

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

In the Matter of the Accusation Against:

**JOSEPH PAUL MACALUSO  
1249 Columbus Way  
Vista, CA 92081**

**Pharmacist License No. RPH 25224**

Respondent.

Case No. 5079

OAH No. 2015020380

**DECISION AND ORDER**

The attached Stipulated Surrender of License and 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 January 8, 2016.

It is so ORDERED on December 9, 2015.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
Amy Gutierrez, Pharm.D.  
Board President

1 KAMALA D. HARRIS  
Attorney General of California  
2 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
3 DIANE DE KERVOR  
Deputy Attorney General  
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*Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5079

12 **JOSEPH PAUL MACALUSO**  
13 **1249 Columbus Way**  
14 **Vista, CA 92081**

OAH No. 2015020380

15 **Pharmacist License No. RPH 25224**

**STIPULATED SURRENDER OF  
LICENSE AND ORDER**

16 Respondent.

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

19 PARTIES

20 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.  
21 She brought this action solely in her official capacity and is represented in this matter by Kamala  
22 D. Harris, Attorney General of the State of California, by Diane de Kervor, Deputy Attorney  
23 General.

24 2. Joseph Paul Macaluso (Respondent) is represented in this proceeding by attorney  
25 Storm P. Anderson, Esq., whose address is 4660 La Jolla Village Drive, Suite 670  
26 San Diego, CA 92122.

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1 basis for the charges in the Accusation and that those charges constitute cause for discipline.  
2 Respondent hereby gives up his right to contest that cause for discipline exists based on those  
3 charges.

4 10. Respondent understands that by signing this stipulation he enables the Board to issue  
5 an order accepting the surrender of his Pharmacist License without further process.

6 RESERVATION

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

11 CONTINGENCY

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

21 13. The parties understand and agree that Portable Document Format (PDF) and facsimile  
22 copies of this Stipulated Surrender of License and Order, including Portable Document Format  
23 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

24 14. This Stipulated Surrender of License and Order is intended by the parties to be an  
25 integrated writing representing the complete, final, and exclusive embodiment of their agreement.  
26 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,  
27 negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order

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1 may not be altered, amended, modified, supplemented, or otherwise changed except by a writing  
2 executed by an authorized representative of each of the parties.

3 15. In consideration of the foregoing admissions and stipulations, the parties agree that  
4 the Board may, without further notice or formal proceeding, issue and enter the following Order:

5 **ORDER**

6 IT IS HEREBY ORDERED that Pharmacist License No. RPH 25224, issued to Respondent  
7 Joseph Paul Macaluso, is surrendered and accepted by the Board of Pharmacy.

8 1. The surrender of Respondent's Pharmacist License and the acceptance of the  
9 surrendered license by the Board shall constitute the imposition of discipline against Respondent.  
10 This stipulation constitutes a record of the discipline and shall become a part of Respondent's  
11 license history with the Board of Pharmacy.

12 2. Respondent shall lose all rights and privileges as a Pharmacist in California as of the  
13 effective date of the Board's Decision and Order.

14 3. Respondent shall cause to be delivered to the Board his pocket license and, if one was  
15 issued, his wall certificate on or before the effective date of the Decision and Order.

16 4. Respondent understands and agrees that if he or she ever files an application for  
17 licensure or a petition for reinstatement in the State of California, the board shall treat it as a new  
18 application for licensure.

19 Respondent may not apply for any license, permit, or registration from the board for three  
20 years from the effective date of this decision. Respondent stipulates that should he or she apply  
21 for any license from the board on or after the effective date of this decision, all allegations set  
22 forth in the accusation shall be deemed to be true, correct and admitted by respondent when the  
23 board determines whether to grant or deny the application.

24 Respondent shall satisfy all requirements applicable to that license as of the date the  
25 application is submitted to the board, including, but not limited to taking and passing the  
26 California Pharmacist Licensure Examination prior to the issuance of a new license. Respondent  
27 is required to report this surrender as disciplinary action.

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1 5. Respondent shall pay the agency its costs of investigation and enforcement in the  
2 amount of \$12,478.50 prior to issuance of a new or reinstated license.

3 6. If Respondent should ever apply or reapply for a new license or certification, or  
4 petition for reinstatement of a license, by any other health care licensing agency in the State of  
5 California, all of the charges and allegations contained in Accusation, No. 5079 shall be deemed  
6 to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any  
7 other proceeding seeking to deny or restrict licensure.

8 ACCEPTANCE

9 I have carefully read the above Stipulated Surrender of License and Order and have fully  
10 discussed it with my attorney, Storm P. Anderson, Esq. I understand the stipulation and the effect  
11 it will have on my Pharmacist License. I enter into this Stipulated Surrender of License and  
12 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order  
13 of the Board of Pharmacy.

