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

In the Matter of the Accusation Against:
YEN K. BUI
9689 Carnation Avenue
Fountain Valley, CA 92708
Pharmacy Technician License No. 55428

Respondent.

Case No. 4813

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about November 4, 2013, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4813 against Yen K. Bui (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about March 13, 2014, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed First Amended Accusation No. 4813 against Yen K. Bui (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit B.)

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1 8 Government Code section 11506 states, in pertinent part:

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

7 9. Respondent failed to file a Notice of Defense within 15 days after service upon
8 him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation
9 No. 4813.

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

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

15 11. Pursuant to its authority under Government Code section 11520, the Board finds
16 Respondent is in default. The Board will take action without further hearing and, based on the
17 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
18 taking official notice of all the investigatory reports, exhibits and statements contained therein on
19 file at the Board's offices regarding the allegations contained in Accusation No. 4813, finds that
20 the charges and allegations in Accusation No. 4813, are separately and severally, found to be true
21 and correct by clear and convincing evidence.

22 12. Taking official notice of its own internal records, pursuant to Business and
23 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
24 and Enforcement is \$937.50 as of April 29, 2014.

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ORDER

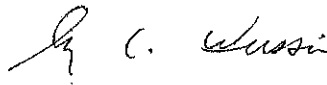
IT IS SO ORDERED that Pharmacy Technician License No. 55428, heretofore issued to Respondent Yen K. Bui, is revoked.

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

This Decision shall become effective on July 9, 2014.

It is so ORDERED June 9, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By 
STAN C. WEISSER
Board President

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DOJ Matter ID:SD2013705571

Attachment:
Exhibit A: A

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
4 State Bar No. 101336
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-3037
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 4813

12 **YEN K. BUI**
13 **9689 Carnation Avenue**
14 **Fountain Valley, CA 92708**

A C C U S A T I O N

15 **Pharmacy Technician License No. 55428**

16 Respondent.

17
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 March 8, 2004, the Board of Pharmacy issued Pharmacy Technician
23 License Number 55428 to Yen K. Bui (Respondent). The Pharmacy Technician License was
24 in full force and effect at all times relevant to the charges brought herein and expired on
25 September 30, 2013.

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1 **JURISDICTION**

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

5 4. Section 4300, subdivision (a) of the Code states "Every license issued may be
6 suspended or revoked."

7 5. Section 4300.1 of the Code states:

8 The expiration, cancellation, forfeiture, or suspension of a board-issued
9 license by operation of law or by order or decision of the board or a court of law, the
10 placement of a license on a retired status, or the voluntary surrender of a license by a
11 licensee shall not deprive the board of jurisdiction to commence or proceed with any
12 investigation of, or action or disciplinary proceeding against, the licensee or to render
13 a decision suspending or revoking the license.

11 **STATUTORY PROVISIONS**

12 6. Section 482 of the Code states:

13 Each board under the provisions of this code shall develop criteria to
14 evaluate the rehabilitation of a person when:

15 (a) Considering the denial of a license by the board under Section 480; or

16 (b) Considering suspension or revocation of a license under Section 490.

17 Each board shall take into account all competent evidence of
18 rehabilitation furnished by the applicant or licensee.

19 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or
20 revoke a license on the ground that the licensee has been convicted of a crime substantially
21 related to the qualifications, functions, or duties of the business or profession for which the
22 license was issued.

23 8. Section 493 of the Code states:

24 Notwithstanding any other provision of law, in a proceeding conducted
25 by a board within the department pursuant to law to deny an application for a license
26 or to suspend or revoke a license or otherwise take disciplinary action against a
27 person who holds a license, upon the ground that the applicant or the licensee has
28 been convicted of a crime substantially related to the qualifications, functions, and
duties of the licensee in question, the record of conviction of the crime shall be
conclusive evidence of the fact that the conviction occurred, but only of that fact, and

///

1 the board may inquire into the circumstances surrounding the commission of the
2 crime in order to fix the degree of discipline or to determine if the conviction is
substantially related to the qualifications, functions, and duties of the licensee in
question.

3 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,'
4 and 'registration.'

