

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

In the Matter of the Accusation Against:

**SADDLEBACK PHARMACY, INC.,
DBA SADDLEBACK PHARMACY
28251 Marguerite Pkwy., Ste. D
Mission Viejo, CA 92692**

Pharmacy Permit No. PHY 50692

**JORDAN BUU PHUNG
23252 Castle Rock
Mission Viejo, CA 92692**

Pharmacist License No. RPH 48177

Case No. 4997

OAH No. 2014050980

Respondents.

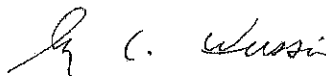
DECISION AND ORDER

The attached Stipulated Surrender of License and Order as to Saddleback Pharmacy, Inc. dba Saddleback Pharmacy, Only and Stipulated Settlement and Disciplinary Order as to Jordan Buu Phung, Only is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on March 13, 2015.

It is so ORDERED on March 6, 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 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 DAVID E. HAUSFELD
Deputy Attorney General
4 State Bar No. 110639
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2025
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:
12
13 **SADDLEBACK PHARMACY, INC.,**
DBA SADDLEBACK PHARMACY
14 **28251 Marguerite Pkwy., Ste. D**
Mission Viejo, CA 92692
15 **Pharmacy Permit No. PHY 50692**
16 **JORDAN BUU PHUNG**
23252 Castle Rock
17 **Mission Viejo, CA 92692**
18 **Pharmacist License No. RPH 48177**
19 Respondents.
20

Case No. 4997
OAH No. 2014050980
STIPULATED SURRENDER OF
LICENSE AND ORDER AS TO
SADDLEBACK PHARMACY, INC.,
DBA SADDLEBACK PHARMACY
ONLY
and
STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO
JORDAN BUU PHUNG, ONLY

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

24 **PARTIES**

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

1 to present evidence and to testify on their own behalf; the right to the issuance of subpoenas to
2 compel the attendance of witnesses and the production of documents; the right to reconsideration
3 and court review of an adverse decision; and all other rights accorded by the California
4 Administrative Procedure Act and other applicable laws.

5 9. Respondents voluntarily, knowingly, and intelligently waive and give up each and
6 every right set forth above.

7 **CULPABILITY**

8 10. Respondents admit the truth of each and every charge and allegation in Accusation
9 No. 4997.

10 11. Respondent Saddleback Pharmacy agrees that by signing this stipulation it enables
11 the Board to issue an order accepting the surrender of Pharmacy Permit Number PHY 50692.

12 12. Respondent Jordan Phung agrees that her Pharmacist License Number RPH 48177 is
13 subject to discipline and to be bound by the Board's probationary terms as set forth in the
14 Disciplinary Order below.

15 **CONTINGENCY**

16 13. This stipulation shall be subject to approval by the Board of Pharmacy. Respondents
17 understand and agree that counsel for Complainant and the staff of the Board of Pharmacy may
18 communicate directly with the Board regarding this stipulation and settlement, without notice to
19 or participation by Respondents or their counsel. By signing the stipulation, Respondents
20 understand and agree that they may not withdraw their agreement or seek to rescind the
21 stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this
22 stipulation as its Decision and Order, the Stipulated Surrender of License and Order as to
23 Saddleback Pharmacy, Inc. dba Saddleback Pharmacy, Only and Stipulated Settlement and
24 Disciplinary Order as to Jordan Buu Phung, Only shall be of no force or effect, except for this
25 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not
26 be disqualified from further action by having considered this matter.

27 14. The parties understand and agree that Portable Document Format (PDF) and facsimile
28 copies of this Stipulated Surrender of License and Order as to Saddleback Pharmacy, Inc. dba

1 Saddleback Pharmacy, Only and Stipulated Settlement and Disciplinary Order as to Jordan Buu
2 Phung, Only, including PDF and facsimile signatures thereto, shall have the same force and effect
3 as the originals.

4 15. This Stipulated Surrender of License and Order as to Saddleback Pharmacy, Inc. dba
5 Saddleback Pharmacy, Only and Stipulated Settlement and Disciplinary Order as to Jordan Buu
6 Phung, Only is intended by the parties to be an integrated writing representing the complete, final,
7 and exclusive embodiment of their agreement. It supersedes any and all prior or
8 contemporaneous agreements, understandings, discussions, negotiations, and commitments
9 (written or oral). This Stipulated Surrender of License and Order as to Saddleback Pharmacy,
10 Inc. dba Saddleback Pharmacy, Only and Stipulated Settlement and Disciplinary Order as to
11 Jordan Buu Phung, Only may not be altered, amended, modified, supplemented, or otherwise
12 changed except by a writing executed by an authorized representative of each of the parties.

13 16. Respondent Jordan Phung stipulates and agrees that no later than 10 days after she
14 signs this agreement, Respondent Jordan Phung will not work in any capacity, including
15 Pharmacist-in-Charge, at Respondent Saddleback Pharmacy. In addition, Respondents also
16 stipulate and agree that Respondents shall select a new Pharmacist-in-Charge for Respondent
17 Saddleback Pharmacy and submit the "Change in Pharmacist-in-Charge" form 17A-14 to the
18 Board for approval no later than 10 days after Respondent Jordan Phung signs this agreement.

