

**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**

JOHN DE SIMONE ONLY

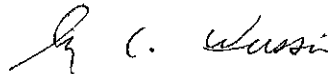
DECISION AND ORDER

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) 897-2764
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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

11 In the Matter of the Accusation Against:
12 **F D M EXCLUSIVE IMAGE, INC. dba**
13 **COOVER PHARMACY;**
14 FARIBORZ MASSOUDI, President
Pharmacy Permit No. PHY 45471
15 **AND**
16 **JOHN DE SIMONE**
Pharmacist License No. RPH 37984
17 Respondents.

Case No. 4851

OAH No. 2014060132

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

JOHN DE SIMONE ONLY

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 ///

28 ///

1 2. Respondent John Anthony De Simone (Respondent) is represented in this proceeding
2 by attorney Robert F. Hahn, whose address is: Law Offices of Hahn & Gould, 2550 9th Street,
3 Suite 101, Berkeley, CA 94701.

4 3. On or about September 8, 1983, the Board issued Pharmacist License No. RPH 37984
5 to Respondent. The Pharmacist License was in full force and effect at all times relevant to the
6 charges brought in Accusation 4851 and will expire on July 31, 2015, 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 his 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 has carefully read, fully discussed with counsel, and understands the
16 charges and allegations in Accusation No. 4851. Respondent has also carefully read, fully
17 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
18 Order.

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

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

28 ///

1 CULPABILITY

2 9. Respondent admits that at hearing Complainant could establish a factual basis for the
3 charges and allegations in Accusation No. 4851 and that those charges and allegations are cause
4 for discipline. Respondent hereby gives up his right to contest those charges and allegations.

5 10. Respondent agrees that his Pharmacist License is subject to discipline and he agrees
6 to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

7 CONTINGENCY

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

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Pharmacist License No. RPH 37984 issued to Respondent John Anthony De Simone is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

1. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the board, in writing, within 72 hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacist license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report such occurrence shall be considered a violation of probation.

2. Report to the Board

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

1 **3. Interview with the Board**

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

7 **4. Cooperate with Board Staff**

8 Respondent shall cooperate with the board's inspection program and with the board's
9 monitoring and investigation of respondent's compliance with the terms and conditions of his
10 probation. Failure to cooperate shall be considered a violation of probation.

11 **5. Continuing Education**

12 Respondent shall provide evidence of efforts to maintain skill and knowledge as a
13 pharmacist as directed by the board or its designee.

14 **6. Notice to Employers**

15 During the period of probation, respondent shall notify all present and prospective
16 employers of the decision in case number 4851 and the terms, conditions and restrictions imposed
17 on respondent by the decision, as follows:

18 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
19 respondent undertaking any new employment, respondent shall cause his direct supervisor,
20 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's
21 tenure of employment) and owner to report to the board in writing acknowledging that the listed
22 individual(s) has/have read the decision in case number 4851, and terms and conditions imposed
23 thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s)
24 submit timely acknowledgment(s) to the board.

25 If Respondent works for or is employed by or through a pharmacy employment service,
26 respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity
27 licensed by the board of the terms and conditions of the decision in case number 4851 in advance
28

1 of the Respondent commencing work at each licensed entity. A record of this notification must
2 be provided to the board upon request.

3 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
4 (15) days of respondent undertaking any new employment by or through a pharmacy employment
5 service, respondent shall cause his direct supervisor with the pharmacy employment service to
6 report to the board in writing acknowledging that he has read the decision in case number 4851
7 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure
8 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

9 Failure to timely notify present or prospective employer(s) or to cause that/those
10 employer(s) to submit timely acknowledgments to the board shall be considered a violation of
11 probation.

12 "Employment" within the meaning of this provision shall include any full-time, part-
13 time, temporary, relief or pharmacy management service as a pharmacist or any position for
14 which a pharmacist license is a requirement or criterion for employment, whether the
15 respondent is an employee, independent contractor or volunteer.

16 **7. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as**
17 **Designated Representative-in-Charge, or Serving as a Consultant**

18 During the period of probation, respondent shall not supervise any intern pharmacist, be the
19 pharmacist-in-charge or designated representative-in-charge of any entity licensed by the board
20 nor serve as a consultant unless otherwise specified in this order. Assumption of any such
21 unauthorized supervision responsibilities shall be considered a violation of probation.

22 **8. Reimbursement of Board Costs**

23 As a condition precedent to successful completion of probation, respondent shall pay to the
24 board its costs of investigation and prosecution in the amount of \$3,759.37. Respondent shall
25 make said payments according to a payment plan approved by the Board.

26 There shall be no deviation from this schedule absent prior written approval by the board or
27 its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of
28 probation.

