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

In the Matter of the Statement of Issues Against: **DARIN LOUIS FREEMAN, JR.** Pharmacy Technician Applicant Respondent.	Case No. 4165 OAH No. 2012070001

ORDER DENYING RECONSIDERATION

The Board of Pharmacy having read and considered respondent's petition for reconsideration of the board's decision effective April 5, 2013. NOW THEREFORE IT IS ORDERED that the petition for reconsideration is denied. The Board of Pharmacy's Decision and Order effective April 5, 2013 is the Board of Pharmacy's final decision in this matter.

Date: March 27, 2013.

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 Statement of Issues Against: **DARIN LOUIS FREEMAN, JR.** Pharmacy Technican Applicant Respondent.	Case No. 4165 OAH 2012070001

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 April 5, 2013.

It is so ORDERED on March 6, 2013.

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 Statement of Issues Against:	Case No. 4165
DARIN LOUIS FREEMAN, JR.,	OAH No. 2012070001
Respondent.	

PROPOSED DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH), on January 7, 2013, in Los Angeles, California. Complainant was represented by Michelle M. McCarron, Deputy Attorney General. Darin Louis Freeman, Jr. (Respondent) appeared and represented himself.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on January 7, 2013.

FACTUAL FINDINGS

1. On May 24, 2012, Complainant Virginia K. Herold (Complainant) filed the Statement of Issues while acting in her official capacity as Executive Officer of the California State Board of Pharmacy (Board), Department of Consumer Affairs.

2. On December 10, 2009, Respondent submitted an Application for Registration as a Pharmacy Technician (application). On May 26, 2011, the application was denied, and Respondent requested a hearing.

3(a). On August 23, 2005, in the California Superior Court for the County of Los Angeles, Case Number FLC03519, Respondent was convicted of violating Penal Code section 32 (accessory to a felony), a misdemeanor.

3(b). Respondent was placed on probation for 36 months and ordered to complete 20 days of Cal Trans duty. On December 9, 2008, the Court dismissed the conviction pursuant to Penal Code section 1203.4.

3(c). The circumstances underlying the conviction are that, on July 7, 2005, Respondent drove his vehicle and picked up a friend who had just committed a robbery and was fleeing the scene of the crime.

4(a). On June 13, 2006, in the California Superior Court for the County of Los Angeles, Case Number 06WF1329, Respondent was convicted of violating Penal Code section 240/242 (assault/battery), a misdemeanor.

4(b). Respondent was placed on probation for 36 months and ordered to serve 48 days in jail and not to possess any deadly weapons.

4(c). The circumstances surrounding the conviction are that, on May 13, 2006, Respondent was involved in a street fight with six other individuals and fled the scene.

5(a). On August 27, 2008, in the California Superior Court for the County of Los Angeles, Case Number 8MP10644, Respondent was convicted of violating Vehicle Code section 23152, subdivision (a) (driving under the influence of alcohol or drugs), a misdemeanor.

5(b). Respondent was placed on probation for 36 months and ordered to serve 20 days in jail and to complete a nine-month First Offender Treatment Program.

5(c). The circumstances underlying the conviction are that, on August 25, 2008, Respondent drove while under the influence of alcohol or drugs.

6(a). On March 24, 2010, in the California Superior Court for the County of Los Angeles, Case Number 9CP11669, Respondent was convicted of violating Vehicle Code section 23152, subdivision (a) (driving under the influence of alcohol or drugs), a misdemeanor.

6(b). Respondent was placed on probation for 48 months and ordered to pay various fines and fees, to serve 132 days in jail and to complete an 18-month Multiple Offender Treatment Program, a Hospital and Morgue program, and a Mothers Against Drunk Driving Victim Impact Program. On June 1, 2010, Respondent's case was called for proof of restitution fine payment. The Court found that Respondent had failed to pay the restitution fine, assessed a $300 civil assessment, and referred the case to a collection agency.

6(c). The circumstances underlying the conviction are that, on August 5, 2009, Respondent drove while under the influence of alcohol or drugs.

