

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

In the Matter of the Accusation Against:

**CVS PHARMACY #1176
25829 Narbonne Avenue
Lomita, CA 90717
Original Permit Number PHY 48257**

Case No. 3970

OAH No. L-2011070283

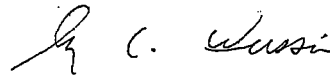
DECISION AND ORDER

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 May 4, 2012.

It is so ORDERED on April 4, 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
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
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Attorneys for Complainant
7

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

10 In the Matter of the Accusation Against:

Case No. 3970

11 **CVS PHARMACY #1176**
12 **25829 Narbonne Ave**
13 **Lomita, CA 90717**
Original Permit Number PHY 48257

OAH No. L-2011070283
STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

14 Respondent.

15
16 In the interest of a prompt and speedy settlement of this matter, consistent with the public
17 interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs,
18 the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will
19 be submitted to the Board for approval and adoption as the final disposition of the Accusation.

20 **PARTIES**

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

25 2. CVS Pharmacy #1176 ("Respondent") is represented in this proceeding by attorney
26 Alyce C. Katayama of Quarles & Brady LLP, whose address is: 411 East Wisconsin Avenue,
27 Suite 2040, Milwaukee, Wisconsin 53202-4497.
28

1 3. On or about September 11, 2006, the Board of Pharmacy issued Original Permit
2 Number PHY 48257 to CVS Pharmacy #1176. The Original Permit Number was in full force and
3 effect at all times relevant to the charges brought in Accusation No. 3970 and will expire on June
4 1, 2012, unless renewed.

5 **JURISDICTION**

6 4. Accusation No. 3970 was filed before the Board of Pharmacy (“Board”), Department
7 of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other
8 statutorily required documents were properly served on Respondent on May 6, 2011. Respondent
9 timely filed their Notice of Defense contesting the Accusation. A copy of Accusation No. 3970 is
10 attached as Exhibit A and incorporated herein by reference.

11 **ADVISEMENT AND WAIVERS**

12 5. Respondent has carefully read, fully discussed with counsel, and understands the
13 charges and allegations in Accusation No. 3970. Respondent has also carefully read, fully
14 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
15 Order.

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

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

25 **CULPABILITY**

26 8. Respondent admits the truth of each and every charge and allegation in Accusation
27 No. 3970.

28

1 9. Respondent agrees that their Original Permit Number is subject to discipline and they
2 agree to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

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 settlement, without notice to
7 or participation by Respondent or their counsel. By signing the stipulation, Respondent
8 understands and agrees that they may not withdraw their agreement or seek to rescind the
9 stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this
10 stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of
11 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between
12 the parties, and the Board shall not be disqualified from further action by having considered this
13 matter.

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

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

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

26 ///

1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Original Permit Number PHY 48257 issued to CVS
3 Pharmacy #1176 is revoked. However, the revocation is stayed and Respondent's license is
4 placed on probation for four (4) years on the following terms and conditions.

5 1. **Obey All Laws**

6 Respondent owner shall obey all state and federal laws and regulations.

7 Respondent owner shall report any of the following occurrences to the Board, in writing,
8 within seventy-two (72) hours of such occurrence:

- 9 an arrest or issuance of a criminal complaint for violation of any provision of the
10 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
11 substances laws
- 12 a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
13 criminal complaint, information or indictment
- 14 a conviction of any crime
- 15 discipline, citation, or other administrative action filed by any state or federal agency
16 which involves Respondent's Original Permit Number or which is related to the
17 practice of pharmacy or the manufacturing, obtaining, handling or distributing,
18 billing, or charging for any drug, device or controlled substance.

19 Failure to timely report any such occurrence shall be considered a violation of probation.

20 2. **Report to the Board**

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

1 **3. Interview with the Board**

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

7 **4. Cooperate with Board Staff**

8 Respondent owner shall cooperate with the Board's inspection program and with the
9 Board's monitoring and investigation of Respondent's compliance with the terms and conditions
10 of their probation. Failure to cooperate shall be considered a violation of probation.

11 **5. Reimbursement of Board Costs**

12 As a condition precedent to successful completion of probation, Respondent owner shall
13 pay to the Board its costs of investigation and prosecution in the amount of \$3,504.00.
14 Respondent owner shall make said payment in full within thirty days of the effective date of the
15 Decision and Order. There shall be no deviation from this schedule absent prior written approval
16 by the Board or its designee. Failure to pay costs by the deadline(s) as directed shall be
17 considered a violation of probation.

