

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

In the Matter of the Accusation Against:

**F D M EXCLUSIVE IMAGE, INC. dba  
COOVER PHARMACY;**  
FARIBORZ MASSOUDI, President  
Pharmacy Permit No. PHY 45471

AND

**JOHN DE SIMONE**  
Pharmacist License No. RPH 37984

Respondents.

Case No. 4851

OAH No. 2014 060132

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER -**

**FDM EXCLUSIVE IMAGE, INC. dba  
COOVER PHARMACY ONLY**

**DECISION AND ORDER**

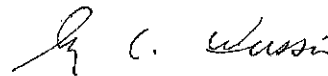
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on June 4, 2015.

It is so ORDERED on May 28, 2015.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By



\_\_\_\_\_  
STAN C. WEISSER, Board President

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA L. SUN  
Supervising Deputy Attorney General  
3 BORA SONG  
Deputy Attorney General  
4 State Bar No. 276475  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2674  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*  
7

8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**  
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11 In the Matter of the Accusation Against:

Case No. 4851

12 **F D M EXCLUSIVE IMAGE, INC. dba**  
**COOVER PHARMACY;**  
13 **FARIBORZ MASSOUDI, President**  
Pharmacy Permit No. PHY 45471  
14

OAH No. 2014060132

**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER -**

15 **AND**

**FDM EXCLUSIVE IMAGE, INC. dba**  
**COOVER PHARMACY ONLY**

16 **JOHN DE SIMONE**  
Pharmacist License No. RPH 37984

17 Respondents.  
18

19  
20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
21 entitled proceedings that the following matters are true:

22 PARTIES

23 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy  
24 (Board). She brought this action solely in her official capacity and is represented in this matter by  
25 Kamala D. Harris, Attorney General of the State of California, by Bora Song, Deputy Attorney  
26 General.

27 2. Fariborz Massoudi is the President and authorized representative of F D M Exclusive  
28 Image, Inc. dba Coover Pharmacy (Respondent), which is represented in this proceeding by

1 attorney Herbert L. Weinberg, whose address is: 1800 Century Park East, 8th Floor, Los Angeles,  
2 CA 90067.

3 3. On or about February 8, 2003, the Board issued Pharmacy Permit No. PHY 45471 to  
4 F D M Exclusive Image, Inc. dba Coover Pharmacy with Fariborz Massoudi as President. The  
5 Pharmacy Permit was in full force and effect at all times relevant to the charges brought in  
6 Accusation No. 4851 and will expire on February 1, 2016, unless renewed.

7 JURISDICTION

8 4. Accusation No. 4851 was filed before the Board, and is currently pending against  
9 Respondent. The Accusation and all other statutorily required documents were properly served  
10 on Respondent on April 9, 2014. Respondent timely filed its Notice of Defense contesting the  
11 Accusation.

12 5. A copy of Accusation No. 4851 is attached as **Exhibit A** and incorporated herein by  
13 reference.

14 ADVISEMENT AND WAIVERS

15 6. Respondent, by its authorized representative, has carefully read, fully discussed with  
16 counsel, and understands the charges and allegations in Accusation No. 4851. Respondent has  
17 also carefully read, fully discussed with counsel, and understands the effects of this Stipulated  
18 Settlement and Disciplinary Order.

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

26 8. Respondent, by its authorized representative, voluntarily, knowingly, and intelligently  
27 waives and gives up each and every right set forth above.

28 ///

1. CULPABILITY

2. 9. Respondent understands and agrees that the charges and allegations in Accusation  
3. No. 4851, if proven at a hearing, constitute cause for imposing discipline upon his Pharmacy  
4. Permit.

5. 10. For the purpose of resolving the Accusation without the expense and uncertainty of  
6. further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual  
7. basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest  
8. those charges.

9. 11. Respondent agrees that his Pharmacy Permit is subject to discipline and he agrees to  
10. be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

11. RESERVATION

12. 12. The admissions made by Respondent herein are only for the purposes of this  
13. proceeding, or any other proceedings in which the Board of Pharmacy or other professional  
14. licensing agency is involved, and shall not be admissible in any other criminal or civil  
15. proceeding.

16. CONTINGENCY

17. 13. This stipulation shall be subject to approval by the Board. Respondent understands  
18. and agrees that counsel for Complainant and the staff of the Board may communicate directly  
19. with the Board regarding this stipulation and settlement, without notice to or participation by  
20. Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he  
21. may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board  
22. considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order,  
23. the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this  
24. paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not  
25. be disqualified from further action by having considered this matter.

26. 14. The parties understand and agree that Portable Document Format (PDF) and facsimile  
27. copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile  
28. signatures thereto, shall have the same force and effect as the originals.



1           **2. Report to the Board**

2           Respondent owner shall report to the board quarterly, on a schedule as directed by the board  
3           or its designee. The report shall be made either in person or in writing, as directed. Among other  
4           requirements, respondent owner shall state in each report under penalty of perjury whether there  
5           has been compliance with all the terms and conditions of probation. Failure to submit timely  
6           reports in a form as directed shall be considered a violation of probation. Any period(s) of  
7           delinquency in submission of reports as directed may be added to the total period of probation.  
8           Moreover, if the final probation report is not made as directed, probation shall be automatically  
9           extended until such time as the final report is made and accepted by the board.