7. On May 11, 2010, in the California Superior Court for the County of San Bernardino, Case Number 93865DF, Respondent was convicted of violating Vehicle Code section 12500, subdivision (a) (driving without a valid driver's license), a misdemeanor. Respondent was placed on probation for 12 months. The circumstances underlying the conviction are that, on February 8, 2010, Respondent drove a vehicle without a valid driver's license.

///
///

8(a). Respondent's application contained several questions to be answered by applicants, including Question 6, which stated:

> Have you ever been convicted or pled no contest to a violation of any law of a foreign country, the United States or any state laws or local ordinances? You must include all misdemeanor and felony convictions, regardless of the age of the conviction, including those which have been set aside under Penal Code section 1203.4. Traffic violations of $500 or less need not be reported. **If "yes," attach an explanation including the type of violation, the date, circumstances, location and the complete penalty received.** In addition to this written explanation, please provide the Board of Pharmacy with **certified copies of all pertinent court documents or arrest reports relating to this conviction.** (Emphasis in original.)
>
> (Exhibit 1.)

8(b). Two boxes, one designated "No" and one designated "Yes," were provided on the application. Respondent marked the box designated "No" and did not disclose his five convictions set forth in Factual Findings 3 through 7.

9. At the administrative hearing, Respondent testified that his response to Question 6 on the application was a "simple mistake" and that there was "no way [he] could lie because [the Board] is going to run a background check." Given the detailed and specific instructions in Question 6, Respondent's explanation is not credible or persuasive.

10. Respondent's response to Question 6 on his application and his failure to disclose his convictions constituted a knowingly false statement of fact required to be revealed in his application and was an act of dishonesty with the intent to substantially benefit himself.

11(a). At the administrative hearing, Respondent denied culpability for his 2005 conviction, stating that his friend had called via cellphone to ask for a ride and that Respondent did not know his friend had committed a crime when he arrived to pick him up. He maintained that the police report (wherein several occupants of Respondent's vehicle overheard his friend state that he had just committed a robbery) was false.

11(b). Respondent also denied any responsibility for his 2006 conviction, stating that he was just "at the wrong place at the wrong time," but had not been involved in the fight. He maintained that the police report (wherein witnesses placed him at the scene, and police observed and pursued him fleeing the scene) was not accurate.

11(c). Respondent's denial of wrongdoing were not credible. Furthermore, by way of his pleas to, and conviction of, violating Penal Code sections 32 (accessory to a felony) and 240/242 (assault/battery), Respondent is guilty of those crimes. (*Arneson v. Fox* (1980)

28 Cal.3d.440, 449 (holding that "[r]egardless of the various motives which may have impelled the plea, the conviction which was based thereon stands as conclusive evidence of appellant's guilt of the offense charged.").)

11(d). Respondent admitted responsibility for his DUI convictions and for driving with a suspended license. He did not provide any evidence that he had addressed his problems with alcohol or drugs by way of either a 12-step program, counseling, or some other support network in an effort to avoid recidivism.

12. Respondent remains on probation in criminal Case Number 9CP11669 until 2014.

13. Respondent has two children and asserts that he is "starting to mature" and is "not the same man." He worked at Sam's Club for a year and anticipated starting new employment with the United States Post Office on February 1, 2013.

LEGAL CONCLUSIONS

1(a). Cause exists to deny Respondent's application for registration as a pharmacy technician, pursuant to Business and Professions Code section 480, subdivision (a)(1), and California Code of Regulations, title 16, section 1770, on the grounds that Respondent has been convicted of a crime which is substantially related to the qualifications, functions and duties of a pharmacy technician, as set forth in Factual Findings 3 through 7, and Legal Conclusion 1(b).