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

3 **9. Probation Monitoring Costs**

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

8 **10. Status of License**

9 Respondent shall, at all times while on probation, maintain an active, current license with
10 the board, including any period during which suspension or probation is tolled. Failure to
11 maintain an active, current license shall be considered a violation of probation.

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

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

17 Following the effective date of this decision, should respondent cease practice due to
18 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
19 respondent may tender his license to the board for surrender. The board or its designee shall have
20 the discretion whether to grant the request for surrender or take any other action it deems
21 appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent
22 will no longer be subject to the terms and conditions of probation. This surrender constitutes a
23 record of discipline and shall become a part of the respondent's license history with the board.

24 Upon acceptance of the surrender, respondent shall relinquish his pocket and wall license to
25 the board within ten (10) days of notification by the board that the surrender is accepted.

26 Respondent may not reapply for any license from the board for three (3) years from the effective
27 date of the surrender. Respondent shall meet all requirements applicable to the license sought as
28

1 of the date the application for that license is submitted to the board, including any outstanding
2 costs.

3 **12. Notification of a Change in Name, Residence Address, Mailing Address or**
4 **Employment**

5 Respondent shall notify the board in writing within ten (10) days of any change of
6 employment. Said notification shall include the reasons for leaving, the address of the new
7 employer, the name of the supervisor and owner, and the work schedule if known. Respondent
8 shall further notify the board in writing within ten (10) days of a change in name, residence
9 address, mailing address, or phone number.

10 Failure to timely notify the board of any change in employer(s), name(s), address(es), or
11 phone number(s) shall be considered a violation of probation.

12 **13. Tolling of Probation**

13 Except during periods of suspension, respondent shall, at all times while on probation, be
14 employed as a pharmacist in California for a minimum of 40 hours per calendar month. Any
15 month during which this minimum is not met shall toll the period of probation, i.e., the period of
16 probation shall be extended by one month for each month during which this minimum is not met.
17 During any such period of tolling of probation, respondent must nonetheless comply with all
18 terms and conditions of probation.

19 Should respondent, regardless of residency, for any reason (including vacation) cease
20 practicing as a pharmacist for a minimum of 40 hours per calendar month in California,
21 respondent must notify the board in writing within ten (10) days of the cessation of practice, and
22 must further notify the board in writing within ten (10) days of the resumption of practice. Any
23 failure to provide such notification(s) shall be considered a violation of probation.

24 It is a violation of probation for respondent's probation to remain tolled pursuant to the
25 provisions of this condition for a total period, counting consecutive and non-consecutive months,
26 exceeding thirty-six (36) months.

27 "Cessation of practice" means any calendar month during which respondent is not
28 practicing as a pharmacist for at least 40 hours, as defined by Business and Professions

1 Code section 4000 et seq. "Resumption of practice" means any calendar month during
2 which respondent is practicing as a pharmacist for at least 40 hours as a pharmacist as
3 defined by Business and Professions Code section 4000 et seq.

4 **14. Violation of Probation**

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

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

17 **15. Completion of Probation**

18 Upon written notice by the board or its designee indicating successful completion of
19 probation, respondent's license will be fully restored.

20 **16. Remedial Education**

21 Within 60 days of the effective date of this decision, respondent shall submit to the board or
22 its designee, for prior approval, an appropriate program of remedial education related to
23 corresponding responsibility and prescription drug abuse prevention. The program of remedial
24 education shall consist of at least ten (10) hours, which shall be completed within two years at
25 Respondent's own expense. All remedial education shall be in addition to, and shall not be
26 credited toward, continuing education (CE) courses used for license renewal purposes.

27 Failure to timely submit or complete the approved remedial education shall be considered a
28 violation of probation. The period of probation will be automatically extended until such

1 remedial education is successfully completed and written proof, in a form acceptable to the board,
2 is provided to the board or its designee.

3 Following the completion of each course, the board or its designee may require the
4 respondent, at his own expense, to take an approved examination to test the respondent's
5 knowledge of the course. If the respondent does not achieve a passing score on the examination,
6 this failure shall be considered a violation of probation. Any such examination failure shall
7 require respondent to take another course approved by the board in the same subject area.