10           **3. Interview with the Board**

11           Upon receipt of reasonable prior notice, respondent owner shall appear in person for  
12           interviews with the board or its designee, at such intervals and locations as are determined by the  
13           board or its designee. Failure to appear for any scheduled interview without prior notification to  
14           board staff, or failure to appear for two (2) or more scheduled interviews with the board or its  
15           designee during the period of probation, shall be considered a violation of probation.

16           **4. Cooperate with Board Staff**

17           Respondent owner shall cooperate with the board's inspection program and with the board's  
18           monitoring and investigation of respondent's compliance with the terms and conditions of his  
19           probation. Failure to cooperate shall be considered a violation of probation.

20           **5. Reimbursement of Board Costs**

21           As a condition precedent to successful completion of probation, respondent owner shall pay  
22           to the board its costs of investigation and prosecution in the amount of \$11,278.13. Respondent  
23           owner shall make said payments according to a payment plan approved by the Board. There shall  
24           be no deviation from this schedule absent prior written approval by the board or its designee.  
25           Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

26           The filing of bankruptcy by respondent owner shall not relieve respondent of his  
27           responsibility to reimburse the board its costs of investigation and prosecution.

28           **6. Probation Monitoring Costs**

1 Respondent owner shall pay any costs associated with probation monitoring as determined  
2 by the board each and every year of probation. Such costs shall be payable to the board on a  
3 schedule as directed by the board or its designee. Failure to pay such costs by the deadline(s) as  
4 directed shall be considered a violation of probation.

5 **7. Status of License**

6 Respondent owner shall, at all times while on probation, maintain current licensure with the  
7 board. If respondent owner submits an application to the board, and the application is approved,  
8 for a change of location, change of permit or change of ownership, the board shall retain  
9 continuing jurisdiction over the license, and the respondent shall remain on probation as  
10 determined by the board. Failure to maintain current licensure shall be considered a violation of  
11 probation.

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

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

17 Following the effective date of this decision, should respondent owner discontinue  
18 business, respondent owner may tender the premises license to the board for surrender. The  
19 board or its designee shall have the discretion whether to grant the request for surrender or take  
20 any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of  
21 the license, respondent will no longer be subject to the terms and conditions of probation.

22 Upon acceptance of the surrender, respondent owner shall relinquish the premises wall and  
23 renewal license to the board within ten (10) days of notification by the board that the surrender is  
24 accepted. Respondent owner shall further submit a completed Discontinuance of Business form  
25 according to board guidelines and shall notify the board of the records inventory transfer.

26 Respondent owner shall also, by the effective date of this decision, arrange for the  
27 continuation of care for ongoing patients of the pharmacy by, at minimum, providing a written  
28 notice to ongoing patients that specifies the anticipated closing date of the pharmacy and that

1 identifies one or more area pharmacies capable of taking up the patients' care, and by cooperating  
2 as may be necessary in the transfer of records or prescriptions for ongoing patients. Within five  
3 days of its provision to the pharmacy's ongoing patients, Respondent owner shall provide a copy  
4 of the written notice to the board. For the purposes of this provision, "ongoing patients" means  
5 those patients for whom the pharmacy has on file a prescription with one or more refills  
6 outstanding, or for whom the pharmacy has filled a prescription within the preceding sixty (60)  
7 days.

8 Respondent owner may not apply for any new licensure from the board for three (3) years  
9 from the effective date of the surrender. Respondent owner shall meet all requirements applicable  
10 to the license sought as of the date the application for that license is submitted to the board.

11 Respondent owner further stipulates that he or she shall reimburse the board for its costs of  
12 investigation and prosecution prior to the acceptance of the surrender.

13 **9. Notice to Employees**

14 Respondent owner shall, upon or before the effective date of this decision, ensure that all  
15 employees involved in permit operations are made aware of all the terms and conditions of  
16 probation, either by posting a notice of the terms and conditions, circulating such notice, or both.  
17 If the notice required by this provision is posted, it shall be posted in a prominent place and shall  
18 remain posted throughout the probation period. Respondent owner shall ensure that any  
19 employees hired or used after the effective date of this decision are made aware of the terms and  
20 conditions of probation by posting a notice, circulating a notice, or both. Additionally,  
21 respondent owner shall submit written notification to the board, within fifteen (15) days of the  
22 effective date of this decision, that this term has been satisfied. Failure to submit such  
23 notification to the board shall be considered a violation of probation.

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

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

28 Respondent shall provide, within thirty (30) days after the effective date of this decision,



1 signed and dated statements from its owners, including any owner or holder of ten percent (10%)  
2 or more of the interest in respondent or respondent's stock, and any officer, stating under penalty  
3 of perjury that said individuals have read and are familiar with state and federal laws and  
4 regulations governing the practice of pharmacy. The failure to timely provide said statements  
5 under penalty of perjury shall be considered a violation of probation.

6 **11. Posted Notice of Probation**

7 Respondent owner shall prominently post a probation notice provided by the board in a  
8 place conspicuous and readable to the public. The probation notice shall remain posted during  
9 the entire period of probation.