1(b). Respondent's convictions individually and collectively are substantially related to the qualifications, functions and duties of a pharmacy technician. Respect for human life, honesty, integrity and compliance with the law are all paramount in pharmacy technicians, who have access to dangerous drugs and controlled substance, and are privy to sensitive personal information of the pharmacy patients, and have been placed in a position of trust with respect to that access and that information. Respondent's crimes demonstrate a lack of respect for human welfare and a propensity to flout the law. These characteristics, to a substantial degree, evidence a potential unfitness to perform the functions of a pharmacy technician in a manner consistent with the public health, safety or welfare. (Cal.Code Regs., tit.16, § 1770.)

2. Cause exists to deny Respondent's application for registration as a pharmacy technician, pursuant to Business and Professions Code section 480, subdivision (c), on the grounds that Respondent knowingly made a false statement of fact required to be revealed in the application for a license, as set forth in Factual Findings 3 through 10.

3. Cause exists to deny Respondent's application for registration as a pharmacy technician, pursuant to Business and Professions Code section 480, subdivision (a)(2), on the grounds that Respondent committed an act of dishonesty with the intent to substantially

benefit himself when he made a false statement in his application for a license, as set forth in Factual Findings 3 through 10.

4. Cause exists to deny Respondent's application for registration as a pharmacy technician, pursuant to Business and Professions Code sections 480, subdivision (a)(3)(a), and 490, on the grounds that Respondent has committed acts which, if done by a licentiate would be grounds for suspension or revocation of a license, as set forth in Factual Findings 3 through 10.

5. Pursuant to California Code of Regulations, title 16, section 1769:

> (a) When considering the denial of a facility or personal license under Section 480 of the Business and Professions Code, the board, in evaluating the rehabilitation of the applicant and his present eligibility for licensing or registration, will consider the following criteria:
>
> (1) The nature and severity of the act(s) or offense(s) under consideration as grounds for denial.
>
> (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under Section 480 of the Business and Professions Code.
>
> (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
>
> (4) Whether the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.
>
> (5) Evidence, if any, of rehabilitation submitted by the applicant.

6(a). Respondent committed five crimes in five years. Virtually all of his crimes demonstrate a lack of respect for human welfare and they all demonstrate a propensity to flout the law. Two involve the misuse of alcohol or drugs. Except for his driving without a valid driver's license, all of Respondent's crimes cause serious concern regarding his ability to function when placed in a position of trust such as that of a pharmacy technician. Although his oldest conviction is over seven years old and was expunged, his two most recent convictions are only three years old. Moreover, Respondent remains on criminal probation for his most recent DUI. Since people have a strong incentive to obey the law while under the supervision of the criminal justice system, little weight is generally placed on the fact that an applicant has engaged in good behavior while on probation or parole. (See, *In re Gossage* (2000) 23 Cal.4th 1080.) In this case, Respondent's probation is not scheduled to terminate until 2014. Consequently, there has been no passage of time to assess Respondent's rehabilitation while released from the command of the criminal justice system

6(b). At the administrative hearing, Respondent refused to accept responsibility for his serious crimes, instead blaming the police for false reports. He also failed to provide any evidence that he had made rehabilitative efforts to address his problems with alcohol or drugs in order to avoid recurrence of any alcohol or drug related offenses.

6(c). Respondent's failure to disclose his criminal past in the application process demonstrates dishonesty and a lack of integrity. Furthermore, at the administrative hearing, his refusal to accept responsibility for his lack of candor with the Board (stating that it was a "simple mistake") demonstrates his continued lack of integrity and prevents a finding of rehabilitation.

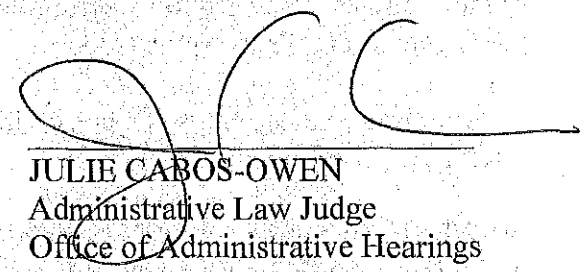
6(d). Given the foregoing, denial of Respondent's application is warranted in order to protect the public health, safety and welfare.