19 17. In consideration of the foregoing admissions and stipulations, the parties agree that
20 the Board may, without further notice or formal proceeding, issue and enter the following
21 Disciplinary Order:

22 **DISCIPLINARY ORDER**

23 IT IS HEREBY ORDERED that Pharmacy Permit No. PHY 50692, issued to Saddleback
24 Pharmacy, Inc. dba Saddleback Pharmacy (Respondent Saddleback Pharmacy) is surrendered and
25 accepted by the Board of Pharmacy. The effective date of the Decision as to Respondent
26 Saddleback Pharmacy only, shall be stayed until March 20, 2015, at which time the pharmacy
27 shall be sold or closed.

28 ///

1 1. The surrender of Respondent Saddleback Pharmacy, Pharmacy Permit No. PHY
2 50692, and the acceptance of the surrendered license by the Board shall constitute the imposition
3 of discipline against Respondent Saddleback Pharmacy. This stipulation constitutes a record of
4 the discipline and shall become a part of Respondent Saddleback Pharmacy's license history with
5 the Board of Pharmacy.

6 2. No later than 10 days after she signs this agreement, Respondent Jordan Phung shall
7 not work in any capacity, including Pharmacist-in-Charge, at Respondent Saddleback Pharmacy.

8 3. No later than 10 days after she signs this agreement Respondent Jordan Phung and
9 Respondent Saddleback Pharmacy shall select a new Pharmacist-in-Charge for Respondent
10 Saddleback Pharmacy and submit the "Change in Pharmacist-in-Charge" form 17A-14 to the
11 Board for approval.

12 4. In the event that Respondent Saddleback Pharmacy is sold and an application for a
13 new permit is submitted to the Board, the Board shall expedite the processing of that application.

14 5. Respondent Saddleback Pharmacy shall lose all rights and privileges as a pharmacy in
15 California as of the effective date of the Board's Decision and Order.

16 6. Respondent Saddleback Pharmacy shall cause to be delivered to the Board its pocket
17 license and, if one was issued, its wall certificate on or before the effective date of the Decision
18 and Order.

19 7. If Respondent Saddleback Pharmacy ever applies for licensure or petitions for
20 reinstatement in the State of California, the Board shall treat it as a new application for licensure.
21 Respondent Saddleback Pharmacy must comply with all the laws, regulations and procedures for
22 licensure in effect at the time the application or petition is filed, and all of the charges and
23 allegations contained in Accusation No. 4997 shall be deemed to be true, correct and admitted by
24 Respondent Saddleback Pharmacy when the Board determines whether to grant or deny the
25 application or petition.

26 8. Respondent Saddleback Pharmacy and Respondent Jordan Phung shall pay to the
27 Board its costs of investigation and enforcement in the amount of \$8,483.50. Respondents shall
28

1 pay these costs in a payment program acceptable to the Board. Respondents shall be jointly and
2 severally liable for the payment of these costs.

3 9. If Respondent Saddleback Pharmacy should ever apply or reapply for a new license
4 or certification, or petition for reinstatement of a license, by any other health care licensing
5 agency in the State of California, all of the charges and allegations contained in Accusation, No.
6 4997 shall be deemed to be true, correct, and admitted by Respondent Saddleback Pharmacy for
7 the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict
8 licensure.

9 10. In the event that Respondent Saddleback Pharmacy is not sold by March 20, 2015,
10 Respondent Saddleback Pharmacy shall, within ten (10) days of the stayed effective date of the
11 Board's order, arrange for the destruction of, the transfer to, sale of or storage in a facility
12 licensed by the Board of all controlled substances and dangerous drugs and devices. Respondent
13 Saddleback Pharmacy shall further provide written proof of such disposition and submit a
14 completed Discontinuance of Business form according to Board guidelines.

15 11. Respondent Saddleback Pharmacy may not apply, reapply, or petition for any
16 licensure or registration of the Board for three (3) years from the effective date of the Decision
17 and Order.

18 IT IS FURTHER HEREBY ORDERED that Pharmacist License Number RPH 48177
19 issued to Jordan Buu Phung (Respondent Jordan Phung) is revoked. However, the revocation is
20 stayed and Respondent Jordan Phung is placed on probation for six (6) years on the following
21 terms and conditions.

22 12. **Suspension**

23 As part of probation, Respondent Jordan Phung is suspended from the practice of pharmacy
24 for one hundred and twenty (120) days beginning the effective date of this decision.

25 During suspension, Respondent Jordan Phung shall not enter any pharmacy area or any
26 portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other
27 distributor of drugs which is licensed by the Board, or any manufacturer, or where dangerous
28 drugs and devices or controlled substances are maintained. Respondent Jordan Phung shall not

1 practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing,
2 compounding, dispensing or patient consultation; nor shall Respondent Jordan Phung manage,
3 administer, or be a consultant to any licensee of the Board, or have access to or control the
4 ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances.

5 Respondent Jordan Phung shall not engage in any activity that requires the professional
6 judgment of a pharmacist. Respondent Jordan Phung shall not direct or control any aspect of the
7 practice of pharmacy. Respondent Jordan Phung shall not perform the duties of a pharmacy
8 technician or a designated representative for any entity licensed by the Board.