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

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

15 **12. Violation of Probation**

16 If a respondent owner has not complied with any term or condition of probation, the board  
17 shall have continuing jurisdiction over respondent license, and probation shall be automatically  
18 extended until all terms and conditions have been satisfied or the board has taken other action as  
19 deemed appropriate to treat the failure to comply as a violation of probation, to terminate  
20 probation, and to impose the penalty that was stayed.

21 If respondent owner violates probation in any respect, the board, after giving respondent  
22 owner notice and an opportunity to be heard, may revoke probation and carry out the disciplinary  
23 order that was stayed. Notice and opportunity to be heard are not required for those provisions  
24 stating that a violation thereof may lead to automatic termination of the stay and/or revocation of  
25 the license. If a petition to revoke probation or an accusation is filed against respondent during  
26 probation, the board shall have continuing jurisdiction and the period of probation shall be  
27 automatically extended until the petition to revoke probation or accusation is heard and decided.

28 ///

1           **13. Completion of Probation**

2           Upon written notice by the board or its designee indicating successful completion of  
3 probation, respondent license will be fully restored.

4           **14. Administrative Penalty**

5           Respondent shall pay an administrative penalty of \$10,000. Respondent shall make  
6 payment of the assessed administrative penalty as follows: in two equal annual installments  
7 beginning with the first payment due on or before the effective date of this decision and order.  
8 Respondent may pay the full remaining unpaid balance at any time. It shall be Respondent's  
9 responsibility to mail or otherwise deliver each payment directly to the Board at the Board's  
10 Sacramento address in a timely manner. Failure to make any payment when due shall be  
11 considered a violation of probation.

12           **15. Separate File of Records**

13           Respondent owner shall maintain and make available for inspection a separate file of all  
14 records pertaining to the acquisition or disposition of all controlled substances. Failure to  
15 maintain such file or make it available for inspection shall be considered a violation of probation.

16           **16. Development of Policies and Procedures**

17           Within 30 days of the effective date of this decision, respondent pharmacy shall develop  
18 and submit to the board or its designee, for prior approval, policies and procedures to be  
19 implemented at the pharmacy for dispensing of controlled substances. These policies and  
20 procedures should include documentation requirements, use of CURES etc. Updates on  
21 implementation of these policies and procedures, including but not limited to training of all  
22 pharmacy staff, must be included in quarterly reports to the board as required by Condition 2  
23 above.

24           **17. Enrollment in PDMP by Pharmacy Staff.**

25           Within 30 days of the effective date of this decision, all licensed pharmacists employed by  
26 or working at respondent pharmacy, must apply for enrollment in the CURES Prescription Drug  
27 Monitoring Program, if not already enrolled.

28           ///

1, ACCEPTANCE

2 I, Fariborz Massoudi, am the President and authorized representative of F D M Exclusive  
3 Image, Inc. dba Coover Pharmacy, and have carefully read the above Stipulated Settlement and  
4 Disciplinary Order and have fully discussed it with my attorney, Herbert L. Weinber. I  
5 understand the stipulation and the effect it will have on Pharmacy Permit No. PHY 34009. I enter  
6 into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently,  
7 and agree to be bound by the Decision and Order of the Board of Pharmacy.

8 DATED: 2/26/2015 

9 F D M EXCLUSIVE IMAGE, INC., dba  
10 COOVER PHARMACY;  
11 BY FARIBORZ MASSOUDI, President  
12 Respondent

13 I have read and fully discussed with Fariborz Massoudi, authorized representative of  
14 Respondent F D M Exclusive Image, Inc. dba Coover Pharmacy; all terms and conditions and  
15 other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its  
16 form and content.

17 DATED: 2/26/2015 

18 HERBERT L. WEINBERG  
19 Attorney for Respondent


20 ENDORSEMENT

21 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
22 submitted for consideration by the Board of Pharmacy.

23 Dated: 2/27/15

24 Respectfully submitted,

25 KAMALA D. HARRIS  
26 Attorney General of California  
27 LINDA L. SUN  
28 Supervising Deputy Attorney General

  
BORA SONG  
Deputy Attorney General  
Attorneys for Complainant

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**Exhibit A**  
**Accusation No. 4851**

1 KAMALA D. HARRIS  
Attorney General of California  
2 MARC D. GREENBAUM  
Supervising Deputy Attorney General  
3 BORA SONG  
Deputy Attorney General  
4 State Bar No. 276475  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2674  
6 Facsimile: (213) 897-2804  
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**STATE OF CALIFORNIA**

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11 In the Matter of the Accusation Against:  
12 **F D M EXCLUSIVE IMAGE, INC. dba**  
**COVER PHARMACY;**  
13 **FARIBORZ MASSOUDI, President**  
891 W. Ninth St.  
14 San Pedro, CA 90731  
15 **Pharmacy Permit No. PHY 45471**  
16 **and**  
17 **JOHN DE SIMONE**  
419 Ave. F  
18 Redondo, CA 90277  
19 **Pharmacist License No. RPH 37984**  
20 Respondents.  
21

Case No. 4851  
**ACCUSATION**

22 Complainant alleges:

23 **PARTIES**

- 24 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
25 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.  
26 2. On or about September 8, 1983, the Board of Pharmacy (Board) issued Pharmacist  
27 License number RPH 37984 to Respondent JOHN ANTHONY DE SIMONE (Respondent De  
28

1 Simone). The Pharmacist License was in full force and effect at all times relevant to the charges  
2 herein and will expire on July 31, 2015, unless renewed.