8 **17. Supervised Practice**

9 During the period of probation, respondent shall practice only under the supervision of a
10 licensed pharmacist not on probation with the board. Upon and after the effective date of this
11 decision, respondent shall not practice pharmacy and his license shall be automatically suspended
12 until a supervisor is approved by the board or its designee. The supervision shall be, as required
13 by the board or its designee, either:

14 Continuous – At least 75% of a work week

15 Substantial - At least 50% of a work week

16 Partial - At least 25% of a work week

17 Daily Review - Supervisor's review of probationer's daily activities within 24 hours

18 Within thirty (30) days of the effective date of this decision, respondent shall have his
19 supervisor submit notification to the board in writing stating that the supervisor has read the
20 decision in case number 4851 and is familiar with the required level of supervision as determined
21 by the board or its designee. It shall be the respondent's responsibility to ensure that his
22 employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the
23 board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
24 acknowledgements to the board shall be considered a violation of probation.

25 If respondent changes employment, it shall be the respondent's responsibility to ensure that
26 his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to
27 the board. Respondent shall have his new supervisor, within fifteen (15) days after employment
28 commences, submit notification to the board in writing stating the direct supervisor and

1 pharmacist-in-charge have read the decision in case number 4851 and is familiar with the level of
2 supervision as determined by the board. Respondent shall not practice pharmacy and his license
3 shall be automatically suspended until the board or its designee approves a new supervisor.

4 Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
5 acknowledgements to the board shall be considered a violation of probation.

6 Within ten (10) days of leaving employment, respondent shall notify the board in writing.

7 During suspension, respondent shall not enter any pharmacy area or any portion of the
8 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
9 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices
10 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
11 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
12 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the
13 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
14 and controlled substances. Respondent shall not resume practice until notified by the board.

15 During suspension, respondent shall not engage in any activity that requires the
16 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
17 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
18 designated representative for any entity licensed by the board.

19 Subject to the above restrictions, respondent may continue to own or hold an interest in any
20 licensed premises in which he holds an interest at the time this decision becomes effective unless
21 otherwise specified in this order.

22 Failure to comply with this suspension shall be considered a violation of probation.

23 **18. No Ownership of Licensed Premises**

24 Respondent shall not acquire any new ownership, legal or beneficial interest nor serve as a
25 manager, administrator, member, officer, director, trustee, associate, or partner of any additional
26 business, firm, partnership, or corporation licensed by the board. If Respondent currently owns or
27 has any legal or beneficial interest in, or serves as a manager, administrator, member, officer,
28 director, trustee, associate, or partner of any business, firm, partnership, or corporation currently

1 or hereinafter licensed by the board, Respondent may continue to serve in such capacity or hold
 2 that interest, but only to the extent of that position or interest as of the effective date of this
 3 decision. Violation of this restriction shall be considered a violation of probation.

4 **19. Ethics Course**

5 Within sixty (60) calendar days of the effective date of this decision, respondent shall enroll
 6 in a course in ethics, at respondent's expense, approved in advance by the board or its designee.
 7 Failure to initiate the course during the first year of probation, and complete it within the second
 8 year of probation, is a violation of probation.

9 Respondent shall submit a certificate of completion to the board or its designee within five
 10 days after completing the course.

11 **20. Enrollment in PDMP**

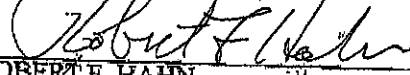
12 Within thirty (30) days of the effective date of this decision, Respondent must apply for
 13 enrollment in the CURES Prescription Drug Monitoring Program, if not already enrolled.

14 **ACCEPTANCE**

15 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
 16 discussed it with my attorney, Robert F. Hahn. I understand the stipulation and the effect it will
 17 have on my Pharmacist License. I enter into this Stipulated Settlement and Disciplinary Order
 18 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
 19 Board of Pharmacy.

20 DATED: 2/12/15 
 21 _____
 22 JOHN ANTHONY DE SIMONE
 Respondent

23 I have read and fully discussed with Respondent John Anthony De Simone the terms and
 24 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
 25 I approve its form and content.

26 DATED: 2/13/15 
 27 _____
 28 ROBERT F. HAHN
 Attorney for Respondent

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ENDORSEMENT

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

Dated: 2/18/15

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
LINDA L. SUN
Supervising Deputy Attorney General


BORA SONG
Deputy Attorney General
Attorneys for Complainant

LA2013510032
51697893.docx

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
Attorneys for Complainant
7

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

11 In the Matter of the Accusation Against:

Case No. 4851

12 **F D M EXCLUSIVE IMAGE, INC. dba**
13 **COOVER PHARMACY;**
14 **FARIBORZ MASSOUDI, President**
891 W. Ninth St.
San Pedro, CA 90731

ACCUSATION

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
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),¹ 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 ¹ All further statutory references are to the Business and Professions Code unless
otherwise indicated.

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

4 **STATUTORY PROVISIONS**

5 10. Section 4301 states in pertinent part:

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

10 ...
11 (d) The clearly excessive furnishing of controlled substances in violation
12 of subdivision (a) of Section 11153 of the Health and Safety Code.