ORDER

WHEREFORE, THE FOLLOWING ORDERS are hereby made:

The application of Darin Louis Freeman, Jr., for registration as a pharmacy technician is hereby denied.

DATED: February 1, 2013



JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings

KAMALA D. HARRIS
Attorney General of California
KAREN B. CHAPPELLE
Supervising Deputy Attorney General
RANDY M. MAILMAN
Deputy Attorney General
State Bar No. 246134
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2442
Facsimile: (213) 897-2804
Attorneys for Complainant

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

In the Matter of the Statement of Issues Against: **DARIN LOUIS FREEMAN JR.** 1150 N. Willow Avenue, Apt F1 Rialto, CA 92376 Pharmacy Technician License Applicant Respondent.	Case No. 4165 **STATEMENT OF ISSUES**

Complainant alleges:

PARTIES

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

2. On or about December 10, 2009, the Board received an application for a Pharmacy Technician License from Darin Louis Freeman Jr. ("Respondent"). On or about October 6, 2009, Darin Louis Freeman Jr. certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on May 26, 2011.

///

///

JURISDICTION

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

STATUTORY PROVISIONS

4. Section 480 states, in pertinent part:

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

"(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4 of the Penal Code.

"(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

"(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.

"(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

. . . .

"(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for the license."

///

///

5. Section 490 states, in pertinent part:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

"(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4 of the Penal Code. . . ."

6. Section 4300, subdivision (c), states, in pertinent part, that "[t]he board may refuse a license to any applicant guilty of unprofessional conduct. . . ."

7. Section 4301 states, in pertinent part:

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

. . . .

"(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

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

. . . .

"(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee . . . The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled 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. . . ."

REGULATORY PROVISION

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

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

FIRST CAUSE FOR DENIAL OF APPLICATION

(Convictions of Substantially Related Crimes)

9. Respondent's application is subject to denial under sections 480, subdivisions (a)(1), in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was convicted of crimes substantially related to the qualifications, functions or duties of a registered pharmacy technician, as follows:

a. On or about May 11, 2010, in the criminal matter entitled *The People of the State of California v. Darin Louis Freeman, Jr.* (Super. Ct. San Bernardino County, 2010, No. 938657DF), Respondent was convicted of driving without a valid driver's license, a violation of California Vehicle Code section 12500, subdivision (a), a misdemeanor. The Court placed Respondent on probation for twelve months. The circumstances underlying the conviction are that on or about February 8, 2010, Respondent was stopped for driving a vehicle without license plates, and did not have a valid driver's license.

///

b. On or about March 24, 2010, in the criminal matter entitled *The People of the State of California v. Darin L. Freeman* (Super. Ct. Los Angeles County, 2009, No. 9CP11669), Respondent was convicted of driving under the influence of alcohol and/or drugs, a violation of California Vehicle Code section 23152, subdivision (a), a misdemeanor. Respondent further admitted to having sustained two prior convictions for driving under the influence. The Court sentenced Respondent to serve one-hundred thirty-three days in jail, placed him on probation for forty-eight months, ordered him to complete an eighteen-month Multiple Offender Treatment Program, ordered him to complete the Hospital and Morgue Program, and ordered him to complete the Mothers Against Drunk Driving Victim Impact Program. The circumstances underlying the conviction are that on or about August 5, 2009, Respondent drove while under the influence of alcohol and/or drugs.

c. On or about August 27, 2008, in the criminal matter entitled *The People of the State of California v. Darin L. Freeman* (Super. Ct. Los Angeles County, 2008, No. 8MP10644), Respondent was convicted of driving under the influence of alcohol and/or drugs, a violation of California Vehicle Code section 23152, subdivision (a), a misdemeanor. The Court sentenced Respondent to serve twenty days in jail, placed him on probation for thirty-six months, and ordered him to complete a nine-month First Offender Treatment Program. The circumstances underlying the conviction are that on or about August 25, 2008, Respondent drove while under the influence of alcohol and/or drugs.