5 9. Section 4301 of the Code states:

6 The board shall take action against any holder of a license who is guilty
7 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:

8

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

11

12 (l) The conviction of a crime substantially related to the qualifications,
13 functions, and duties of a licensee under this chapter. The record of conviction of a
14 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
15 States Code regulating controlled substances or of a violation of the statutes of this
16 state regulating controlled substances or dangerous drugs shall be conclusive
17 evidence of unprofessional conduct. In all other cases, the record of conviction shall
18 be conclusive evidence only of the fact that the conviction occurred. The board may
19 inquire into the circumstances surrounding the commission of the crime, in order to
20 fix the degree of discipline or, in the case of a conviction not involving controlled
21 substances or dangerous drugs, to determine if the conviction is of an offense
22 substantially related to the qualifications, functions, and duties of a licensee under this
23 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
24 contendere is deemed to be a conviction within the meaning of this provision. The
25 board may take action 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
Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
dismissing the accusation, information, or indictment.

26

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

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1 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
2 licensee or registrant to perform the functions authorized by his license or registration in a manner
3 consistent with the public health, safety, or welfare."

4 **COST RECOVERY**

5 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
6 administrative law judge to direct a licentiate found to have committed a violation or violations of
7 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
8 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
9 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
10 included in a stipulated settlement.

11 **DRUGS**

12 15. Methylenedioxy amphetamine, commonly known as Ecstasy (MDMA), is a
13 Schedule I controlled substance as designated by Health and Safety Code section 11554(d)(6) and
14 is a dangerous drug pursuant to Business and Professions Code section 4022.

15 **FIRST FOR DISCIPLINE**

16 **(Unprofessional Conduct - Illegal Possession of Controlled Substances -** 17 **Ecstasy - on January 31, 2013)**

18 16. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision
19 (l) of the Code in that she was convicted of a crime that is substantially related to the
20 qualifications, functions and duties of a pharmacy technician. The circumstances are as follows:

21 17. On or about May 30, 2013, in a criminal proceeding entitled *The People of the State*
22 *of California v. Brandon Abille Fulinara*, in the Superior Court of California, County of Orange,
23 North Justice Center, Case No. 13NF0710, Respondent was convicted on his plea of guilty of
24 violating Health and Safety Code section 11377(a) (possession of controlled substances – ecstasy
25 (MDMA)), a felony. Pursuant to a plea bargain, counts for violating Health and Safety Code
26 sections 11378 (possession for sale of ecstasy (MDMA)), and 11379(a) (possession for sale of
27 ecstasy (MDMA)), felonies, were dismissed.

28

1 18. As a result of the conviction, the Court placed Respondent on three years formal
2 probation, ordered her to serve 365 days in the Orange County Jail, and stayed the jail sentence
3 pending successful completion of probation. The Court also ordered Respondent to obey all laws,
4 pay various fines and fees, provide a DNA sample and prints for the State DNA Database,
5 register pursuant to Health and Safety Code section 11590, complete 45 days Cal Trans service as
6 directed by the Probation Department, submit person and property to search and seizure,
7 cooperate with probation or any mandatory supervision officer in any plan for psychological,
8 psychiatric, alcohol and/or drug treatment probation, not own, use or possess any type of
9 dangerous or deadly weapon, disclose terms and conditions of probation when asked by any law
10 enforcement or probation officer, and pay costs of supervision.

11 19. The circumstances that led to the conviction are that on October 11, 2012,
12 Westminster Police Department Officers served a search warrant issued by an Orange County
13 Superior Court judge commanding the search of Respondent's vehicle, a maroon Scion XB, and
14 her place of residence in Stanton, California. At approximately 1051 hours, officers conducted a
15 traffic stop of Respondent's vehicle in the area of Beach and Chapman in Westminster,
16 California. Respondent was the passenger in the vehicle that was being driven by a male.
17 Officers conducted a search of the vehicle and Respondent's person and property pursuant to the
18 warrant and located the controlled substance ecstasy (MDMA) in various forms, including pills,
19 capsules and white powder. Respondent and her companion were arrested and transported to the
20 Westminster Police Department for processing.

21 20. Officers then proceeded to Respondent's residence located on Santa Barbara Avenue
22 in Stanton, California, to conduct a search. Officers used keys obtained from the vehicle to gain
23 entry into the residence, where officers found more contraband including pills packaged in 17
24 separate baggies, consistent with packaging for selling the suspected ecstasy, 33 vials of
25 Ketamine 10 ml. each, more ecstasy pills contained in a clear glass bakeware type pan, and
26 various drug paraphernalia, including a package of 1000 empty clear gel capsules, and \$2,720 in
27 cash.