3 3. On or about February 8, 2003, the Board issued Pharmacy Permit number PHY 45471  
4 to F D M EXCLUSIVE IMAGE, INC. dba COOVER PHARMACY. FARIBORZ MASSOUDI,  
5 a.k.a. David Massoudi, has been the President of F D M EXCLUSIVE IMAGE, INC. dba  
6 COOVER PHARMACY since October 10, 2002. Pharmacy Permit number PHY 45471 was in  
7 full force and effect at all times relevant to the charges brought herein and will expire on February  
8 1, 2014, unless renewed.

9 4. Respondent De Simone was the Pharmacist-in-Charge of F D M EXCLUSIVE  
10 IMAGE INC. dba COOVER PHARMACY (Coover Pharmacy or Respondent Coover ) from  
11 December 4, 2008 to June 1, 2013.

#### 12 JURISDICTION

13 5. This Accusation is brought before the Board, under the authority of the following  
14 laws.

15 6. Business and Professions Code section 118, subdivision (b),<sup>1</sup> provides in pertinent  
16 part that the suspension, expiration, surrender, or cancellation of a license shall not deprive the  
17 Board of jurisdiction to proceed with a disciplinary action during the period within which the  
18 license may be renewed, restored, reissued or reinstated.

19 7. Section 4300, subdivision (a), provides that every license issued by the Board may be  
20 suspended or revoked.

21 8. Section 4300.1 states:

22 The expiration, cancellation, forfeiture, or suspension of a board-issued  
23 license by operation of law or by order or decision of the board or a court of law, the  
24 placement of a license on a retired status, or the voluntary surrender of a license by a  
25 licensee shall not deprive the board of jurisdiction to commence or proceed with any  
26 investigation of, or action or disciplinary proceeding against, the licensee or to render  
27 a decision suspending or revoking the license.

28 <sup>1</sup> All further statutory references are to the Business and Professions Code unless  
otherwise indicated.



1           12. Section 4113, subdivision (c), states, "The pharmacist-in-charge shall be responsible  
2 for a pharmacy's compliance with all state and federal laws and regulations pertaining to the  
3 practice of pharmacy."

4           13. Health and Safety Code section 11153, subdivision (a), states:

5                   (a) A prescription for a controlled substance shall only be issued for a  
6 legitimate medical purpose by an individual practitioner acting in the usual course of  
7 his or her professional practice. The responsibility for the proper prescribing and  
8 dispensing of controlled substances is upon the prescribing practitioner, *but a*  
9 *corresponding responsibility rests with the pharmacist who fills the prescription.*  
10 Except as authorized by this division, the following are not legal prescriptions: (1) an  
11 order purporting to be a prescription which is issued not in the usual course of  
12 professional treatment or in legitimate and authorized research; or (2) an order for an  
13 addict or habitual user of controlled substances, which is issued not in the course of  
14 professional treatment or as part of an authorized narcotic treatment program, for the  
15 purpose of providing the user with controlled substances, sufficient to keep him or her  
16 comfortable by maintaining customary use. (Emphasis added.)

17           14. Health and Safety Code section 11165 provides, in pertinent part:

18                   (a) To assist health care practitioners in their efforts to ensure appropriate  
19 prescribing, ordering, administering, furnishing, and dispensing of controlled  
20 substances, law enforcement and regulatory agencies in their efforts to control the  
21 diversion and resultant abuse of Schedule II, Schedule III, and Schedule IV controlled  
22 substances, and for statistical analysis, education, and research, the Department of  
23 Justice shall, contingent upon the availability of adequate funds in the CURES Fund,  
24 maintain the Controlled Substance Utilization Review and Evaluation System  
25 (CURES) for the electronic monitoring of, and Internet access to information  
26 regarding, the prescribing and dispensing of Schedule II, Schedule III, and Schedule  
27 IV controlled substances by all practitioners authorized to prescribe, order,  
28 administer, furnish, or dispense these controlled substances.

                  (d) For each prescription for a Schedule II, Schedule III, or Schedule IV  
controlled substance, as defined in the controlled substances schedules in federal law  
and regulations, specifically Sections 1308.12, 1308.13, and 1308.14, respectively, of  
Title 21 of the Code of Federal Regulations, the dispensing pharmacy, clinic, or other  
dispenser shall report the following information to the Department of Justice as soon  
as reasonably possible, but not more than seven days after the date a controlled  
substance is dispensed, in a format specified by the Department of Justice:

(1) Full name, address, and, if available, telephone number of the ultimate  
user or research subject, or contact information as determined by the Secretary of the  
United States Department of Health and Human Services, and the gender, and date of  
birth of the ultimate user.

(2) The prescriber's category of licensure, license number, national  
provider identifier (NPI) number, if applicable, the federal controlled substance  
registration number, and the state medical license number of any prescriber using the  
federal controlled substance registration number of a government-exempt facility.



1 (3) Pharmacy prescription number, license number, NPI number, and  
federal controlled substance registration number.

2 (4) National Drug Code (NDC) number of the controlled substance  
dispensed.

