who has 0.08 percent or more, by weight, of alcohol in his or
23 her blood to drive a vehicle. For purposes of this article and Section 34501.16, percent, by weight,
24 of alcohol in a person's blood is based upon grams of alcohol per 100 milliliters of blood or grams
25 of alcohol per 210 liters of breath.”

26 12. California Vehicle Code section 23550 states:

27 (a) If a person is convicted of a violation of Section 23152 and the offense occurred within
28 10 years of three or more separate violations of Section 23103, as specified in Section 23103.5, or

1 Section 23152 or 23153, or any combination thereof, that resulted in convictions, that person shall
2 be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or in
3 a county jail for not less than 180 days nor more than one year, and by a fine of not less than three
4 hundred ninety dollars (\$390) nor more than one thousand dollars (\$1,000). The person's
5 privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles
6 pursuant to paragraph (7) of subdivision (a) of Section 13352. The court shall require the person
7 to surrender the driver's license to the court in accordance with Section 13550.

8 (b) A person convicted of a violation of Section 23152 punishable under this section shall
9 be designated as a habitual traffic offender for a period of three years, subsequent to the
10 conviction. The person shall be advised of this designation pursuant to subdivision (b) of Section
11 13350.

12 13. Los Angeles County Code section 13.18.010 states:

13 "Every person who consumes any beer, wine or other intoxicating beverage on any public
14 street, sidewalk, alley, highway or parking lot open to the public is guilty of a misdemeanor. This
15 section shall not be deemed to proscribe any act which is positively permitted or prohibited by
16 any law of the state of California."

17 **COST RECOVERY**

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

22 **FIRST CAUSE FOR DISCIPLINE**

23 (Unprofessional Conduct - Criminal Conviction)

24 15. Respondent is subject to disciplinary action under section 4301, subdivision (l), in
25 conjunction with California Code of Regulations, title 16, section 1770, in that Respondent has
26 been convicted of a crime substantially related to the qualifications, functions, and duties of a
27 licensed pharmacy technician. The circumstances are as follows:

28 ///

1 a. On or about May 25, 2005, in the criminal matter entitled *The People of the State of*
2 *California v. Steve Herrera* (Super. Ct. Los Angeles, 2005, No. 5WH02594), Respondent was
3 convicted of one misdemeanor count of violating Vehicle Code section 23152(b) [drive with a
4 greater than 0.08% blood alcohol] and one misdemeanor count of violating Penal Code section
5 148(a) [resisting arrest]. Respondent was fined and placed on probation for a period of three (3)
6 years. Respondent disclosed this conviction on his application for licensure, and following an
7 investigation into the matter, the Board issued Pharmacy Technician License Number TCH 68927
8 to Steve Herrera on or about July 10, 2006. Since that time, Respondent has been convicted of
9 additional crimes on multiple occasions.

10 b. On or about October 17, 2008, Respondent entered a plea of nolo contendere and was
11 convicted of one misdemeanor count of violating Penal Code section 243(b) [battery against a
12 peace officer] in the criminal proceeding entitled *The People of the State of California v. Steve*
13 *Herrera* (Super. Ct. Los Angeles County, 2008, No. 8JB05013). Respondent was placed on
14 probation for a period of 3 years, sentenced to 2 days in jail and 28 days of community service,
15 and ordered to attend anger management classes.

16 c. The circumstances underlying the conviction are that on or about May 24, 2008, the
17 Los Angeles County Sheriff's Department responded to a domestic disturbance call involving an
18 intoxicated individual who was reportedly throwing bricks and attempting to enter a residence in
19 Hacienda Heights, California, without permission. Once on the scene, the deputies encountered
20 Respondent, dressed only in his underwear and tennis shoes, kicking at the front door of the
21 residence. As one of the deputies approached Respondent, Respondent charged the deputy and
22 attempted to punch him in the head. The deputy was able to subdue Respondent, whereupon he
23 was arrested and charged with assault and battery.

24 d. On or about November 25, 2008, Respondent entered a plea of nolo contendere and
25 was convicted of one misdemeanor count of violating Vehicle Code section 23152(b) [drive with
26 a greater than 0.08% blood alcohol] in the criminal proceeding entitled *The People of the State of*
27 *California v. Steve Herrera* (Super. Ct. Los Angeles County, 2008, No. 8JB09380). Respondent
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1 was placed on probation for a period of 3 years, sentenced to 4 days in jail, and ordered to attend
2 an 18-month second offender alcohol program.

