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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:

Case No. 4468

13 **WHITNEY MITCHELL MCCORMICK**
14 **245 Long Street # A**
15 **Eureka, CA 95501**

DEFAULT DECISION AND ORDER

Pharmacist License No. RPH 66676

[Gov. Code, §11520]

16 Respondent.

17
18 **FINDINGS OF FACT**

19 1. On or about March 26, 2013, Complainant Virginia K. Herold, in her official capacity
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
21 Accusation No. 4468 against Whitney Mitchell McCormick (Respondent) before the Board of
22 Pharmacy. (A copy of the Accusation is attached as exhibit A.)

23 2. On or about December 2, 2011, the Board of Pharmacy (Board) issued Pharmacist
24 License No. RPH 66676 to Respondent. The Pharmacist License was in full force and effect at
25 all times relevant to the charges brought in Accusation No. 4468. The license expired February
26 28, 2013, and has not been renewed, so is in delinquent status. Pursuant to Business and
27 Professions Code section 4300.1, this lapse in licensure does not deprive the Board of its
28 authority and jurisdiction to institute or continue this disciplinary proceeding.

1 3. On or about April 2, 2013, Respondent was served by Certified and First Class Mail
2 with copies of: Accusation No. 4468; a Statement to Respondent, a Notice of Defense; a Request
3 for Discovery; and Discovery Statutes (Gov.Code, §§ 11507.5, 11507.6, 11507.7) at Respondent's
4 address of record, which was and is: 245 Long Street # A, Eureka, CA 95501.

5 4. Pursuant to Business and Professions Code section 136 and/or 4100, and/or California
6 Code of Regulations, title 16, section 1704, Respondent's address of record, and any changes
7 thereto, are required to be reported and maintained with the Board.

8 5. Service of the Accusation was effective as a matter of law under Government Code
9 section 11505, subdivision (c) and/or Business & Professions Code section 124

10 6. On or about May 8, 2013 the aforementioned documents were returned by the U.S.
11 Postal Service marked "Unable to Forward" with a "Notify Sender of New Address" label listing
12 a new address for Respondent of 441 Indianola Cutoff, Eureka, CA 95503-9406.

13 7. On or about May 9, 2013, Respondent was served by Certified and First Class Mail
14 with copies of: Accusation No. 4468; a Statement to Respondent, a Notice of Defense; a Request
15 for Discovery; and Discovery Statutes (Gov.Code, §§ 11507.5, 11507.6, 11507.7) at Respondent's
16 newly-discovered address of 441 Indianola Cutoff, Eureka, CA 95503-9406.

17 8. Government Code section 11506 states, in pertinent part:

18 (c) The respondent shall be entitled to a hearing on the merits if the respondent
19 files a notice of defense, and the notice shall be deemed a specific denial of all parts
20 of the accusation not expressly admitted. Failure to file a notice of defense shall
21 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
22 may nevertheless grant a hearing.

23 9. Respondent failed to file a Notice of Defense within 15 days after service upon her of
24 the Accusation at either of the addresses listed above, and therefore waived her right to a hearing
25 on the merits of Accusation No. 4468.

26 10. California Government Code section 11520 states, in pertinent part:

27 (a) If the respondent either fails to file a notice of defense or to appear at the
28 hearing, the agency may take action based upon the respondent's express admissions
or upon other evidence and affidavits may be used as evidence without any notice to
respondent.

11. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Board's offices regarding the allegations contained in Accusation No. 4468, finds that the charges and allegations in Accusation No. 4468, are separately and severally, found to be true and correct by clear and convincing evidence.

12. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement are \$7,121.00 as of July 3, 2013.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Whitney Mitchell McCormick has subjected her Pharmacist License No. RPH 66676 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacist License based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Evidence Packet in this case:

a. Respondent's License is subject to revocation pursuant to Business and Professions Code section 4301(f), for acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, in that Respondent: (i) Between in or about September 2011 and on or about January 8, 2012, stole/diverted from the CVS pharmacy where she worked, for her own use, at least one hundred sixty (160) **oxycodone** tablets and at least twenty (20) **hydromorphone** tablets; (ii) Between on or about January 20, 2012 and on or about June 18, 2012, was a participant in the Pharmacists Recovery Program (PRP), the Board's diversion program, during which time she had a positive random drug test result for **morphine** on February 14, 2012, a "dilute" random drug test result on May 11, 2012, missed calls for testing on June 15, 16, and 17, 2012, and missed random drug tests on February 25, March 16, May 19, 25, 26, 28, 29, and June 7, 9, and 16, 2012, all of which led to Respondent being terminated from the program with a classification as a Public Risk.

b. Respondent's License is subject to revocation pursuant to Business and Professions Code section(s) 4301(h), (j) and/or (o), and/or Health and Safety Code section 11170, for self-administration of a controlled substance, in that Respondent, as described above, on one or more occasions administered a controlled substance to herself.