3 (5) Quantity of the controlled substance dispensed.

4 (6) International Statistical Classification of Diseases, 9th revision (ICD-  
5 9) or 10th revision (ICD-10) Code, if available.

6 (7) Number of refills ordered.

7 (8) Whether the drug was dispensed as a refill of a prescription or as a  
8 first-time request.

9 (9) Date of origin of the prescription.

10 (10) Date of dispensing of the prescription.

11 **REGULATORY PROVISIONS**

12 15. California Code of Regulations, title 16, section 1707.3, states:

13 Prior to consultation as set forth in section 1707.2, a pharmacist shall  
14 review a patient's drug therapy and medication record before each prescription drug is  
15 delivered. The review shall include screening for severe potential drug therapy  
problems.

16 16. California Code of Regulations, title 16, section 1761, subdivision (a), states:

17 (a) No pharmacist shall compound or dispense any prescription which  
18 contains any significant error, omission, irregularity, uncertainty, ambiguity or  
alteration. Upon receipt of any such prescription, the pharmacist shall contact the  
19 prescriber to obtain the information needed to validate the prescription.

20 (b) Even after conferring with the prescriber, a pharmacist shall not  
21 compound or dispense a controlled substance prescription where the pharmacist  
knows or has objective reason to know that said prescription was not issued for a  
legitimate medical purpose.

22 **CONTROLLED SUBSTANCES AND DANGEROUS DRUGS**

23 17. Section 4021 provides that a "controlled substance" means any substance listed in  
24 Schedules I through V contained in Health and Safety Code section 11053, et seq.

25 18. Section 4022 states in pertinent part:

26 "Dangerous drug" or "dangerous device" means any drug or device  
27 unsafe for self-use in humans or animals, and includes the following:

28 (a) Any drug that bears the legend: "Caution: federal law prohibits  
dispensing without prescription," "Rx only," or words of similar import.

1  
2 (c) Any other drug or device that by federal or state law can be lawfully  
dispensed only on prescription or furnished pursuant to Section 4006.

3 19. **Oxycontin** is the brand name for **oxycodone**, which is a Schedule II controlled  
4 substance as designated by Section 4021 and Health and Safety Code section 11055, subdivision  
5 (b)(1)(M). It is also a dangerous drug as defined by Section 4022 and is prescribed to treat pain.

6 20. **Endocet** is a brand name for a combination of **oxycodone/acetaminophen**, a  
7 Schedule II controlled substance as designated by Section 4021 and Health and Safety Code  
8 section 11055, subdivision (b)(7). It is also a dangerous drug as defined by Section 4022 and is  
9 prescribed to treat pain.

10 21. **Norco** and **Lortab** are Schedule III controlled substances as designated by Section  
11 4021 and Health and Safety Code section 11056, subdivision (e)(4). It is also a dangerous drug as  
12 defined by Section 4022 and is prescribed to treat pain.

13 22. **Xanax** is the brand name for **alprazolam**, which is a Schedule IV controlled  
14 substance as designated by Section 4021 and Health and Safety Code section 11057, subdivision  
15 (d)(1). It is also a dangerous drug as defined by Section 4022 and is prescribed to treat anxiety.

16 23. **Roxicodone** is the brand name for **oxycodone**, which Schedule II controlled  
17 substance as designated by Section 4021 and Health and Safety Code section 11055, subdivision  
18 (b)(1)(M). It is also a dangerous drug as defined by Section 4022 and is prescribed to treat pain.

19 24. **Subutex** is the brand name for **buprenorphine**, which is a Schedule V controlled  
20 substance as designated by Section 4021 and Health and Safety Code section 11058, subdivision  
21 (d). It is also a dangerous drug as defined by Section 4022 and is prescribed primarily to treat  
22 opiate dependence.

23 **COST RECOVERY**

24 25. Section 125.3 states, in pertinent part, that the Board may request the administrative  
25 law judge to direct a licentiate found to have committed a violation or violations of the licensing  
26 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the  
27 case.

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1 FACTUAL BACKGROUND

2 26. On or about November 18, 2011, Board Inspector Sarah Bayley inspected Coover  
3 Pharmacy with Medical Board Investigator Kimberly Wilson. The inspectors found that Coover  
4 Pharmacy failed to transmit CURES<sup>2</sup> data for the past three years. The pharmacy had been  
5 transmitting the data weekly, but Foundation Systems, Inc. (FSI), the pharmacy software that  
6 Coover Pharmacy used, did not update the proper system to transmit the data successfully to  
7 Atlantic Associates.

8 27. On November 18, 2011, Massoudi, the owner of Coover Pharmacy, called FSI and  
9 transmitted three years of data to Atlantic Associates. The FSI File Relay Reports indicated that  
10 the files had been received and stated, "Even if the status of the relay to the intended recipient is  
11 indicated as successful, it is YOUR responsibility to verify with the recipient that it really was  
12 successful." (Original emphasis.)

13 28. On or about November 21, 2011, the Board received a complaint from the Medical  
14 Board of California (Medical Board) regarding Dr. Nicole Lippman's prescriptions and deaths of  
15 two patients, S.R.<sup>3</sup> and K.B.