3 e. The circumstances underlying the conviction are that on or about October 3, 2008, an
4 officer of the West Covina Police Department stopped Respondent after observing him speeding
5 and weaving in and out of traffic lanes. While questioning Respondent, the arresting officer
6 observed that Respondent smelled of alcohol, had slurred speech, bloodshot eyes and was
7 unsteady on his feet. Respondent was then asked to perform a series of field sobriety tests, which
8 he failed. Respondent also provided two breath samples to an alcohol screening device which
9 registered Respondent's blood alcohol content at .12.

10 f. On or about March 16, 2009, Respondent entered a plea of nolo contendere and was
11 convicted of one misdemeanor count of violating Vehicle Code section 23152(b) [drive with a
12 greater than 0.08% blood alcohol] in the criminal proceeding entitled *The People of the State of*
13 *California v. Steve Herrera* (Super. Ct. Los Angeles County, 2008, No. 8RI06642). Respondent
14 was placed on probation for a period of 4 years, sentenced to 4 days in jail, and ordered to attend
15 an 18-month alcohol offender program.

16 g. The circumstances underlying the conviction are that on or about October 18, 2008,
17 the Los Angeles County Sheriff's Department responded to a call regarding a possible drunk
18 driver on Sunset Avenue in La Puente, California. Once on the scene, the deputy contacted a
19 witness who informed him that the suspected drunk driver had driven off road, abandoned his
20 vehicle and fled the scene. The deputy then observed a man (Respondent) staggering down the
21 street with his shirt off. While questioning Respondent, the arresting officer observed that
22 Respondent smelled strongly of alcohol, had watery, bloodshot eyes, and was unsteady on his
23 feet. Respondent admitted that he had been drinking and that he was the driver of the vehicle in
24 question. Respondent also provided a breath sample to an alcohol screening device which
25 registered Respondent's blood alcohol content at .28.

26 h. On or about February 8, 2010, Respondent entered a plea of nolo contendere and was
27 convicted of one misdemeanor count of violating Los Angeles County Code section 13.18.010
28 [consuming alcohol in public place] in the criminal proceeding entitled *The People of the State of*

1 *California v. Steve Herrera* (Super. Ct. Los Angeles County, 2009, No. 9BF03310). Respondent
2 was ordered to serve 3 days in jail.

3 i. The circumstances underlying the conviction are that on or about June 11, 2009, a
4 Los Angeles Sheriff's Department deputy observed Respondent drinking beer from a 40 oz. bottle
5 in the parking lot of a Norwalk, California, convenience store.

6 **SECOND CAUSE FOR DISCIPLINE**

7 (Unprofessional Conduct - Dangerous Use of Alcohol)

8 16. Respondent is subject to disciplinary action under section 4301, subdivision (h), in
9 that Respondent has used alcoholic beverages to the extent and/or in a manner as to be dangerous
10 or injurious to himself and the public. The circumstances are that on January 26, 2012,
11 Respondent was arrested by Los Angeles County Sheriff's deputies for violating Vehicle Code
12 section 23550(a) [DUI - Habitual Offender] and Vehicle Code section 20002(a) [Hit and Run].
13 Respondent was arrested after he attempted to flee the scene following a collision with two
14 parked vehicles. The sheriff's deputies determined that Respondent was under the influence of
15 alcohol based on his incoherence, inability to attempt a sobriety test, inability to stand without
16 assistance, strong smell of alcohol and intermittent loss of consciousness. Complainant refers to
17 and by this reference incorporates the allegations set forth above in paragraph 15, subdivisions a
18 through i, inclusive, as though set forth fully herein.

19 **THIRD CAUSE FOR DISCIPLINE**

20 (Unprofessional Conduct -- Multiple Misdemeanors Involving Alcohol)

21 17. Respondent is subject to disciplinary action under section 4301, subdivision (k), in
22 that Respondent has been convicted of more than one misdemeanor involving the use of alcoholic
23 beverages. Complainant refers to and by this reference incorporates the allegations set forth above
24 in paragraph 15, subdivisions a through i, inclusive, as though set forth fully herein.

25 **PRAYER**

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

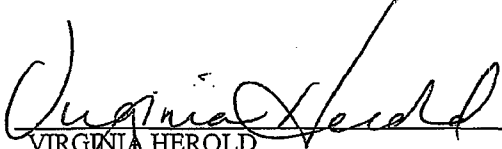
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1. Revoking or suspending Pharmacy Technician License Number TCH 68927, issued to Steve Herrera;
2. Ordering Steve Herrera to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED:

2/17/12



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

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