28 ///

Exhibit B

First Amended Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
4 State Bar No. 101336
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-3037
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 4813

12 **YEN K. BUI**
13 **9689 Carnation Avenue**
14 **Fountain Valley, CA 92708**

FIRST AMENDED ACCUSATION

15 **Pharmacy Technician License No. 55428**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about March 8, 2004, the Board of Pharmacy issued Pharmacy Technician
24 License Number 55428 to Yen K. Bui (Respondent). The Pharmacy Technician License was
25 in full force and effect at all times relevant to the charges brought herein and expired on
26 September 30, 2013.

27 ///

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1 **JURISDICTION**

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

5 4. Section 4300, subdivision (a) of the Code states "Every license issued may be
6 suspended or revoked."

7 5. Section 4300.1 of the Code states:

8 The expiration, cancellation, forfeiture, or suspension of a board-issued
9 license by operation of law or by order or decision of the board or a court of law, the
10 placement of a license on a retired status, or the voluntary surrender of a license by a
11 licensee shall not deprive the board of jurisdiction to commence or proceed with any
12 investigation of, or action or disciplinary proceeding against, the licensee or to render
13 a decision suspending or revoking the license.

11 **STATUTORY PROVISIONS**

12 6. Section 482 of the Code states:

13 Each board under the provisions of this code shall develop criteria to
14 evaluate the rehabilitation of a person when:

15 (a) Considering the denial of a license by the board under Section 480; or

16 (b) Considering suspension or revocation of a license under Section 490.

17 Each board shall take into account all competent evidence of
18 rehabilitation furnished by the applicant or licensee.

19 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or
20 revoke a license on the ground that the licensee has been convicted of a crime substantially
21 related to the qualifications, functions, or duties of the business or profession for which the
22 license was issued.

23 8. Section 493 of the Code states:

24 Notwithstanding any other provision of law, in a proceeding conducted
25 by a board within the department pursuant to law to deny an application for a license
26 or to suspend or revoke a license or otherwise take disciplinary action against a
27 person who holds a license, upon the ground that the applicant or the licensee has
28 been convicted of a crime substantially related to the qualifications, functions, and
duties of the licensee in question, the record of conviction of the crime shall be
conclusive evidence of the fact that the conviction occurred, but only of that fact, and

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1 the board may inquire into the circumstances surrounding the commission of the
2 crime in order to fix the degree of discipline or to determine if the conviction is
substantially related to the qualifications, functions, and duties of the licensee in
question.

3 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,'
4 and 'registration.'

5 9. Section 4301 of the Code states:

6 The board shall take action against any holder of a license who is guilty
7 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:

8

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

11

12 (l) The conviction of a crime substantially related to the qualifications,
13 functions, and duties of a licensee under this chapter. The record of conviction of a
14 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
15 States Code regulating controlled substances or of a violation of the statutes of this
16 state regulating controlled substances or dangerous drugs shall be conclusive
17 evidence of unprofessional conduct. In all other cases, the record of conviction shall
18 be conclusive evidence only of the fact that the conviction occurred. The board may
19 inquire into the circumstances surrounding the commission of the crime, in order to
20 fix the degree of discipline or, in the case of a conviction not involving controlled
21 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. A plea or verdict of guilty or a conviction following a plea of nolo
contendere is deemed to be a conviction within the meaning of this provision. The
board may take action 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
Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
dismissing the accusation, information, or indictment.

22

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

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1 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
2 licensee or registrant to perform the functions authorized by his license or registration in a manner
3 consistent with the public health, safety, or welfare."

4 **COST RECOVERY**

5 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
6 administrative law judge to direct a licentiate found to have committed a violation or violations of
7 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
8 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
9 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
10 included in a stipulated settlement.

11 **DRUGS**

12 15. Ketamine Is a Schedule III controlled substance pursuant to Health and Safety Code
13 section 11056, subdivision (g), and a dangerous drug pursuant to Business and Professions Code section
14 4022.

15 16. Methylenedioxy amphetamine, commonly known as Ecstasy (MDMA), is a
16 Schedule I controlled substance as designated by Health and Safety Code section 11554(d)(6) and
17 is a dangerous drug pursuant to Business and Professions Code section 4022.