18 The filing of bankruptcy by Respondent owner shall not relieve Respondent of their
19 responsibility to reimburse the Board its costs of investigation and prosecution.

20 **6. Probation Monitoring Costs**

21 Respondent owner shall pay any costs associated with probation monitoring as determined
22 by the Board each and every year of probation. Such costs shall be payable to the Board on a
23 schedule as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as
24 directed shall be considered a violation of probation.

25 **7. Status of License**

26 Respondent owner shall, at all times while on probation, maintain current licensure with the
27 Board. If Respondent owner submits an application to the Board, and the application is approved,
28 for a change of location, change of permit or change of ownership, the Board shall retain

1 continuing jurisdiction over the license, and the Respondent shall remain on probation as
2 determined by the Board. Failure to maintain current licensure shall be considered a violation of
3 probation.

4 If Respondent owner's license expires or is cancelled by operation of law or otherwise at
5 any time during the period of probation, including any extensions thereof or otherwise, upon
6 renewal or reapplication Respondent owner's license shall be subject to all terms and conditions
7 of this probation not previously satisfied.

8 **8. License Surrender While on Probation/Suspension**

9 Following the effective date of this decision, should Respondent owner discontinue
10 business, Respondent owner may tender the premises license to the Board for surrender. The
11 Board or its designee shall have the discretion whether to grant the request for surrender or take
12 any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of
13 the license, Respondent will no longer be subject to the terms and conditions of probation.

14 Upon acceptance of the surrender, Respondent owner shall relinquish the premises wall and
15 renewal license to the Board within ten (10) days of notification by the Board that the surrender is
16 accepted. Respondent owner shall further submit a completed Discontinuance of Business form
17 according to Board guidelines and shall notify the Board of the records inventory transfer.

18 Respondent owner shall also, by the effective date of this decision, arrange for the
19 continuation of care for ongoing patients of the pharmacy by, at minimum, providing a written
20 notice to ongoing patients that specifies the anticipated closing date of the pharmacy and that
21 identifies one or more area pharmacies capable of taking up the patients' care, and by cooperating
22 as may be necessary in the transfer of records or prescriptions for ongoing patients. Within five
23 days of its provision to the pharmacy's ongoing patients, Respondent owner shall provide a copy
24 of the written notice to the Board. For the purposes of this provision, "ongoing patients" means
25 those patients for whom the pharmacy has on file a prescription with one or more refills
26 outstanding, or for whom the pharmacy has filled a prescription within the preceding sixty (60)
27 days.

28 Respondent owner may not apply for any new licensure from the Board for three (3) years

1 from the effective date of the surrender. Respondent owner shall meet all requirements applicable
2 to the license sought as of the date the application for that license is submitted to the Board.

3 Respondent owner further stipulates that he or she shall reimburse the Board for its costs of
4 investigation and prosecution prior to the acceptance of the surrender.

5 **9. Notice to Employees**

6 Respondent owner shall, upon or before the effective date of this decision, ensure that all
7 employees involved in permit operations are made aware of all the terms and conditions of
8 probation, either by posting a notice of the terms and conditions, circulating such notice, or both.
9 If the notice required by this provision is posted, it shall be posted in a prominent place and shall
10 remain posted throughout the probation period. Respondent owner shall ensure that any
11 employees hired or used after the effective date of this decision are made aware of the terms and
12 conditions of probation by posting a notice, circulating a notice, or both. Additionally,
13 Respondent owner shall submit written notification to the Board, within fifteen (15) days of the
14 effective date of this decision, that this term has been satisfied. Failure to submit such
15 notification to the Board shall be considered a violation of probation.

16 "Employees" as used in this provision includes all full-time, part-time,
17 volunteer, temporary and relief employees and independent contractors employed or
18 hired at any time during probation.

19 **10. Owners and Officers: Knowledge of the Law**

20 Respondent shall provide, within thirty (30) days after the effective date of this decision,
21 signed and dated statements from its owners, including any owner or holder of ten percent (10%)
22 or more of the interest in Respondent or Respondent's stock, and any officer, stating under
23 penalty of perjury that said individuals have read and are familiar with state and federal laws and
24 regulations governing the practice of pharmacy. The failure to timely provide said statements
25 under penalty of perjury shall be considered a violation of probation.

26 **11. Posted Notice of Probation**

27 Respondent owner shall prominently post a probation notice provided by the Board in a
28 place conspicuous and readable to the public. The probation notice shall remain posted during

1 the entire period of probation.