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

10 **13. Obey All Laws**

11 Respondent Jordan Phung shall obey all state and federal laws and regulations.

12 Respondent Jordan Phung shall report any of the following occurrences to the board, in
13 writing, within seventy-two (72) hours of such occurrence:

- 14 • an arrest or issuance of a criminal complaint for violation of any provision of the
15 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
16 substances laws
- 17 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
18 criminal complaint, information or indictment
- 19 • a conviction of any crime
- 20 • discipline, citation, or other administrative action filed by any state or federal agency
21 which involves Respondent Jordan Phung's Pharmacist license or which is related to
22 the practice of pharmacy or the manufacturing, obtaining, handling, distributing,
23 billing, or charging for any drug, device or controlled substance.

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

25 **14. Report to the Board**

26 Respondent Jordan Phung shall report to the Board quarterly, on a schedule as directed by
27 the Board or its designee. The report shall be made either in person or in writing, as directed.
28 Among other requirements, Respondent Jordan Phung shall state in each report under penalty of

1 perjury whether there has been compliance with all the terms and conditions of probation. Failure
2 to submit timely reports in a form as directed shall be considered a violation of probation. Any
3 period(s) of delinquency in submission of reports as directed may be added to the total period of
4 probation. Moreover, if the final probation report is not made as directed, probation shall be
5 automatically extended until such time as the final report is made and accepted by the board.

6 **15. Interview with the Board**

7 Upon receipt of reasonable prior notice, Respondent Jordan Phung shall appear in person
8 for interviews with the board or its designee, at such intervals and locations as are determined by
9 the board or its designee. Failure to appear for any scheduled interview without prior notification
10 to board staff, or failure to appear for two (2) or more scheduled interviews with the board or its
11 designee during the period of probation, shall be considered a violation of probation.

12 **16. Cooperate with Board Staff**

13 Respondent Jordan Phung shall cooperate with the board's inspection program and with the
14 board's monitoring and investigation of Respondent Jordan Phung's compliance with the terms
15 and conditions of her probation. Failure to cooperate shall be considered a violation of probation.

16 **17. Continuing Education**

17 Respondent Jordan Phung shall provide evidence of efforts to maintain skill and knowledge
18 as a pharmacist as directed by the Board or its designee.

19 **18. Notice to Employers**

20 During the period of probation, Respondent Jordan Phung shall notify all present and
21 prospective employers of the decision in case number 4997 and the terms, conditions and
22 restrictions imposed on Respondent Jordan Phung by the decision, as follows:

23 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
24 Respondent Jordan Phung undertaking any new employment, Respondent Jordan Phung shall
25 cause her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge
26 employed during Respondent Jordan Phung's tenure of employment) and owner to report to the
27 Board in writing acknowledging that the listed individual(s) has/have read the decision in case
28 number 4997, and terms and conditions imposed thereby. It shall be Respondent Jordan Phung's

1 responsibility to ensure that her employer(s) and/or supervisor(s) submit timely
2 acknowledgment(s) to the Board.

3 If Respondent Jordan Phung works for or is employed by or through a pharmacy
4 employment service, Respondent Jordan Phung must notify her direct supervisor, pharmacist-in-
5 charge, and owner at every entity licensed by the Board of the terms and conditions of the
6 decision in case number 4997 in advance of the Respondent Jordan Phung commencing work at
7 each licensed entity. A record of this notification must be provided to the Board upon request.

8 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
9 (15) days of Respondent Jordan Phung undertaking any new employment by or through a
10 pharmacy employment service, Respondent Jordan Phung shall cause her direct supervisor with
11 the pharmacy employment service to report to the Board in writing acknowledging that they have
12 read the decision in case number 4997 and the terms and conditions imposed thereby. It shall be
13 Respondent Jordan Phung's responsibility to ensure that her employer(s) and/or supervisor(s)
14 submit timely acknowledgment(s) to the Board.

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

18 "Employment" within the meaning of this provision shall include any full-time,
19 part-time, temporary, relief or pharmacy management service as a pharmacist or any
20 position for which a pharmacist license is a requirement or criterion for employment,
21 whether Respondent Jordan Phung is an employee, independent contractor or
22 volunteer.

23 **19. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC),**
24 **Serving as Designated Representative-in-Charge, or Serving as a Consultant**

25 During the period of probation, Respondent Jordan Phung shall not supervise any intern
26 pharmacist, be the pharmacist-in-charge or designated representative-in-charge of any entity
27 licensed by the Board nor serve as a consultant unless otherwise specified in this order.

28 ///

1 Assumption of any such unauthorized supervision responsibilities shall be considered a
2 violation of probation.

3 **20. Reimbursement of Board Costs**

4 As a condition precedent to successful completion of probation, Respondent Saddleback
5 Pharmacy and Respondent Jordan Phung shall pay to the Board its costs of investigation and
6 prosecution in the amount of \$8,483.50. Respondents shall pay these costs in a payment program
7 acceptable to the Board. Respondents shall be jointly and severally liable for the payment of
8 these costs.

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

12 The filing of bankruptcy by Respondent Saddleback Pharmacy or Respondent Jordan
13 Phung shall not relieve Respondent Saddleback Pharmacy or Respondent Jordan Phung of their
14 responsibility to reimburse the Board its costs of investigation and prosecution.

15 **21. Probation Monitoring Costs**

16 Respondent Jordan Phung shall pay any costs associated with probation monitoring as
17 determined by the Board each and every year of probation. Such costs shall be payable to the
18 Board on a schedule as directed by the Board or its designee. Failure to pay such costs by the
19 deadline(s) as directed shall be considered a violation of probation.