d. On or about June 13, 2006, in the criminal matter entitled *The People of the State of California v. Darin Louis Freeman, Jr.* (Super. Ct. Orange County, 2006, No. 06WF1329), Respondent was convicted of assault/battery, a violation of California Penal Code section 240/242, a misdemeanor. The Court sentenced Respondent to serve forty-eight days in jail, placed him on probation for thirty-six months, and issued him a firearm restriction. The circumstances underlying the conviction are that on or about May 13, 2006, Respondent was involved in a street fight with six others, four males B.D., J.S., C.C.M. and C.S.M. and two females R.H. and L.C., all ganging up on another male, A.P.

e. On or about August 23, 2005, in the criminal matter entitled *The People of the State*

of California v. Darin L. Freeman (Super. Ct. Los Angeles County, 2005, No. FLC03519) Respondent was convicted of violating California Penal Code section 32, accessory to a felony, a misdemeanor. The Court placed Respondent on probation for thirty-six months and ordered him to complete twenty days Cal Trans duty. On or about December 9, 2008, the Court dismissed the conviction pursuant to Penal Code section 1203.4. The circumstances underlying the conviction are that on or about July 7, 2005, Respondent committed a "purse snatch" from an elderly female victim by dragging her to the ground, thereby causing swelling to her left hand and abrasions on both arms.

SECOND CAUSE FOR DENIAL OF APPLICATION

(Dishonesty in Application Documents)

10. Respondent's application is subject to denial under section 480, subdivision (c), in that on or about October 6, 2009, Respondent knowingly made a false statement of fact required to be revealed in his application for licensure by certifying under penalty of perjury to the accuracy of all statements in the application and answering "No" to question No. 6, when in fact, he had sustained five prior convictions, as set forth in full above in paragraph 9, subparagraphs (a) through (e), inclusive, as though set forth fully. Application, question 6, states:

> Have you ever been convicted of or pled no contest to a violation of any law of a foreign country, the United States or any state laws or local ordinances? You must include all misdemeanor and felony convictions, regardless of the age of the conviction, including those which have been set aside under Penal Code section 1203.4. Traffic violations of $500 or less need not be reported. **If "yes," attach an explanation including the type of violation, the date, circumstances, location and the complete penalty received.** In addition to this written explanation, please provide the Board of Pharmacy with **certified copies of all pertinent court documents or arrest reports relating to this conviction.**

THIRD CAUSE FOR DENIAL OF APPLICATION

(Acts Involving Dishonesty, Fraud, or Deceit)

11. Respondent's application is subject to denial under section 480, (a)(2), in that Respondent committed acts involving dishonesty, fraud, or deceit with the intent to substantially benefit himself and / or substantially injure another. Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 9 and 10, inclusive, as though set forth fully.

FOURTH CAUSE FOR DENIAL OF APPLICATION

(Conduct Warranting License Discipline)

12. Respondent's application is subject to denial under section 480, subdivisions (a)(3)(A)(B), in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent committed substantially related acts which if done by a licensee would be grounds for discipline. Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 9 and 10, inclusive, as though set forth fully. Respondent violated sections, as follows:

a. Sections 490, 4300 and 4301, subdivision (l), on the grounds of unprofessional conduct, in that Respondent sustained criminal convictions.

b. Sections 4300 and 4301, subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit , or corruption.

c. Sections 4300 and 4301, subdivision (g), on the grounds of unprofessional conduct, in that Respondent knowingly signed his application for licensure falsely represented his criminal conviction history.

d. Section 4301, subdivision (h), on the grounds of unprofessional conduct in that Respondent used alcoholic beverages to the extent or in a manner as to be dangerous or injurious to himself and to the public.

e. Section 4301, subdivision (k), on the grounds of unprofessional conduct in that Respondent was convicted of more than one misdemeanor involving the use, consumption, or self-administration of an alcoholic beverage.

///

PRAYER

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

1. Denying Darin Louis Freeman Jr.'s Pharmacy Technician License Application; and
2. Taking such other and further action as deemed necessary and proper.

DATED: 5/24/12

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

LA2011601407
51088922.doc