c. Respondent's License is subject to revocation pursuant to Business and Professions Code section(s) 4301(j), (o) and/or 4059, and/or Health and Safety Code section 11170, in that Respondent, as described above, furnished to herself or another, conspired to furnish, and/or assisted in or abetted furnishing of, a controlled substance.

d. Respondent's License is subject to revocation pursuant to Business and Professions Code section(s) 4301(j), (o) and/or 4060, and/or Health and Safety Code section 11350, in that Respondent, as described above, possessed, conspired to possess, and/or assisted in or abetted possession of, a controlled substance, without a prescription.

e. Respondent's License is subject to revocation pursuant to Business and Professions Code section(s) 4301(j), (o) and/or 4327, in that Respondent, as described above, sold, dispensed, or compounded drug(s) while under the influence of a dangerous drug, and/or directly or indirectly attempted, conspired, and/or assisted in or abetted such conduct.

f. Respondent's License is subject to revocation pursuant to Business and Professions Code section(s) 4301(j) and/or (o), and/or Health and Safety Code section 11153, in that Respondent, as described above, dispensed, conspired to dispense, and/or assisted in or abetted dispensing of, illegitimate controlled substance prescriptions.

g. Respondent's License is subject to revocation pursuant to Business and Professions Code section(s) 4301(j) and/or (o), and/or Health and Safety Code section 11173(a), in that Respondent, as described above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

h. Respondent's License is subject to revocation pursuant to Business and Professions Code section(s) 4301(l) and/or 490, by reference to California Code of Regulations, title 16, section 1770, for conviction of substantially related crime(s), in that based on the conduct above, on or about April 17, 2012, in *People v. Whitney Mitchell McCormick*, Case No. CR1200621 in

1 Humboldt County Superior Court, Respondent was convicted of violating Health and Safety Code
2 section 11153 (Dispensing Illegitimate Controlled Substance Prescription), a felony.

3 i. Respondent's License is subject to revocation pursuant to Business and Professions
4 Code section 4301, in that Respondent, as described above, engaged in unprofessional conduct.

5
6 ORDER

7 IT IS SO ORDERED that Pharmacist License No. RPH 66676, heretofore issued to
8 Respondent Whitney Mitchell McCormick, is revoked.

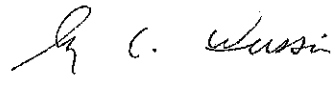
9 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
10 written motion requesting that the Decision be vacated and stating the grounds relied on within
11 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
12 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

13 This Decision shall become effective on October 9, 2013.

14 It is so ORDERED ON September 9, 2013.

15 BOARD OF PHARMACY
16 DEPARTMENT OF CONSUMER AFFAIRS
17 STATE OF CALIFORNIA

18
19 By


20 STANLEY C. WEISSER
21 Board President

22 40727444.DOC
23 DOJ Matter ID:SF2012403070

24 Attachment:
25 Exhibit A: Accusation
26
27
28

Exhibit A

Accusation

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2 FRANK H. PACOE
Supervising Deputy Attorney General
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Deputy Attorney General
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Attorneys for Complainant

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9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 4468

13 **WHITNEY MITCHELL MCCORMICK**
14 **245 Long Street # A**
15 **Eureka, CA 95501**

ACCUSATION

16 **Pharmacist License No. RPH 66676**

17 **Respondent.**

18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about December 2, 2011, the Board of Pharmacy issued Pharmacist License
23 Number RPH 66676 to Whitney Mitchell McCormick (Respondent). The Pharmacist License
24 was in full force and effect at all times relevant to the charges brought herein and will expire on
25 February 28, 2013, unless renewed.

26 **JURISDICTION**

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

1 4. Section 4011 of the Code provides that the Board shall administer and enforce both
2 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
3 Act [Health & Safety Code, § 11000 et seq.].

4 5. Section 4300(a) of the Code provides that every license issued by the Board may be
5 suspended or revoked.

6 6. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or
7 suspension of a Board-issued license, the placement of a license on a retired status, or the
8 voluntary surrender of a license by a licensee, shall not deprive the Board of jurisdiction to
9 commence or proceed with any investigation of, or action or disciplinary proceeding against, the
10 licensee or to render a decision suspending or revoking the license.

11 12 STATUTORY AND REGULATORY PROVISIONS

13 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action
14 against any holder of a license who is guilty of "unprofessional conduct," defined to include, but
15 not be limited to, any of the following:

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

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

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

26 (l) The conviction of a crime substantially related to the qualifications, functions, and duties
27 of a licensee under this chapter.

28 ///

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

5 8. Section 490 of the Code provides, in pertinent part, that the Board may suspend or
6 revoke a license when it finds that the licensee has been convicted of a crime substantially related
7 to the qualifications, functions or duties of the license.