2 Respondent owner shall not, directly or indirectly, engage in any conduct or make any
3 statement which is intended to mislead or is likely to have the effect of misleading any patient,
4 customer, member of the public, or other person(s) as to the nature of and reason for the probation
5 of the licensed entity.

6 Failure to post such notice shall be considered a violation of probation.

7 **12. Violation of Probation**

8 If a Respondent owner has not complied with any term or condition of probation, the Board
9 shall have continuing jurisdiction over Respondent license, and probation shall be automatically
10 extended until all terms and conditions have been satisfied or the Board has taken other action as
11 deemed appropriate to treat the failure to comply as a violation of probation, to terminate
12 probation, and to impose the penalty that was stayed.

13 If Respondent owner violates probation in any respect, the Board, after giving Respondent
14 owner notice and an opportunity to be heard, may revoke probation and carry out the disciplinary
15 order that was stayed. Notice and opportunity to be heard are not required for those provisions
16 stating that a violation thereof may lead to automatic termination of the stay and/or revocation of
17 the license. If a petition to revoke probation or an accusation is filed against Respondent during
18 probation, the Board shall have continuing jurisdiction and the period of probation shall be
19 automatically extended until the petition to revoke probation or accusation is heard and decided.

20 **13. Completion of Probation**

21 Upon written notice by the Board or its designee indicating successful completion of
22 probation, Respondent license will be fully restored.

23 **14. Community Services Program**

24 Within sixty (60) days of the effective date of this decision, Respondent owner shall submit
25 to the Board or its designee, for prior approval, a community service program in which
26 Respondent shall donate 1,500 free immunizations to a non-profit health clinic within a twenty
27 five mile radius of Lomita, California during the first year of probation. Respondent shall donate
28 the free immunizations to the non-profit health clinic, but it will be the responsibility of the non-

1 profit health clinic to administer the immunization.

2 Within thirty (30) days of Board approval thereof, Respondent owner shall submit
3 documentation to the Board demonstrating commencement of the community service program.
4 Respondent owner shall report on progress with the community service program in the quarterly
5 reports. Respondent within (30) days of completion of the donation of all 1,500 immunizations,
6 shall submit proof of the donation to the Board.

7 Failure to timely submit, commence, or comply with the program shall be considered a
8 violation of probation.

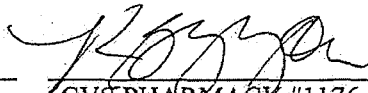
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1 ACCEPTANCE

2 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
3 discussed it with my attorney, Alyce Katayama. I understand the stipulation and the effect it will
4 have on my Original Permit Number. I enter into this Stipulated Settlement and Disciplinary
5 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
6 of the Board of Pharmacy.

7 DATED: 2-4-12



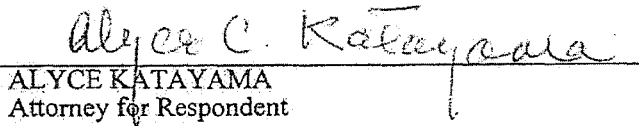
8 CVS PHARMACY #1176

Respondent *Richard B. Mazzoni, RPh*

9 I have read and fully discussed with Respondent CVS Pharmacy #1176 the terms and
10 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.

11 I approve its form and content.

12 DATED: 2-4-12


13 ALYCE KATAYAMA
Attorney for Respondent

14
15 ENDORSEMENT

16 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for
17 consideration by the Board of Pharmacy of the Department of Consumer Affairs.

18 Dated: 2-6-2012

Respectfully submitted,

19 KAMALA D. HARRIS
Attorney General of California
20 KAREN B. CHAPPELLE
Supervising Deputy Attorney General



21 RANDY M. MAILMAN
Deputy Attorney General
22 *Attorneys for Complainant*

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Exhibit A

Accusation No. 3970

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 RANDY M. MAILMAN
Deputy Attorney General
4 State Bar No. 246134
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5 Los Angeles, CA 90013
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6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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

10 In the Matter of the Accusation Against:

Case No. 3970

11 **CVS PHARMACY #1176**
12 **25829 Narbonne Ave**
13 **Lomita, CA 90717**
Original Permit Number No. PHY 48257

A C C U S A T I O N

14 Respondent.

15 Complainant alleges:

16 **PARTIES**

- 17 1. Virginia Herold ("Complainant") brings this Accusation solely in her official capacity
18 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
19 2. On or about September 11, 2006, the Board of Pharmacy issued Original Permit
20 Number Number PHY 48257 to CVS Pharmacy #1176 ("Respondent"). The Original Permit
21 Number was in full force and effect at all times relevant to the charges brought herein and will
22 expire on June 1, 2011, unless renewed.