20 **22. Status of License**

21 Respondent Jordan Phung shall, at all times while on probation, maintain an active, current
22 license with the Board, including any period during which suspension or probation is tolled.
23 Failure to maintain an active, current license shall be considered a violation of probation.

24 If Respondent Jordan Phung's license expires or is cancelled by operation of law or
25 otherwise at any time during the period of probation, including any extensions thereof due to
26 tolling or otherwise, upon renewal or reapplication Respondent Jordan Phung's license shall be
27 subject to all terms and conditions of this probation not previously satisfied.

28 ///

1 **23. License Surrender While on Probation/Suspension**

2 Following the effective date of this decision, should Respondent Jordan Phung cease
3 practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of
4 probation, Respondent Jordan Phung may tender her license to the Board for surrender. The
5 Board or its designee shall have the discretion whether to grant the request for surrender or take
6 any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of
7 the license, Respondent Jordan Phung will no longer be subject to the terms and conditions of
8 probation. This surrender constitutes a record of discipline and shall become a part of the
9 Respondent Jordan Phung's license history with the Board.

10 Upon acceptance of the surrender, Respondent Jordan Phung shall relinquish her pocket
11 and wall license to the Board within ten (10) days of notification by the Board that the surrender
12 is accepted. Respondent Jordan Phung may not reapply for any license from the Board for three
13 (3) years from the effective date of the surrender. Respondent Jordan Phung shall meet all
14 requirements applicable to the license sought as of the date the application for that license is
15 submitted to the board, including any outstanding costs.

16 **24. Notification of a Change in Name, Residence Address, Mailing Address or**
17 **Employment**

18 Respondent Jordan Phung shall notify the Board in writing within ten (10) days of any
19 change of employment. Said notification shall include the reasons for leaving, the address of the
20 new employer, the name of the supervisor and owner, and the work schedule if known.
21 Respondent Jordan Phung shall further notify the Board in writing within ten (10) days of a
22 change in name, residence address, mailing address, or phone number.

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

25 **25. Tolling of Probation**

26 Except during periods of suspension, Respondent Jordan Phung shall, at all times while on
27 probation, be employed as a pharmacist in California for a minimum of forty (40) hours per
28 calendar month. Any month during which this minimum is not met shall toll the period of

1 probation, i.e., the period of probation shall be extended by one month for each month during
2 which this minimum is not met. During any such period of tolling of probation, Respondent
3 Jordan Phung must nonetheless comply with all terms and conditions of probation.

4 Should Respondent Jordan Phung, regardless of residency, for any reason (including
5 vacation) cease practicing as a pharmacist for a minimum of forty (40) hours per calendar month
6 in California, Respondent Jordan Phung must notify the Board in writing within ten (10) days of
7 the cessation of practice, and must further notify the Board in writing within ten (10) days of the
8 resumption of practice. Any failure to provide such notification(s) shall be considered a violation
9 of probation.

10 It is a violation of probation for Respondent Jordan Phung's probation to remain tolled
11 pursuant to the provisions of this condition for a total period, counting consecutive and non-
12 consecutive months, exceeding thirty-six (36) months.

13 "Cessation of practice" means any calendar month during which Respondent
14 Jordan Phung is not practicing as a pharmacist for at least forty (40) hours, as defined
15 by Business and Professions Code section 4000 et seq. "Resumption of practice"
16 means any calendar month during which Respondent Jordan Phung is practicing as a
17 pharmacist for at least forty (40) hours as a pharmacist as defined by Business and
18 Professions Code section 4000 et seq.

19 **26. Violation of Probation**

20 If Respondent Jordan Phung has not complied with any term or condition of probation, the
21 Board shall have continuing jurisdiction over Respondent Jordan Phung, and probation shall
22 automatically be extended, until all terms and conditions have been satisfied or the Board has
23 taken other action as deemed appropriate to treat the failure to comply as a violation of probation,
24 to terminate probation, and to impose the penalty that was stayed.

25 If Respondent Jordan Phung violates probation in any respect, the Board, after giving
26 Respondent Jordan Phung notice and an opportunity to be heard, may revoke probation and carry
27 out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for
28 those provisions stating that a violation thereof may lead to automatic termination of the stay

1 and/or revocation of the license. If a petition to revoke probation or an accusation is filed against
2 Respondent Jordan Phung during probation, the Board shall have continuing jurisdiction and the
3 period of probation shall be automatically extended until the petition to revoke probation or
4 accusation is heard and decided.

5 **27. Completion of Probation**

6 Upon written notice by the Board or its designee indicating successful completion of
7 probation, Respondent Jordan Phung's license will be fully restored.

8 **28. Community Services Program**

9 Within sixty (60) days of the effective date of this decision, Respondent Jordan Phung shall
10 submit to the Board or its designee, for prior approval, a community service program in which
11 Respondent Jordan Phung shall provide free health-care related services on a regular basis to a
12 community or charitable facility or agency for a total of two hundred and fifty hours (250) for the
13 first three (3) years of probation. Within thirty (30) days of Board approval thereof, Respondent
14 Jordan Phung shall submit documentation to the Board demonstrating commencement of the
15 community service program. A record of this notification must be provided to the Board upon
16 request. Respondent Jordan Phung shall report on progress with the community service program
17 in the quarterly reports. Failure to timely submit, commence, or comply with the program shall
18 be considered a violation of probation.