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

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

15 10. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous
16 drug or dangerous device except upon the prescription of an authorized prescriber.

17 11. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
18 controlled substance, except that furnished upon a valid prescription/drug order.

19 12. Section 4327 of the Code, in pertinent part, makes it unlawful, while on duty, to sell,
20 dispense or compound any drug while under the influence of any dangerous drug.

21 13. Health and Safety Code section 11153, subdivision (a), requires that a prescription for
22 a controlled substance be issued for a legitimate medical purpose by an individual practitioner
23 acting in the usual course of his or her professional practice, and specifies that the responsibility
24 for proper prescribing and dispensing of controlled substances is on the prescribing practitioner,
25 but that a corresponding responsibility rests with the pharmacist who fills the prescription.

26 14. Health and Safety Code section 11170 provides that no person shall prescribe,
27 administer, or furnish a controlled substance for himself or herself.

28 ///

1 15. Health and Safety Code section 11173, subdivision (a), provides that no person shall
2 obtain or attempt to obtain controlled substances, or procure or attempt to procure the
3 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,
4 or subterfuge; or (2) by the concealment of a material fact.

5 16. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
6 any controlled substance listed in Schedule II (Health and Safety Code section 11055),
7 subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

8 17. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
9 administrative law judge to direct a licensee found to have committed a violation of the licensing
10 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

11 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

12 18. Section 4021 of the Code states:

13 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
14 11053) of Division 10 of the Health and Safety Code.”

15 19. Section 4022 of the Code states, in pertinent part:

16 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,
17 except veterinary drugs that are labeled as such, and includes the following:

18 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without
19 prescription,’ ‘Rx only,’ or words of similar import.

20 ...

21 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
22 prescription or furnished pursuant to Section 4006.”

23 20. **OxyContin** and **Roxicodone** are among the brand names for **oxycodone**, a Schedule
24 II controlled substance as designated by Health and Safety Code section 11055(b)(1)(M) and a
25 dangerous drug as designated by Business and Professions Code section 4022. It is an opioid.

26 21. **Dilaudid** is a brand name for **hydromorphone**, a Schedule II controlled substance as
27 designated by Health and Safety Code section 11055(b)(1)(J) and a dangerous drug as designated
28 by Business and Professions Code section 4022. It is an opioid.

FACTUAL BACKGROUND

22. From an unknown start date in or prior to September 2011 until on or about January 8, 2012, Respondent worked first as an intern pharmacist and then as a staff pharmacist for a CVS Pharmacy (PHY 49689) in Arcata, CA. As such, Respondent had access to the pharmacy stock of controlled substances and dangerous drugs.

23. During her employment, Respondent took advantage of this access to steal/divert controlled substances and dangerous drugs, including **oxycodone** and/or **hydromorphone**, for her own use. The exact number of instances of diversion/theft by Respondent, and the full quantity of controlled substances or dangerous drugs diverted/stolen by Respondent, are not known, but in the course of investigations conducted by the pharmacy, by police, and by the Board, the following were among the observations, admissions, and revelations reported:

a. On or about January 3, 2012, surveillance video captured Respondent removing three (3) unidentified bottles from the Schedule II controlled substances safe in the pharmacy, pouring pills from (at least) one of the bottles into her hand, and placing the pills in her pocket.

b. A subsequent inventory count discovered a 40-tablet shortage of **oxycodone**.

c. On or about January 8, 2012, Respondent admitted during an interview by CVS supervisors and/or investigators that during the prior two months of employment at the pharmacy she had stolen/diverted, for her own use, 160 **oxycodone** tablets and 20 **hydromorphone** tablets. Respondent further admitted to having suffered from pain since an automobile accident at the age of 16, and to having taken the drugs for self-use. Respondent signed a Promissory Note agreeing to make restitution to CVS, and gave a written Statement to CVS in which she admitted to an "on and off" addiction to pain drugs, and that she had taken approximately 150-170 **oxycodone** tablets and 20 **hydromorphone** tablets for self use since September 2011.

c. On or about January 12, 2012, Respondent confirmed these admissions during an interview with police. She said that she began diverting "a few" **oxycodone** in September 2011 for her personal use, but that as time went on the pain of working longer shifts when she was on her feet for long stretches prompted her to take more pills to self-medicate.

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1 d. On or about April 18, 2012, Respondent confirmed these admissions during an
2 interview with Board Inspector(s), and further admitted that prior to stealing/diverting drugs from
3 the CVS pharmacy stock, she had been buying **oxycodone**, without prescription, from a friend.