18 **FIRST FOR DISCIPLINE**

19 **(May 30, 2013 Criminal Conviction for Sale or Transportation of a 20 Controlled Substance – Ecstasy – on October 11, 2012)**

21 17. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision
22 (l) of the Code in that she was convicted of a crime that is substantially related to the
23 qualifications, functions and duties of a pharmacy technician. The circumstances are as follows:

24 18. On or about May 30, 2013, in a criminal proceeding entitled *The People of the State*
25 *of California v. Yen Kim Bui, aka Yen Thi Kim Bui*, in the Superior Court of California, County of
26 Orange, West Justice Center, Case No. 12WF3025, Respondent was convicted on her plea of
27 guilty of violating Health and Safety Code section 11379(a) (sale or transportation of a controlled
28

1 substance – ecstasy (MDMA)), a felony. Pursuant to a plea bargain, counts for violating Health
2 and Safety Code sections 11378 (possession for sale of ecstasy (MDMA)), and 11379.2
3 (possession for sale of ketamine), felonies, were dismissed.

4 19. As a result of the conviction, the Court placed Respondent on three years formal
5 probation, ordered her to serve 365 days in the Orange County Jail, and stayed the jail sentence
6 pending successful completion of probation. The Court also ordered Respondent to obey all laws,
7 pay various fines and fees, provide a DNA sample and prints for the State DNA Database,
8 register pursuant to Health and Safety Code section 11590, complete 45 days Cal Trans service as
9 directed by the Probation Department, submit person and property to search and seizure,
10 cooperate with probation or any mandatory supervision officer in any plan for psychological,
11 psychiatric, alcohol and/or drug treatment probation, not own, use or possess any type of
12 dangerous or deadly weapon, disclose terms and conditions of probation when asked by any law
13 enforcement or probation officer, and pay costs of supervision.

14 20. The circumstances that led to the conviction are that on October 11, 2012,
15 Westminster Police Department Officers served a search warrant issued by an Orange County
16 Superior Court judge commanding the search of Respondent's vehicle, a maroon Scion XB, and
17 her place of residence in Stanton, California. At approximately 1051 hours, officers conducted a
18 traffic stop of Respondent's vehicle in the area of Beach and Chapman in Westminster,
19 California. Respondent was the passenger in the vehicle that was being driven by a male.
20 Officers conducted a search of the vehicle and Respondent's person and property pursuant to the
21 warrant and located the controlled substance ecstasy (MDMA) in various forms, including pills,
22 capsules and white powder. Respondent and her companion were arrested and transported to the
23 Westminster Police Department for processing.

24 21. Officers then proceeded to Respondent's residence located on Santa Barbara Avenue
25 in Stanton, California, to conduct a search. Officers used keys obtained from the vehicle to gain
26 entry into the residence, where officers found more contraband including pills packaged in 17
27 separate baggies, consistent with packaging for selling the suspected ecstasy, 33 vials of
28 Ketamine 10 ml. each, more ecstasy pills contained in a clear glass bakeware type pan, and

1 various drug paraphernalia, including a package of 1000 empty clear gel capsules, and \$2,720 in
2 cash.

3 22. Officers conducted an interview of Respondent prior to booking and Respondent
4 admitted to officers that she sold drugs in large quantities "at the club."

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Violation of California Statutes Regulating Controlled Substances)**

7 23. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and
8 (o) of the Code for unprofessional conduct in that on or about October 11, 2012, Respondent
9 violated Health and Safety Code section 11379(a) and Business and Professions Code section
10 4060, as detailed at paragraphs 17-22, above, which are incorporated here by reference.

11 **PRAYER**

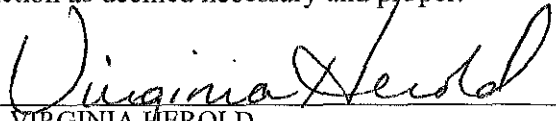
12 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
13 and that following the hearing, the Board of Pharmacy issue a decision:

14 1. Revoking or suspending Pharmacy Technician License Number 55428, issued to
15 Yen K. Bui

16 2. Ordering Yen K. Bui to pay the Board of Pharmacy the reasonable costs of the
17 investigation and enforcement of this case, pursuant to Business and Professions Code section
18 125.3;

19 3. Taking such other and further action as deemed necessary and proper.

20 DATED: 3/13/14


21 VIRGINIA HEROLD
22 Executive Officer
23 Board of Pharmacy
24 Department of Consumer Affairs
25 State of California
26 Complainant

25 SD2013705571
26 70762540.docx