23 **JURISDICTION**

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

1 4. Section 4011 of the Code provides that the Board shall administer and enforce the
2 Pharmacy Law [Bus. & Prof. Code, § 4000 et seq].

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

5 6. Section 4037 of the Code provides, in pertinent part, “‘Pharmacy’ means an area,
6 place, or premises licensed by the board in which the profession of pharmacy is practiced and
7 where prescriptions are compounded. ‘Pharmacy’ includes, but is not limited to, any area, place,
8 or premises described in a license issued by the board wherein controlled substances, dangerous
9 drugs, or dangerous devices are stored, possessed, prepared, manufactured, derived, compounded,
10 or repackaged, and from which the controlled substances, dangerous drugs, or dangerous devices
11 are furnished, sold, or dispensed at retail.”

12 7. Section 118, subdivision (b) of the Code provides:

13 “The suspension, expiration, or forfeiture by operation of law of a license issued by a board in
14 the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a
15 court of law, or its surrender without the written consent of the board, shall not, during any period
16 in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to
17 institute or continue a disciplinary proceeding against the licensee upon any ground provided by
18 law or to enter an order suspending or revoking the license or otherwise taking disciplinary action
19 against the licensee on any such ground.

20 STATUTORY AND REGULATORY PROVISIONS

21 8. Section 4301 of the Code provides, in pertinent part:

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

26 ...

27 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
28 violation of or conspiring to violate any provision or term of this chapter or of the applicable

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

3 9. California Code of Rules and Regulations, chapter 16, section 1714, subdivision
4 (c) provides, in pertinent part, “The pharmacy and fixtures and equipment shall be maintained in a
5 clean and orderly condition. The pharmacy shall be dry, well-ventilated, free from rodents and
6 insects, and properly lighted. The pharmacy shall be equipped with a sink with hot and cold
7 running water for pharmaceutical purposes.”

8 **COST RECOVERY**

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

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Failing to Maintain Operational Standards)**

15 11. Respondent’s Original Permit Number is subject to disciplinary action under
16 California Code of Regulations, chapter 16, section 1714, for failing to maintain operational
17 standards in that Respondent failed to maintain CVS Pharmacy #1176 in a clean and orderly
18 condition, free from rodents.

19 12. On or about November 9, 2010, an inspector with the County of Los Angeles Public
20 Health Department inspected CVS Pharmacy #1176 located at 25829 Narbonne Avenue in
21 Lomita, California.

22 13. The inspector noticed that CVS Pharmacy #1176 had a rodent infestation problem.
23 The inspector observed rat droppings, food that had been gnawed through by rats, a strong odor
24 of rat urine, and uplifted ceiling tiles that were broken and/ or gnawed through.

25 14. On or about November 9, 2010, the Public Health Department suspended the public
26 health permit for CVS Pharmacy.

27
28

1 SECOND CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct)

3 15. Respondent's Original Permit Number is subject to disciplinary action under Code
4 section 4301 subdivision (o), for unprofessional conduct in that Respondent violated a regulation
5 of the state of California governing pharmacies. The circumstances surrounding the conduct are
6 more particularly described in paragraphs 11 through 14, inclusive, above, and herein
7 incorporated by reference.

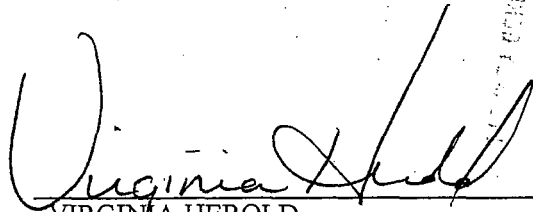
8 PRAYER

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

- 11 1. Revoking or suspending Original Permit Number PHY 48257, issued to CVS
- 12 Pharmacy #1176;
- 13 2. Ordering CVS Pharmacy #1176 to pay the Board of Pharmacy the reasonable costs of
- 14 the investigation and enforcement of this case, pursuant to Business and Professions Code section
- 15 125.3;
- 16 3. Taking such other and further action as deemed necessary and proper.

17
18
19 DATED: _____

4/7/11

20 

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

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