16 29. Board Inspector Sejal Desai investigated the complaint and obtained and reviewed  
17 CURES data for Coover Pharmacy for January 1, 2010 to December 5, 2012. The CURES data  
18 revealed a total of 18,970 controlled substances prescriptions dispensed, 8,921 (47.03%) of which  
19 were prescribed by Dr. Lippman for 699,344 total dosage units. The top three drugs prescribed by  
20 Dr. Lippman and dispensed by Coover Pharmacy were APAP/Hydrocodone Bitartrate (325 mg-  
21 10mg, tab), Oxycontin (80 mg, ter), and Alprazolam (2 mg, tab). Inspector Desai found that a  
22

23 <sup>2</sup> The Controlled Substance Utilization Review and Evaluation System or CURES is a  
24 database maintained by the California Department of Justice, Bureau of Narcotic Enforcement.  
25 The program began in 1998 and required mandatory monthly pharmacy reporting of dispensed  
26 Schedule II controlled substances. The CURES program was amended in January 2005 to include  
27 mandatory weekly reporting of Schedule II-IV controlled substances. The data is sent to a data  
28 collection company, who sends the pharmacy confirmation that the data was received and informs  
the pharmacy if the data was rejected. The data is collected statewide and can be used by health  
care professionals to evaluate and determine whether their patients are utilizing controlled  
substances correctly.

<sup>3</sup> All patients are referred to by their initial to maintain their confidentiality.

1 large number of prescriptions dispensed by Coover Pharmacy were written by Dr. Lippman for  
2 her own family member.

3 30. K.B. and S.R. were two patients who died while under Dr. Lippman's care. K.B. was  
4 S.R.'s girlfriend and they both went to Coover Pharmacy to have Dr. Lippman's prescriptions  
5 dispensed. K.B. died on April 6, 2010. The coroner recorded the cause of death as "combined  
6 intoxication of oxycodone, oxymorphone, hydrocodone, morphine, alprazolam,  
7 hydroxyalprazolam, propoxyphene, norpropoxyphene, diclomine." There was evidence of  
8 injection sites on K.B.'s upper extremities. S.R. died on May 29, 2010. The coroner recorded  
9 that the cause of death was the combined effects of alprazolam, amphetamine, oxycodone, and  
10 oxymorphone. S.R.'s external post mortem exam showed multiple reddish discolorations on left  
11 and right wrists with needle puncture marks.

12 31. On or about May 9, 2013, Inspector Desai conducted an inspection of Coover  
13 Pharmacy. During the inspection, Inspector Desai requested controlled substance prescription  
14 hardcopies from May 9, 2010 to May 9, 2013 for K.B. and S.R., N.L. prescription hardcopy for  
15 RX #246375, and N.L. prescription hardcopies for "office use." In response, Inspector Desai  
16 received the requested documents including patient profiles for S.R., K.B., N.L. (Office Use),  
17 N.L., and S.L. and copies of prescriptions for S.L. During the course of the investigation and upon  
18 examination of CURES data and documents from Coover Pharmacy, Inspector Desai determined  
19 the following:

20 A. K.B. only had controlled substance dispensed at Coover Pharmacy. On  
21 numerous occasions, Coover Pharmacy dispensed Oxycontin 80mg above the recommended  
22 dosing interval of twice daily. K.B. received it three times daily. K.B. lived in Rancho Santa  
23 Margarita and drove approximately 55 miles from home to see Dr. Lippman and have  
24 prescriptions dispensed at Coover Pharmacy. Coover Pharmacy dispensed controlled substance  
25 pain medications for K.B. written by Dr. Lippman, despite the fact that Dr. Lippman was not a  
26 pain specialist. CURES data for K.B. showed that prior to going to Coover Pharmacy, K.B. had  
27 prescriptions dispensed at 11 pharmacies in various cities. K.B. continued to use multiple  
28 pharmacies while going to Coover Pharmacy. K.B. went to multiple practitioners in different

1 cities while going to Dr. Lippman. If Respondents had reviewed CURES data for K.B., they  
2 would have been able to determine K.B. as a doctor and pharmacy shopper. In addition, a review  
3 of CURES data would have revealed that K.B. was placed on Suboxone (primarily used for  
4 treatment of opioid addiction).

5 B. S.R. only had controlled substances dispensed at Coover Pharmacy. He  
6 received therapy duplication of pain medications which included Oxycontin 40mg, oxycodone  
7 30mg with hydrocodone/acetaminophen (HC/AP) 10/500 on numerous occasions prescribed by  
8 Dr. Lippman. S.R. was also prescribed alprazolam 2mg by Dr. Lippman. S.B. lived in Foothill  
9 Ranch and drove approximately 48 miles to see Dr. Lippman and have prescriptions dispensed at  
10 Coover Pharmacy. Coover Pharmacy dispensed controlled substance pain medications for S.R.  
11 written by Dr. Lippman, despite the fact that Dr. Lippman was not a pain specialist. CURES data  
12 for S.R. showed that prior to going to Coover Pharmacy, S.R. had prescriptions dispensed at eight  
13 different pharmacies in various cities. S.R. continued to use multiple pharmacies while going to  
14 Coover Pharmacy and went to multiple practitioners in different cities while seeing Dr. Lippman.