19 **29. Remedial Education**

20 Within sixty (60) days of the effective date of this decision, Respondent Jordan Phung shall
21 submit to the Board or its designee, for prior approval, an appropriate program of remedial
22 education related to corresponding responsibility therapeutics of controlled substances,
23 particularly in opioid therapy. The program of remedial education shall consist of at least sixteen
24 (16) hours per year for each year of the six (6) years probation, and shall be completed at
25 Respondent Jordan Phung's own expense. All remedial education shall be in addition to, and
26 shall not be credited toward, continuing education (CE) courses used for license renewal
27 purposes.

28 ///

1 Following the successful completion of three (3) years of probation Respondent Jordan
2 Phung may petition the Board for a reduction in the length of the term of this provision.

3 Failure to timely submit or complete the approved remedial education shall be considered a
4 violation of probation. The period of probation will be automatically extended until such
5 remedial education is successfully completed and written proof, in a form acceptable to the
6 Board, is provided to the Board or its designee.

7 Following the completion of each course, the Board or its designee may require Respondent
8 Jordan Phung, at her own expense, to take an approved examination to test Respondent Jordan
9 Phung's knowledge of the course. If Respondent Jordan Phung does not achieve a passing score
10 on the examination, this failure shall be considered a violation of probation. Any such
11 examination failure shall require Respondent Jordan Phung to take another course approved by
12 the Board in the same subject area.

13 **30. Supervised Practice**

14 During the period of probation, Respondent Jordan Phung shall practice only under the
15 supervision of a licensed pharmacist not on probation with the Board. Upon and after the
16 effective date of this decision, Respondent Jordan Phung shall not practice pharmacy and her
17 license shall be automatically suspended until a supervisor is approved by the Board or its
18 designee. The supervision shall be, as required by the board or its designee, either:

19 Continuous – At least 75% of a work week

20 Substantial - At least 50% of a work week

21 Partial - At least 25% of a work week

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

23 Within thirty (30) days of the effective date of this decision, Respondent Jordan Phung shall
24 have her supervisor submit notification to the Board in writing stating that the supervisor has read
25 the decision in case number 4997 and is familiar with the required level of supervision as
26 determined by the Board or its designee. It shall be Respondent Jordan Phung's responsibility to
27 ensure that her employer(s), pharmacist-in-charge and/or supervisor(s) submit timely
28 acknowledgement(s) to the Board. Failure to cause the direct supervisor and the pharmacist-in-

1 charge to submit timely acknowledgements to the Board shall be considered a violation of
2 probation.

3 If Respondent Jordan Phung changes employment, it shall be Respondent Jordan Phung's
4 responsibility to ensure that her employer(s), pharmacist-in-charge and/or supervisor(s) submit
5 timely acknowledgement(s) to the Board. Respondent Jordan Phung shall have her new
6 supervisor, within fifteen (15) days after employment commences, submit notification to the
7 Board in writing stating the direct supervisor and pharmacist-in-charge have read the decision in
8 case number 4997 and is familiar with the level of supervision as determined by the Board.
9 Respondent Jordan Phung shall not practice pharmacy and her license shall be automatically
10 suspended until the Board or its designee approves a new supervisor. Failure to cause the direct
11 supervisor and the pharmacist-in-charge to submit timely acknowledgements to the Board shall
12 be considered a violation of probation.

13 Within ten (10) days of leaving employment, Respondent Jordan Phung shall notify the
14 board in writing.

15 During suspension, Respondent Jordan Phung shall not enter any pharmacy area or any
16 portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other
17 distributor of drugs which is licensed by the Board, or any manufacturer, or where dangerous
18 drugs and devices or controlled substances are maintained. Respondent Jordan Phung shall not
19 practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing,
20 compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be
21 a consultant to any licensee of the Board, or have access to or control the ordering, manufacturing
22 or dispensing of dangerous drugs and controlled substances. Respondent Jordan Phung shall not
23 resume practice until notified by the Board.

24 During suspension, Respondent Jordan Phung shall not engage in any activity that requires
25 the professional judgment of a pharmacist. Respondent Jordan Phung shall not direct or control
26 any aspect of the practice of pharmacy. Respondent Jordan Phung shall not perform the duties of
27 a pharmacy technician or a designated representative for any entity licensed by the Board.

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

1 **31. Tolling of Suspension**

2 During the period of suspension, Respondent Jordan Phung shall not leave California for
3 any period exceeding ten (10) days, regardless of purpose (including vacation). Any such
4 absence in excess of the ten (10) days during suspension shall be considered a violation of
5 probation. Moreover, any absence from California during the period of suspension exceeding ten
6 (10) days shall toll the suspension, i.e., the suspension shall be extended for one day for each day
7 over ten (10) days Respondent is absent from California. During any such period of tolling of
8 suspension, Respondent must nevertheless comply will all terms and conditions of probation.
9 Respondent must notify the Board in writing within ten (10) days of departure, and must further
10 notify the Board in writing within ten (10) days of return. The failure to provide such
11 notification(s) shall constitute a violation of probation. Upon such departure and return,
12 Respondent shall not resume the practice of pharmacy until notified by the Board that the period
13 of suspension has been satisfactorily completed.

