

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

In the Matter of the Accusation Against:

**NORMAN TADAYOSHI NISHI**  
1547 18<sup>TH</sup> Street  
Manhattan Beach, CA 90266

**Pharmacist License No. RPH 25974**

Respondent.

Case No. 4249

OAH No. L-2011080793

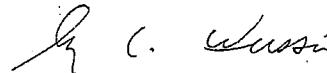
**DECISION AND ORDER**

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

This decision shall become effective on April 12, 2012.

It is so ORDERED on March 13, 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 GLORIA A. BARRIOS  
Supervising Deputy Attorney General  
3 LANGSTON M. EDWARDS  
Deputy Attorney General  
4 State Bar No. 237926  
300 So. Spring Street, Suite 1702  
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*Attorneys for Complainant*

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**Manhattan Beach, CA 90266**  
13 **Pharmacist License No. RPH 25974**

OAH No. L-2011080793

**STIPULATED SURRENDER OF  
LICENSE AND ORDER**

14 Respondent.

15  
16 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
17 entitled proceedings that the following matters are true:  
18

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 Langston M. Edwards, Deputy Attorney  
23 General.  
24

25 2. Norman Tadayoshi Nishi (Respondent) is represented in this proceeding by attorney  
26 Ronald S. Marks, Esq., whose address is 21900 Burbank Boulevard, Suite 300  
27 Woodland Hills, CA 91367.  
28



1 CULPABILITY

2 8. Respondent admits the truth of each and every charge and allegation in Accusation  
3 No. 4249, agrees that cause exists for discipline and hereby surrenders to the his Pharmacist  
4 License No. RPH 25974 for the Board's formal acceptance.

5 9. Respondent understands that by signing this stipulation he enables the Board to issue  
6 an order accepting the surrender of his Pharmacist License without further process.

7 CONTINGENCY

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

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

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

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

ORDER

1  
2 IT IS HEREBY ORDERED that Citation No. CI 2009 41227 issued to Respondent Norman  
3 Tadayoshi Nishi as well as the abatements and fines ordered by those citations, are withdrawn  
4 and dismissed and that Pharmacist License No. RPH 25974, issued to Respondent Norman  
5 Tadayoshi Nishi, is surrendered and accepted by the Board of Pharmacy.

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

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

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

14 4. If Respondent ever files an application for licensure or a petition for reinstatement in  
15 the State of California, the Board shall treat it as a new application for licensure. Respondent  
16 must comply with all the laws, regulations and procedures for reinstatement of a revoked license  
17 in effect at the time the petition is filed, and all of the charges and allegations contained in  
18 Accusation No. 4249 shall be deemed to be true, correct and admitted by Respondent when the  
19 Board determines whether to grant or deny the application or petition.

20 5. Respondent shall pay the agency a civil penalty in the amount of \$75,000.00 prior to  
21 issuance of a new or reinstated license.

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ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, Ronald S. Marks, Esq.; I understand the stipulation and the effect it will have on my Pharmacist 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: 2/2/12

*Norman Tadayoshi Nishi*  
NORMAN TADAYOSHINISHI  
Respondent

I have read and fully discussed with Respondent Norman Tadayoshi Nishi the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: 2/3/12

*Ronald S. Marks*  
RONALD S. MARKS, ESQ.  
Attorney for 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:

Respectfully submitted,  
KAMALA D. HARRIS  
Attorney General of California  
GLORIA A. BARRIOS  
Supervising Deputy Attorney General

*Langston M. Edwards*  
LANGSTON M. EDWARDS  
Deputy Attorney General  
Attorneys for Complainant

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**Exhibit A**

**Accusation No. 4249**

]»

1 KAMALA D. HARRIS  
Attorney General of California  
2 GLORIA A. BARRIOS  
Supervising Deputy Attorney General  
3 LANGSTON M. EDWARDS  
Deputy Attorney General  
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**Pharmacist License No. RPH 25974**

OAH No. L-2011080793

**ACCUSATION**

14 Respondent.

15  
16 Complainant alleges:

17 **PARTIES**

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

20 2. On or about February 27, 1969, the Board of Pharmacy issued Pharmacist License  
21 Number RPH 25974 to Norman Tadayoshi Nishi (Respondent). The Pharmacist License expired  
22 on February 28, 2011, and has not been renewed.

23  
24 **JURISDICTION**

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



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

6       5. Section 4300 of the Code states:

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

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

11       ...

12       (4) Revoking his or her license.

13       (5) Taking any other action in relation to disciplining him or her as the board in its  
14 discretion may deem proper.”

15       6. Section 4161 of Code states, in pertinent part:

16       “(a) A person located outside this state that (1) ships, sells, mails, or delivers dangerous  
17 drugs ... into this state or (2) sells, brokers, or distributes dangerous drugs ... within this state  
18 shall be considered a nonresident wholesaler.

19       (b) A nonresident wholesaler shall be licensed by the Board prior to shipping, selling,  
20 mailing, or delivering dangerous drugs ... to a site located in this state or selling, brokering, or  
21 distributing dangerous drugs ... within this state.”

22       7. Section 4169 of the Code states, in pertinent part:

23       “(a)(1) A person or entity may not purchase, trade, sell, or transfer dangerous drugs or  
24 dangerous devices at wholesale with a person or entity that is not licensed with the board as a  
25 wholesaler or pharmacy.”