15 C. On June 30, 2009, Coover Pharmacy dispensed RX #192596 and 192594 to  
16 S.R. The handwriting on the prescription did not seem to be in the doctor handwriting and the  
17 RX was questionable. On April 9, 2010, Coover Pharmacy dispensed RX #207470 for  
18 hydrocodone/acetaminophen 10/500mg #90, 1 tab three times daily and RX #207473 for  
19 hydrocodone/acetaminophen 10/500mg #150, 1 tab every 4-5 hours, to S.R.. On February 11,  
20 2010, Coover Pharmacy dispensed RX #204278 for oxycodone to S.R. but the prescription was  
21 dated February 12, 2010.

22 D. S.L. was the mother of Dr. Lippman. Dr. Lippman wrote an extensive number  
23 of prescriptions for pain medications for S.L., which were dispensed by Coover Pharmacy.  
24 CURES data showed that from January 1, 2010 to December 5, 2012, Coover Pharmacy  
25 dispensed 310 controlled substance prescriptions for a total dosage unites of 21,290 for patient  
26 S.L. Coover Pharmacy dispensed Oxycontin above the recommended dosing interval of twice  
27 daily for S.L. S.L. received it three to four times daily. S.L. was prescribed Subutex by Dr.  
28 Lippman and dispensed by Coover Pharmacy on numerous occasions. Since Subutex is primarily

1 used for treatment opioid dependence, this should have raised a question by the pharmacy.  
2 Coover Pharmacy dispensed mostly controlled substance pain medications for patient S.L. written  
3 by Dr. Lippman, despite the fact that Dr. Lippman was not a pain specialist.

4 E. N.L. (office use) were prescriptions written by Dr. Lippman for "office use."  
5 CURES data showed that from January 1, 2010 to December 5, 2012, Coover Pharmacy  
6 dispensed 154 controlled substances prescriptions for a total dosage of 7,757 for Dr. Lippman's  
7 office use. Coover Pharmacy dispensed mostly controlled substances for Dr. Lippman's office  
8 use, despite the fact that Dr. Lippman was not a pain specialist.

9 F. Inspector Desai noted that a review of the prescriptions showed a relationship of  
10 Dr. Lippman's patients being referred to Coover Pharmacy for the dispensing of prescriptions.  
11 Also, Coover Pharmacy's information was pre-printed on Dr. Lippman's prescription pads.

12 32. On or about May 16, 2013, Inspector Desai spoke to Coover Pharmacy's part-time  
13 Pharmacist H. Pharmacist H stated that Coover Pharmacy currently did not have access to PDMP  
14 (prescription drug monitoring program of CURES) and that Coover Pharmacy does not maintain  
15 any files or notes to manage patient pain therapy.

16 33. On or about May 17, 2013, Respondent De Simone completed and returned pharmacy  
17 questionnaires for Coover Pharmacy regarding K.B. and S.R. to the Board. On the  
18 questionnaires, Respondent De Simone indicated that the patients lived outside the pharmacy  
19 trading area of five miles and were sent to Coover Pharmacy from Dr. Lippman's office.  
20 Respondent knew that K.B.'s diagnosis was "pain/detox." Respondent did not know S.R.'s  
21 diagnosis or reason for therapy. As to both K.B. and S.R., Respondent did not know whether the  
22 prescription was new, and Respondent did not know the patients' appearance or demeanor or any  
23 other information about the patients other than identity and mode of payment [insurance]. On  
24 both questionnaires, Respondent indicated that the pharmacy did not maintain a file or notes on  
25 the patient monitoring the patient's pain control, and that they did not speak to the doctor about  
26 any of the prescriptions. On the questionnaire regarding K.B., Respondent wrote that "the doctor  
27 used CURES before writing RX then gave us the information prescription." Respondent wrote  
28 that Dr. Lippman was a pain management and addiction specialist.



1 S.L., and N.L. (office use). If Respondents had reviewed CURES data prior to dispensing  
2 controlled substances to K.B. and S.R., Respondents would have been able to determine that both  
3 patients were doctor and pharmacy shoppers. In addition, as to K.B., a review of CURES would  
4 have revealed that K.B. was placed on Suboxone which is used for treatment of opioid addiction.  
5 Even without reviewing CURES reports, based on a review of the patients' drug profiles,  
6 Respondents would have been able to see questionable drug therapies. Moreover, the prescribing  
7 pattern of one physician, Dr. Lippman, was repetitive and redundant with respect to the same  
8 controlled substances prescribed repeatedly for the majority of her patients. Despite Dr. Lippman  
9 claiming to be a pain specialist, if Respondents had checked the Medical Board's website,  
10 Respondents would have seen that Dr. Lippman did not have a certification or specialty in pain.  
11 Complainant refers to, and by this reference incorporates, the allegations set forth above in  
12 paragraphs 27-35 including all subparagraphs.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Excessive Furnishing of Controlled Substances)**