14 DATED:

9/25/15

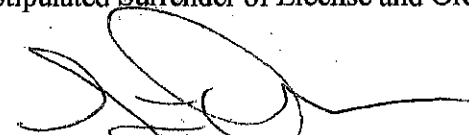


15 JOSEPH PAUL MACALUSO  
Respondent

16 I have read and fully discussed with Respondent Joseph Paul Macaluso the terms and  
17 conditions and other matters contained in this Stipulated Surrender of License and Order. I  
18 approve its form and content.

19 DATED:

9/25/15



20 STORM P. ANDERSON, ESQ.  
Attorney for Respondent

21 ENDORSEMENT

22 The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted  
23 for consideration by the Board of Pharmacy of the Department of Consumer Affairs.  
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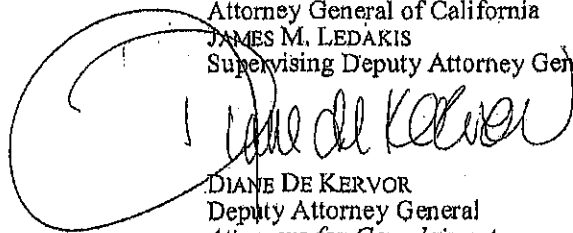
09/25/2015 09:46

#198 P.007/009

Dated: 9/25/15

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
JAMES M. LEDAKIS  
Supervising Deputy Attorney General



DIANE DE KERVOR  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**Accusation No. 5079**



1 KAMALA D. HARRIS  
Attorney General of California  
2 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
3 DIANE DE KERVOR  
Deputy Attorney General  
4 State Bar No. 174721  
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6 San Diego, CA 92186-5266  
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7 Facsimile: (619) 645-2061  
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12 **JOSEPH PAUL MACALUSO**  
13 **1249 Columbus Way**  
14 **Vista, CA 92081**

**ACCUSATION**

15 **Pharmacist License No. RPH 25224**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about August 8, 1967, the Board of Pharmacy issued Pharmacist License  
23 Number RPH 25224 to Joseph Paul Macaluso (Respondent). The Pharmacist License was in full  
24 force and effect at all times relevant to the charges brought herein and will expire on November  
25 30, 2014, unless renewed.

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JURISDICTION

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

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 4300 of the Code states in pertinent part:

(a) Every license issued may be suspended or revoked.

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

(1) Suspending judgment.

(2) Placing him or her upon probation.

(3) Suspending his or her right to practice for a period not exceeding one year.

(4) Revoking his or her license.

(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

....

6. Section 4300.1 of the Code states:

The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a 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.

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11. Section 4113 of the Code states:

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(c) 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.

12. Section 4301 of the Code states:

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

....

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

....

(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 by any other state or federal regulatory agency.

**REGULATORY PROVISIONS**

13. Title 16, California Code of Regulations, Section 1707.1 provides:

(a) A pharmacy shall maintain medication profiles on all patients who have prescriptions filled in that pharmacy except when the pharmacist has reasonable belief that the patient will not continue to obtain prescription medications from that pharmacy.

(1) A patient medication record shall be maintained in an automated data processing or manual record mode such that the following information is readily retrievable during the pharmacy's normal operating hours.

(A) The patient's full name and address, telephone number, date of birth (or age) and gender;

(B) For each prescription dispensed by the pharmacy:

1. The name, strength, dosage form, route of administration, if other than oral, quantity and directions for use of any drug dispensed;

1  
2 2. The prescriber's name and where appropriate, license number, DEA  
registration number or other unique identifier;

3 3. The date on which a drug was dispensed or refilled;

4 4. The prescription number for each prescription; and

5 5. The information required by section 1717.

6 (C) Any of the following which may relate to drug therapy: patient  
7 allergies, idiosyncracies, current medications and relevant prior medications including  
8 nonprescription medications and relevant devices, or medical conditions which are  
communicated by the patient or the patient's agent.

9 (D) Any other information which the pharmacist, in his or her professional  
judgment, deems appropriate.

10 (2) The patient medication record shall be maintained for at least one year  
11 from the date when the last prescription was filled.

#### 12 **COST RECOVERY**

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

#### 17 **DRUG**

18 15. Norco, a brand name for hydrocodone with acetaminophen, is a dangerous drug  
19 pursuant to section 4022, and a Schedule IV controlled substance as designated by Health and  
20 Safety Code section 11056(e)(5).

#### 21 **FACTS SUPPORTING CAUSES FOR DISCIPLINE**

22 16. Respondent was employed by North County Health Services Pharmacy (Pharmacy) as  
23 Director of Pharmacy from August 1, 2007 until he was terminated on November 7, 2012. He  
24 was the Pharmacist in Charge from November 26, 2007 until his termination.

25 17. The Pharmacy's internal policies provide that the Pharmacy may only dispense  
26 medicines in their formulary. The Pharmacy only accepts prescriptions written by North County  
27 Health Services clinicians for North County Health Services patients. However, North County  
28

1 Health Services employees and their families may fill prescriptions at a discounted rate, but the  
2 prescription must be written by or cosigned by a North County Health Services clinician.