4 24. On or about June 18, 2012, the Board received a letter from Virginia Matthews, RN,
5 the Diversion Project Manager for Maximus, the administrator of the Board's diversion program,
6 the Pharmacists Recovery Program (PRP), stating that as of June 18, 2012, Respondent had been
7 terminated from the diversion program with a classification as a Public Risk. The letter detailed
8 facts regarding Respondent's treatment history, including an intake date of January 20, 2012, a
9 positive random drug test result for **morphine** on February 14, 2012, a "dilute" random drug test
10 result on May 11, 2012, missed calls for testing on June 15, 16, and 17, 2012, and missed random
11 drug tests on February 25, March 16, May 19, 25, 26, 28, 29, and June 7, 9, 16, 2012.

12
13 FIRST CAUSE FOR DISCIPLINE

14 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

15 25. Respondent is subject to discipline under section 4301(f) of the Code in that
16 Respondent, as described in paragraphs 22 to 24 above, committed numerous acts involving
17 moral turpitude, dishonesty, fraud, deceit, or corruption.

18
19 SECOND CAUSE FOR DISCIPLINE

20 (Self-Administration of Controlled Substance and/or Alcohol)

21 26. Respondent is subject to discipline under section 4301(h) of the Code, and/or 4301(j)
22 and/or (o) of the Code and Health and Safety Code section 11170, in that Respondent, as
23 described in paragraphs 22 to 24 above, administered a controlled substance to herself.

24
25 THIRD CAUSE FOR DISCIPLINE

26 (Furnishing of Controlled Substance)

27 27. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
28 4059 of the Code, and/or Health and Safety Code section 11170 in that Respondent, as described

1 in paragraphs 22 to 24 above, furnished to herself or another without a valid prescription, and/or
2 conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.

3
4 FOURTH CAUSE FOR DISCIPLINE

5 (Possession of Controlled Substance)

6 28. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
7 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described
8 in paragraphs 22 to 24 above, possessed, conspired to possess, and/or assisted in or abetted
9 possession of, a controlled substance, without a prescription.

10
11 FIFTH CAUSE FOR DISCIPLINE

12 (Selling, Dispensing, or Compounding While Under the Influence)

13 29. Respondent is subject to disciplinary action under section 4301(j) and/or (o) and/or
14 section 4327 of the Code, in that Respondent, as described in paragraphs 22 to 24 above, sold,
15 dispensed or compounded drug(s) while under the influence of a dangerous drug, and/or directly
16 or indirectly attempted, conspired, and/or assisted in or abetted such conduct.

17
18 SIXTH CAUSE FOR DISCIPLINE

19 (Dispensing Illegitimate Controlled Substance Prescription)

20 30. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
21 and/or Health and Safety Code section 11153, in that Respondent, as described in paragraphs 22
22 to 24 above, dispensed, conspired to dispense, and/or assisted in or abetted the dispensing of, an
23 illegitimate controlled substance prescription.

24
25 SEVENTH CAUSE FOR DISCIPLINE

26 (Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

27 31. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
28 and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs

22 to 24 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

EIGHTH CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime(s))

32. Respondent is subject to discipline under section 4301(I) and/or section 490 of the Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of a substantially related crime, in that on or about April 17, 2012, in the criminal case *People v. Whitney Mitchell McCormick*, Case No. CR1200621 in Humboldt County Superior Court, Respondent was convicted of violating Health and Safety Code section 11153, subdivision (a)(1) (Dispensing Illegitimate Controlled Substance Prescription), a felony, as follows:

a. On or about February 14, 2012, based on the conduct described in paragraphs 22 and 23, Respondent was charged in Case No. CR1200621 with violating (1) Health and Safety Code section 11158, subdivision (a) (Dispensing Controlled Substance Without Prescription), a felony, (2) Health and Safety Code Section 11350, subdivision (a) (Possession of Controlled Substance), a felony, and (3) Penal Code section 488 (Petty Theft), a misdemeanor.

b. On or about April 17, 2012, Respondent pleaded guilty to a substituted count of violating Health and Safety Code section 11153, subdivision (a)(1) (Dispensing Illegitimate Controlled Substance Prescription), a felony.

c. On or about May 22, 2012, the imposition of sentence was suspended in favor of a period of two (2) years formal probation, on specified terms and conditions.

NINTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

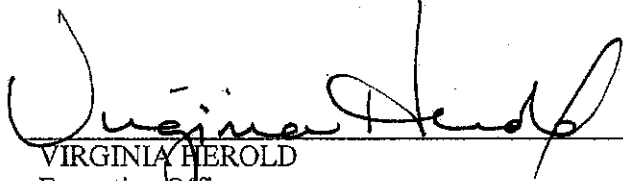
33. Respondent is subject to discipline under section 4301 of the Code in that Respondent, as described in paragraphs 22 to 32 above, engaged in unprofessional conduct.

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 66676, issued to Whitney Mitchell McCormick (Respondent);
2. Ordering Respondent to pay the Board 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 is deemed necessary and proper.

DATED: 3/26/13


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

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