15 38. Respondents are subject to disciplinary action under Sections 4301, subdivisions (d)  
16 and/or (j), and 4306.5, subdivision (c), and/or Section 4113, subdivision (c), in conjunction with  
17 California Code of Regulations, title 16, section 1761, in that Respondents committed one or  
18 more acts of unprofessional conduct when they excessively furnished controlled substances in  
19 violation of Health and Safety Code section 11153, subdivision (a). Respondents dispensed  
20 erroneous or uncertain prescriptions, as described more fully above in paragraph 30, subparagraph  
21 C. Respondents also failed to assume their corresponding responsibility for proper prescribing  
22 when they dispensed controlled substances to habitual doctor and pharmacy shoppers.  
23 Complainant refers to, and by this reference incorporates, the allegations set forth above in  
24 paragraphs 27-35 including all subparagraphs.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Failure to Maintain and Consult Patient-Specific Records)**

3 39. Respondents are subject to disciplinary action under Sections 4301 and 4306.5,  
4 subdivisions (c) and (d), and/or Section 4113, subdivision (c), in conjunction with California  
5 Code of Regulations, title 16, section 1707.3, in that Respondents committed one or more acts of  
6 unprofessional conduct by failing to consult appropriate patient, prescription, and other records,  
7 and failing to fully maintain and retain appropriate patient-specific information pertaining to the  
8 dispensing of controlled substances. Respondents did not maintain files and notes on any of its  
9 patients to monitor their pain therapy, and also did not consult any records on its patients. The  
10 only documentation that Respondents maintained were prescription hardcopies. In addition,  
11 Respondents failed to review the patients' medication records and drug therapy prior to  
12 dispensing controlled substances. Complainant refers to, and by this reference incorporates, the  
13 allegations set forth above in paragraphs 25–26, 30, subparagraphs A–D, and 31–33.

14 **FOURTH CAUSE FOR DISCIPLINE**

15 **(Failure to Report Controlled Substance Prescriptions to CURES)**

16 40. Respondents are subject to disciplinary action under Section 4301, subdivisions (j)  
17 and/or (o), and/or Section 4113, subdivision (c), by reference to Health and Safety Code section  
18 11165, for violating statutes regulating controlled substances or dangerous drugs and/or directly  
19 or indirectly violating, attempting to violate, or assisting in or abetting a violation of laws or  
20 regulations governing the practice of pharmacy. Specifically, Respondents failed to transmit  
21 CURES data for a period of approximately three years and thus were not in compliance with  
22 Health and Safety Code section 11165, subdivision (d). Complainant refers to, and by this  
23 reference incorporates, the allegations set forth above in paragraphs 25 and 26.

24 **FIFTH CAUSE FOR DISCIPLINE**

25 **(Violation of Laws and Regulations Governing Pharmacy)**

26 41. Respondents are subject to disciplinary action under Section 4301, subdivision (o),  
27 and/or Section 4113, subdivision (c), in that Respondents committed one or more acts of  
28 unprofessional conduct when they violated or attempted to violate, directly or indirectly, or

1 assisted in or abetted the violation of laws and regulations governing pharmacy. Complainant  
2 refers to, and by this reference incorporates, the allegations set forth above in paragraphs 25-39.

3 **DISCIPLINARY CONSIDERATIONS**

4 **(As to Respondent De Simone only)**

5 42. To determine the degree of discipline, if any, to be imposed on Respondent De  
6 Simone, Complainant alleges that on or about June 12, 2012, in a prior action, the Board of  
7 Pharmacy issued Citation number CI 2011 52796 and ordered Respondent to pay \$2,500.00 for a  
8 violation of Business and Professions Code section 4110, subdivision (a) ["No person shall  
9 conduct a pharmacy in the State of California unless he or she has obtained a license from the  
10 board..."]. Respondent De Simone was pharmacist-in-charge of Griffith Drugs (PHY 45422 and  
11 PHY 50714). Specifically, on or about February 2010 to July 12, 2011, Massoudi and  
12 Respondent De Simone operated Griffith Drugs as a pharmacy without licensure by the Board. In  
13 the same Citation, Respondent De Simone was also issued a citation without a fine for a violation  
14 of Business and Professions Code section 4201, subdivisions (f) and (i) ["Application form;  
15 required information; renew annually..., report change in ownership within 30 days."]  
16 Specifically, on or about February 2010, the ownership of Griffith Drugs was transferred to  
17 Massoudi and Respondent De Simone without notifying the Board. Citation no. CI 2011 52796 is  
18 now final and is incorporated by reference as if fully set forth.

19 **PRAYER**

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

22 1. Revoking or suspending Pharmacy Permit number PHY 45471, issued to Respondent  
23 F D M EXCLUSIVE IMAGE, INC., dba COOVER PHARMACY; FARIBORZ MASSOUDI as  
24 President;

25 2. Revoking or suspending Pharmacist License number RPH 37984, issued to  
26 Respondent JOHN DE SIMONE;

27 3. Ordering Respondents F D M EXCLUSIVE IMAGE, INC., dba COOVER  
28 PHARMACY and JOHN DE SIMONE to pay the Board of Pharmacy the reasonable costs of the

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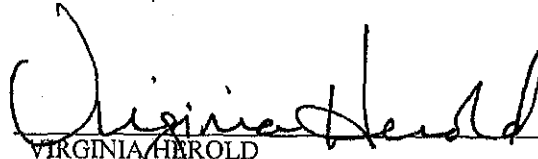
investigation and enforcement of this case, pursuant to Business and Professions Code section

125.3;

4. Taking such other and further action as deemed necessary and proper.

DATED:

3/27/14



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

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