13 ...
14 (j) The violation of any of the statutes of this state, or any other state, or
15 of the United States regulating controlled substances and dangerous drugs.

16 ...
17 (o) Violating or attempting to violate, directly or indirectly, or assisting in
18 or abetting the violation of or conspiring to violate any provision or term of this
19 chapter or of the applicable federal and state laws and regulations governing
20 pharmacy, including regulations established by the board or by any other state or
21 federal regulatory agency.

22 11. Section 4306.5 states:

23 Unprofessional conduct for a pharmacist may include any of the
24 following:

25 ...
26 (b) Acts or omissions that involve, in whole or in part, the failure to
27 exercise or implement his or her best professional judgment or corresponding
28 responsibility with regard to the dispensing or furnishing of controlled substances,
dangerous drugs, or dangerous devices, or with regard to the provision of services.

 (c) Acts or omissions that involve, in whole or in part, the failure to
consult appropriate patient, prescription, and other records pertaining to the
performance of any pharmacy function.

 (d) Acts or omissions that involve, in whole or in part, the failure to fully
maintain and retain appropriate patient-specific information pertaining to the
performance of any pharmacy function.

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
2 federal controlled substance registration number.

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

5 (5) Quantity of the controlled substance dispensed.

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

8 (7) Number of refills ordered.

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

11 (9) Date of origin of the prescription.

12 (10) Date of dispensing of the prescription.

13 REGULATORY PROVISIONS

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

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

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

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

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

28 CONTROLLED SUBSTANCES AND DANGEROUS DRUGS

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

18. Section 4022 states in pertinent part:

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

(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 licensee 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.

28 ///

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 CURES² 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.³ 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 ² 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.

³ 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 units 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 34. On or about May 17, 2013, Respondent De Simone completed and returned a
2 pharmacy questionnaire for Coover Pharmacy regarding S.L. to the Board. On the questionnaire,
3 Respondent De Simone indicated that S.L. was the mother of the physician and that S.L. had
4 terminal breast cancer. The prescriptions were always picked up by Dr. Lippman, and the
5 pharmacy never saw S.L. Respondent indicated that the doctor's office had access to CURES.
6 Regarding the maintenance of a file or notes the patient, Respondent only wrote, "Spoke to MD
7 on many occasions MD stated nature of pain."

8 35. Inspector Desai determined that despite Dr. Lippman's claim that she was a pain
9 specialist, if Coover Pharmacy had checked the Medical Board's website, they would have been
10 able to see that Dr. Lippman did not have specific certifications or specialty in pain.

11 36. On February 12, 2013, the Medical Board of California filed First Amended
12 Accusation number 06-2010-210845⁴ against Dr. Lippman for unprofessional conduct and gross
13 negligence [Bus. & Prof. Code, § 2227.2234, subd. (b)] and prescribing for or administering to
14 herself controlled substances and or dangerous drugs [Bus. & Prof. Code, § 2239], and alleged
15 that Dr. Lippman self-administered oxycodone, oxymorphone, benzodiazepines and barbituates.
16 The First Amended Accusation alleged improper self use of drugs as well as gross negligence in
17 the care and treatment of K.B. and S.R.

18 FIRST CAUSE FOR DISCIPLINE

19 (Failure to Exercise Professional Judgment or Corresponding Responsibility)

20 37. Respondents Coover and De Simone (collectively, Respondents) are subject to
21 disciplinary action under Sections 4301 and 4306.5, subdivision (b), and/or Section 4113,
22 subdivision (c), in conjunction with California Code of Regulations, title 16, sections 1707.3 and
23 1761, in that Respondents committed one or more acts of unprofessional conduct when they failed
24 to exercise or implement their best professional judgment or corresponding responsibility with
25 regard to the dispensing or furnishing of controlled substances or dangerous drugs to K.B., S.R.,

26 ⁴ On August 8, 2013, Dr. Lippman stipulated to a surrender of her Physician's and
27 Surgeon's Certificate No. A-62947 and admitted to the allegations contained in Accusation No.
28 06-2010-210845. ON September 4, 2013 the Medical Board adopted the decision and order,
which became effective on September 11, 2013.

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 (e), 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.

25 ///

26 ///

27 ///

28 ///

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

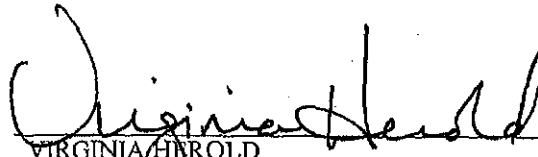
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 HAROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

LA2013510032
51429452.doc