14 **32. Surrender of DEA Permit**

15 Within thirty (30) days of the effective date of the decision, Respondent Jordan Phung shall
16 surrender her federal Drug Enforcement Administration (DEA) permit to the DEA for
17 cancellation. Respondent shall provide documentary proof of such cancellation to the Board or
18 its designee. Respondent is prohibited from prescribing until the Board has received satisfactory
19 proof of cancellation. Thereafter, Respondent shall not apply/reapply for a DEA registration
20 number without the prior written consent of the Board or its designee.

21 **33. No Ownership of Licensed Premises**

22 Respondent Jordan Phung shall not own, have any legal or beneficial interest in, or serve as
23 a manager, administrator, member, officer, director, trustee, associate, or partner of any business,
24 firm, partnership, or corporation currently or hereinafter licensed by the Board.

25 In addition to the requirements regarding the surrender of Pharmacy Permit No. PHY 50692
26 issued to Saddleback Pharmacy, Inc. dba Saddleback Pharmacy, as outlined previously in the
27 agreement, Respondent Jordan Phung shall sell or transfer any legal or beneficial interest in any
28 other entity licensed by the board within ninety (90) days following the effective date of this

1 decision and shall immediately thereafter provide written proof thereof to the Board. Failure to
2 timely divest any legal or beneficial interest(s) or provide documentation thereof shall be
3 considered a violation of probation.

4 **34. Ethics Course**

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

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

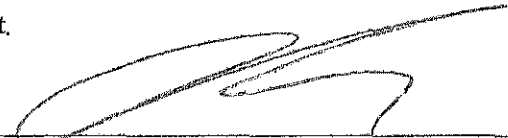
11
12 **ACCEPTANCE**

13 I have carefully read the above Stipulated Surrender of License and Order as to Saddleback
14 Pharmacy, Inc. dba Saddleback Pharmacy, Only and Stipulated Settlement and Disciplinary
15 Order as to Jordan Buu Phung, Only, and have fully discussed it with my attorney, Paul Chan. I
16 understand the stipulation and the effect it will have on my Pharmacy Permit No. PHY 42046,
17 and my Pharmacist License Number RPH 4844. On behalf of myself and Respondent Saddleback
18 Pharmacy, Inc. dba Saddleback Pharmacy, I enter into this Stipulated Surrender of License and
19 Order as to Saddleback Pharmacy, Inc. dba Saddleback Pharmacy, Only and Stipulated
20 Settlement and Disciplinary Order as to Jordan Buu Phung, Only, voluntarily, knowingly, and
21 intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

22
23 DATED: 1/30/2015 Jordan Phung
24 JORDAN BUU PHUNG, as an individual, and as
25 authorized agent on behalf of
26 SADDLEBACK PHARMACY, INC. DBA
27 SADDLEBACK PHARMACY
28 Respondents

1 I have read and fully discussed with Respondents Jordan Buu Phong and Saddleback
2 Pharmacy, Inc. dba Saddleback Pharmacy the terms and conditions and other matters contained in
3 the above Stipulated Surrender of License and Order as to Saddleback Pharmacy, Inc. dba
4 Saddleback Pharmacy, Only and Stipulated Settlement and Disciplinary Order as to Jordan Buu
5 Phung, Only. I approve its form and content.

6 DATED: 1-30-15


7 PAUL CHAN,
8 Attorney for Respondent

9
10
11
12 ENDORSEMENT

13 The foregoing Stipulated Surrender of License and Order as to Saddleback Pharmacy, Inc.
14 dba Saddleback Pharmacy, Only and Stipulated Settlement and Disciplinary Order as to Jordan
15 Buu Phung, Only is hereby respectfully submitted for consideration by the Board of Pharmacy.

16 Dated:

17 Respectfully submitted,

18 KAMALA D. HARRIS
19 Attorney General of California
20 JAMES M. LEDAKIS
21 Supervising Deputy Attorney General

22 DAVID E. HAUSFELD
23 Deputy Attorney General
24 *Attorneys for Complainant*

25 SD2013706259
26 71014255.doc

1 I have read and fully discussed with Respondents Jordan Buu Phong and Saddleback
2 Pharmacy, Inc. dba Saddleback Pharmacy the terms and conditions and other matters contained in
3 the above Stipulated Surrender of License and Order as to Saddleback Pharmacy, Inc. dba
4 Saddleback Pharmacy, Only and Stipulated Settlement and Disciplinary Order as to Jordan Buu
5 Phong, Only. I approve its form and content.

6 DATED: _____

7 PAUL CHAN,
8 Attorney for Respondent

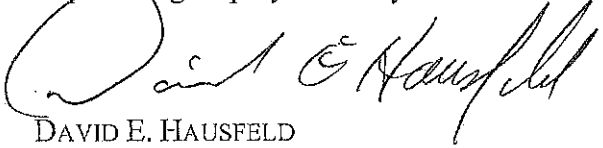
9
10
11
12 **ENDORSEMENT**

13 The foregoing Stipulated Surrender of License and Order as to Saddleback Pharmacy, Inc.
14 dba Saddleback Pharmacy, Only and Stipulated Settlement and Disciplinary Order as to Jordan
15 Buu Phong, Only is hereby respectfully submitted for consideration by the Board of Pharmacy.