26       8. Section 4301 of the Code states:

27       “The board shall take action against any holder of a license who is guilty of unprofessional  
28 conduct ... Unprofessional conduct shall include, but is not limited to, any of the following:

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“(j) 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.

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

(p) Actions or conduct that would have warranted denial of a license.”

9. Section 480 of the Code states:

“(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

...

(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.”

10. Section 4105 of the Code states, in pertinent part:

“(a) All records or other documentation of the acquisition and disposition of dangerous drugs ... by any entity licensed by the Board shall be retained on the licensed premises in a readily retrievable form.

(b) The licensee may remove the original records or documentation from the licensed premises on a temporary basis for license-related purposes. However a duplicate set of those records or other documentation shall be retained on the licensed premises.

(c) The records required by this section shall be retained on the licensed premises for a period of three years from the date of making.”

11. Section 4081 of the Code states:

“(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three (3) years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy ... or establishment

1 holding a currently valid and unrevoked certificate, license, permit, registration, or exemption  
2 under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4  
3 (commencing with Section 16000) of Division 9 of the Welfare and Instructions Code who  
4 maintains a stock of dangerous drugs or dangerous devices.”

5 12. Section 4332 of Code states, in pertinent part, that any person who fails, neglects, or  
6 refuses to maintain the records required by Section 4081 or who when called upon by an  
7 authorized officer or a member of the board; fails, neglects, or refuses to produce or provide the  
8 records within a reasonable time, or who willfully produces or furnishes records that are false is  
9 guilty of a misdemeanor.”

10 13. California Code of Regulations, title 16, section 1714, states, in pertinent part:

11 “(b) Each pharmacy licensed by the board shall maintain its facilities, space, fixtures, and  
12 equipment so that drugs are safely and properly prepared, maintained, secured and distributed.  
13 The pharmacy shall be of sufficient size and unobstructed area to accommodate the safe practice  
14 of pharmacy.”

15 14. California Code of Regulations, title 16, section 1770, states:

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

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23 **BACKGROUND FACTS**

24 15. On or around January 30, 1991, the Board issued Original Permit Number PHY  
25 36852 to Norman Tadayoshi Nishi (Respondent) to do business as Morningside Medical  
26 Pharmacy (Pharmacy) located at 1704 W. Manchester Ave., Los Angeles, CA 90047, the address  
27 of record.

1 16. Respondent was the Sole Owner and Pharmacist-In-Charge from January 30, 1991 to  
2 November 20, 2008.

3 17. On or around May 13, 2009, during an investigation of the Pharmacy, evidence was  
4 adduced that Respondent had removed all invoice records from the Pharmacy and stored them at  
5 his home without a waiver issued by the Board.

6 18. Respondent returned the invoice records dating from June 18, 2007 to November 1,  
7 2008 to the Pharmacy for the Board's review.

8 19. The Board's review of the invoice records resulted in the discovery of 217 invoices  
9 from unlicensed wholesalers of pharmaceuticals, namely, Drogueria De La Villa, Inc. SUC/FMC  
10 Distributors of Nevada, Inc., located in Arecibo, Puerto Rico and Drogueria De La Villa, Inc.,  
11 located in Arecibo, Puerto Rico in violation of Bus. and Prof. Code § 4161.

12  
13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Purchasing Dangerous Drugs From Unlicensed Entity)**

15 20. Respondent is subject to disciplinary action under section 4169, subdivision (a)(1) in  
16 conjunction with section 4161 subdivisions (a)-(b) and California Code of Regulations, title 16,  
17 section 1770 in that Respondent purchased dangerous drugs from an unlicensed wholesaler or  
18 pharmacy. Complainant incorporates by reference paragraphs 15 – 19, above, as if fully set forth  
19 herein.

20  
21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Failure to Produce Records)**

23 21. Respondent is subject to disciplinary action under section 4081, subdivision (a) and  
24 section 4105, subdivisions (a) – (c) in that Respondent failed to maintain all records of acquisition  
25 or disposition of dangerous drugs at the Pharmacy. Moreover, Respondent failed to obtain a  
26 waiver for off-site records storage pursuant to the requirements set forth in California Code of  
27 Regulations, title 16, section 1707. Complainant incorporates by reference paragraphs 15 -19,  
28 above, as if fully set forth herein.

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**THIRD CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct: Violation of State Statutes)**

22. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and (o) for violation of state statutes and provisions of Chapter 9 of the Code. Complainant incorporates by reference paragraphs 15 – 21 above, as if fully set forth herein.

**FOURTH CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct: Actions Warranting Denial of License)**

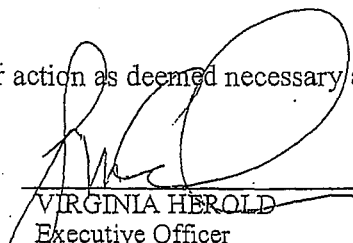
23. Respondent is subject to disciplinary action under sections 480, subdivision (a) and 4301, subdivision (p) of the Code for committing acts that would have warranted denial of a license. Complainant incorporates by reference paragraphs 15 -22 above, as if fully set forth herein.

**PRAYER**

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

1. Revoking or suspending Pharmacist License Number RPH 25974, issued to Norman Tadayoshi Nishi;
2. Ordering Norman Tadayoshi Nishi 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: 2/2/12

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