16 Dated: 2/3/15

17 Respectfully submitted,

18 KAMALA D. HARRIS
19 Attorney General of California
20 JAMES M. LEDAKIS
21 Supervising Deputy Attorney General

22 
23 DAVID E. HAUSFELD
24 Deputy Attorney General
25 *Attorneys for Complainant*

26 SD2013706259
27 71014255.doc

Exhibit A

Accusation No. 4997

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 DESIREE I. KELLOGG
Deputy Attorney General
4 State Bar No. 126461
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2996
7 Facsimile: (619) 645-2061
Attorneys for Complainant
8

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

11 In the Matter of the Accusation Against:

Case No. 4997

12 **SADDLEBACK PHARMACY, INC.,**
13 **DBA SADDLEBACK PHARMACY**
28251 Marguerite Pkwy., Ste. D
14 Mission Viejo, CA 92692

ACCUSATION

15 Pharmacy Permit No. PHY 50692

16 **JORDAN BUU PHUNG**
23252 Castle Rock
17 Mission Viejo, CA 92692

18 Pharmacist License No. RPH48177

19 Respondents.
20

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 19, 2011, the Board of Pharmacy issued Pharmacy Permit
27 Number PHY 50692 to Saddleback Pharmacy, Inc., doing business as Saddleback Pharmacy
28 (Respondent Saddleback Pharmacy). The Pharmacy Permit was in full force and effect at all

1 times relevant to the charges brought herein and will expire on September 1, 2014, unless
2 renewed.

3 3. On or about August 14, 1995, the Board of Pharmacy issued Pharmacist License
4 Number RPH 48177 to Jordan Buu Phung (Respondent Jordan Phung). The Pharmacy Permit
5 was in full force and effect at all times relevant to the charges brought herein and will expire on
6 May 31, 2015, unless renewed.

7 JURISDICTION

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

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

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

16 7. Section 4300.1 of the Code states:

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

21 STATUTORY AND REGULATORY PROVISIONS

22 8. Section 4059(a) of the Code states:

23 A person may not furnish any dangerous drug, except upon the prescription of a
24 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
pursuant to Section 3640.7. A person may not furnish any dangerous device, except
upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
naturopathic doctor pursuant to Section 3640.7.

25 9. Section 4301 of the Code states in pertinent part:

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

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

...

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

...

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

10. Section 4113(c) of the Code states:

The pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy.

11. Section 4306.5 of the Code states, in pertinent part:

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

Acts or omissions that involve, in whole or in part, the inappropriate exercise of his or her education, training, or experience as a pharmacist, whether or not the act or omission arises in the course of the practice of pharmacy or the ownership, management, administration, or operation of a pharmacy or other entity licensed by the board.

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.

12. Health and Safety Code section 11153(a) states:

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

1 13. Section 1707.3 of title 16, California Code of Regulations states:

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

6 14. Section 1716 of title 16, California Code of Regulations states:

7 Pharmacists shall not deviate from the requirements of a prescription except
8 upon the prior consent of the prescriber or to select the drug product in accordance
9 with Section 4073 of the Business and Professions Code.

10 Nothing in this regulation is intended to prohibit a pharmacist from exercising
11 commonly accepted pharmaceutical practice in the compounding or dispensing of a
12 prescription.

13 15. Section 1761 of title 16, California Code of Regulations states:

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

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

22 COST RECOVERY

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

27 DRUGS

28 17. Dilaudid is a brand name for hydromorphone, a Schedule II controlled substance
pursuant to Health and Safety Code section 11054(b)(1)(J) and a dangerous drug pursuant to
Business and Professions Code section 4022.

18. Norco is a brand name for hydrocodone/acetaminophen, a Schedule III controlled
substance pursuant to Health and Safety Code section 11056(e)(5) and a dangerous drug pursuant
to Business and Professions Code section 4022.

1 19. Oxycodone is a Schedule II controlled substance pursuant to Health and Safety Code
2 section 11054(b)(1)(M) and a dangerous drug pursuant to Business and Professions Code section
3 4022.

4 20. Phenergan with Codeine is the brand name for promethazine with codeine, a Schedule
5 V controlled substance pursuant to Health and Safety Code section 11058(c)(1) and is a
6 dangerous drug pursuant to Business and Professions Code section 4022.

7 21. Xanax is the brand name for alprazolam, a Schedule IV controlled substance pursuant
8 to Health and Safety Code section 11057(d)(1) and a dangerous drug pursuant to Business and
9 Professions Code section 4022.

10 **FACTUAL ALLEGATIONS**

11 22. From September 19, 2011 through the present, Respondent Jordan Phung was the
12 Pharmacist-in-Charge of Respondent Saddleback Pharmacy.

13 23. On January 24, 2013, the Board received an anonymous complaint from "concerned
14 Mission Viejo residents." They informed the Board that there were numerous customers driving
15 from Los Angeles to fill prescriptions for controlled substances at Respondents. They suspected
16 illegal drug activity.

17 24. On April 30, 2012, the Board received notification from a drug wholesaler that it had
18 identified Respondents' orders for controlled substances as creating an "unreasonable risk for
19 potential diversion." The drug wholesaler further commented that Respondents could not
20 adequately justify the quantities of controlled substances ordered by them and suspended sales of
21 controlled substances to them as of April 26, 2012.

22 25. From October 17, 2011 to February 7, 2013, Respondents filled 1018 prescriptions for
23 controlled substances which were written either by physician assistant, B.E. from Corona; Dr.
24 C.A. from Los Angeles; Dr. E.G. from Beverly Hills; Dr. M.S. from Panorama City; Dr. E.C.
25 from Panorama City; Dr. A.V. from Los Angeles; and Dr. M.G. from Los Angeles. The amounts
26 of oxycodone dispensed by Respondents during the same time frame was higher than neighboring
27 pharmacies and three times the amount of their closest competitor pharmacy.

28

1 26. Dr. M.S. was arrested for allegedly operating a "pill mill" or writing prescriptions for
2 illegitimate purposes. He admitted that none of the prescriptions filled by Respondents and
3 written by him were prescribed for a legitimate medical purpose. He further admitted that he had
4 never seen any of the patients who had prescriptions filled for controlled substances at
5 Respondent Saddleback Pharmacy and that he had never spoken with anyone at Respondent
6 Saddleback Pharmacy.

7 27. Dr. E.S. was under investigation for the same charges as Dr. M.S. Dr. A.V. was
8 deceased when he allegedly wrote controlled substance prescriptions which were filled by
9 Respondents.

10 28. To obtain controlled substances, patients traveled a range of 110 miles to 246.2 miles
11 from their residences to their providers' offices, from the prescribers' offices to Respondent
12 Saddleback Pharmacy and from Respondent Saddleback Pharmacy to their residences.

13 29. Patients paid for the controlled substance prescriptions in cash and did not seek
14 reimbursement from an insurance company or government agency. Respondents sold controlled
15 substances for substantial mark-ups, including a 400 percent mark-up and a 1258 percent mark-
16 up.

17 30. Groups of patients were furnished controlled substances by Respondents at the same
18 time. Respondents' records listed the same home address for various patients who were
19 dispensed controlled substances by Respondents.

20 31. Respondents filled prescriptions for controlled substances which were written in an
21 identical fashion for multiple patients. For example, Dr. E.G.'s patients were prescribed the same
22 "cocktail" of promethazine with codeine, hydrocodone/acetaminophen and alprazolam
23 consistently.

24 32. Respondents filled prescriptions for controlled substances earlier than was written on
25 the prescriptions without authorization from the prescribers. Additionally, Respondents filled
26 controlled substance prescriptions for patients who (1) used multiple pharmacies to fill their
27 controlled substance prescriptions and (2) patients who used multiple prescribers to obtain the
28 same controlled substances.

1 irregularities, uncertainties, ambiguities or alterations, as set forth in paragraphs 22 through 33.
2 above, which are incorporated herein by reference.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Failure to Review Patients' Medication Record Before Prescription Drugs Delivered)**

5 37. Respondents are subject to disciplinary action under Code section 4301(o), for
6 violating title 16, California Code of Regulations, section 1707.3, in that they dispensed
7 prescriptions for controlled substances and dangerous drugs, without review of patients'
8 medication records before each prescription drug was delivered. Such a review would have
9 revealed numerous "red flags," as set forth in paragraphs 22 through 33 above, which are
10 incorporated herein by reference.

11 **FIFTH CAUSE FOR DISCIPLINE**

12 **(Dispensing Controlled Substances with Variations from Prescriptions)**

13 38. Respondents are subject to disciplinary action under Code section 4301(o) for
14 violating title 16, California Code of Regulations, section 1716, in that they dispensed controlled
15 substances which deviated from the requirements of the prescriptions without the prior consent of
16 the prescribers. Specifically, they dispensed controlled substances earlier than prescribed by the
17 providers, as set forth in paragraphs 22 through 33, which are incorporated herein by reference.

18 **SIXTH CAUSE FOR DISCIPLINE**

19 **(Failure to Exercise or Implement Best Professional Judgment or Corresponding**

20 **Responsibility when Dispensing Controlled Substances**

21 **against Respondent Jordan Phung)**

22 39. Respondent Jordan Phung is subject to disciplinary action under Code section
23 4301(o), for violating Business and Professions Code section 4306.5(a) and (b), in that she failed
24 to exercise or implement her best professional judgment or corresponding responsibility when
25 dispensing controlled substances, as set forth in paragraphs 22 through 33 above, which are
26 incorporated herein by reference.

1 SEVENTH CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct)

3 40. Respondents are subject to disciplinary action under Code section 4301 for
4 unprofessional conduct in that they engaged in the activities described in paragraphs 22 through
5 33 above, which are incorporated herein by reference.

6 PRAYER

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

9 1. Revoking or suspending Pharmacy Permit Number PHY 50692, issued to Saddleback
10 Pharmacy, Inc., doing business as Saddleback Pharmacy;

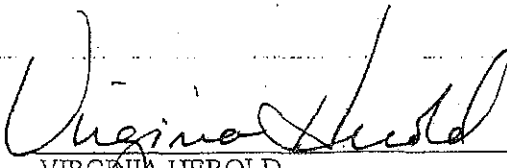
11 2. Revoking or suspending Pharmacist License Number RPH 48177, issued to Jordan
12 Buu Phung;

13 3. Ordering Saddleback Pharmacy, Inc. doing business as Saddleback Pharmacy and
14 Jordan Buu Phung to pay the Board of Pharmacy the reasonable costs of the investigation and
15 enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

17
18
19 DATED: _____

4/9/14



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

20
21
22
23
24 SD2013706259
25 70819108.doc
26
27
28