3 18. A complaint was filed by a Pharmacist colleague at the Pharmacy, which led to an  
4 investigation against Respondent regarding his prescribing practices with respect to filling his own  
5 or his family's prescriptions.

6 19. Respondent admitted to filling some prescriptions in his name and then changing the  
7 name of the prescription to a fictitious name. When the investigation into this practice started,  
8 Respondent changed the fictitious names for his prescriptions into another fictitious name.

9 20. Respondent admitted to processing prescriptions through the pharmacy computer  
10 system and printing medication bottle labels for himself and his wife, then voiding the reprinted  
11 labels in the computer records to maintain the current inventory. Some of these labels were for  
12 medications for Respondent's wife prescribed by a doctor on a date that that doctor was no longer  
13 working at North County Health Services.

14 21. Respondent admitted to ordering Norco in a dosage not normally carried by the  
15 pharmacy (non-formulary), checking the drug into the pharmacy inventory, then maintaining the  
16 bottle in a secret drawer to which only he had the key. Respondent claimed that his doctor was  
17 going to prescribe Norco to him, so he went ahead and filled the prescription, but that his doctor  
18 ultimately did not write the prescription. Respondent alleged that he intended to return the  
19 medication to a reverse distributor. Respondent reported that at the time of his termination there  
20 was a full, large, unopened bottle of Norco in his "secret drawer." However, only two empty  
21 bottles of Norco were found in Respondent's drawer.

22 22. Several prescriptions were filled at the pharmacy for Respondent, his wife, and his  
23 daughter with no corresponding documentation from a physician to support those prescriptions.

24 23. Despite the fact that he filled prescriptions at the pharmacy, there was no profile in  
25 Respondent's name at the pharmacy. Respondent changed his name in the North County Health  
26 Services computer software to two pseudonyms, Dee Wyse and Mike Schrek. Respondent  
27 admitted to changing the name in the computer system to Mike Schrek so he could fill  
28

1 prescriptions at work for a discount while maintaining his privacy. The pharmacy profile for Dee  
2 Wyse had the same address, social security number, and date of birth as Respondent.

3 24. Prescriptions for Respondent were altered to the name Dee Wyse. Those  
4 prescriptions also erroneously listed the prescribing doctor's place of employment as North  
5 County Health Services.

6 25. A few prescriptions for Respondent and his wife were allegedly prescribed by the  
7 Chief Medical Officer of North County Health Services, with his signature. However, the Chief  
8 Medical Officer denied prescribing any medication to Respondent, Respondent's wife, or any of  
9 Respondent's pseudonyms and the signatures did not belong to him. Some of these prescriptions  
10 were generated by other medical facilities, not North County Health Services.

11 26. Several of the prescriptions forged with the name of the Chief Medical Officer were  
12 associated with the prescription file for Dee Wyse, one of Respondent's pseudonyms.

13 27. Several of the prescriptions filled for Dee Wyse had no hard copy prescriptions  
14 associated with them or had been voided.

15 28. Several of the filled prescriptions had the wrong prescription number for the type of  
16 drug distributed. Respondent would assign non-controlled prescription numbers to prescriptions  
17 that were controlled substances.

18 29. A colleague questioned a refill for Respondent's wife, that was dated for one year  
19 from the fill date, the type of medication did not match the pharmacy records, and there was no  
20 authorization for the medication.

21 30. Respondent verified/ initialed two prescriptions filled for this wife on a nonprescription  
22 form with a doctor's signature who denied writing the prescriptions or any prescriptions for  
23 Respondent's wife.

24 31. Respondent verified another prescription for his wife on a prescription that was  
25 written on a North County Health Services prescription pad (they were available at the pharmacy)  
26 and fraudulently signed by a North County Health Services Pharmacy clinician. Respondent's wife  
27 never saw that doctor and was not a North County Health Services patient. The doctor did not  
28 sign the prescription.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct - Failure to Maintain Medication Profiles)**

3 32. Respondent is subject to disciplinary action under section 4301, subdivision (o) for  
4 violation of California Code of Regulations, title 16, section 1707.1 in that, although he filled  
5 prescriptions for himself at work, Respondent failed to maintain a Medication Profile on himself, as set  
6 forth in paragraphs 15 to 30, which are incorporated herein by reference.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Unprofessional Conduct - Making False and Fraudulent Prescription Records)**

9 33. Respondent is subject to disciplinary action for unprofessional Conduct under section  
10 4301, subdivision (g), for knowingly making a document that falsely represents the existence or  
11 nonexistence of a set of facts, in that Respondent altered his patient medication record by changing  
12 his name to the alias "Mike Schrek" and filled prescriptions for himself under that pseudonym as  
13 well as the pseudonym "Dee Wyse," as set forth in paragraphs 15 to 30, which are incorporated  
14 herein by reference.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Unprofessional Conduct - Furnished a Dangerous Drug Without a Lawful Prescription)**

17 34. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the  
18 Code for unprofessional conduct in that Respondent knowingly violated Business and Professions  
19 Code section 4059, subdivision (a), when he dispensed a dangerous drug to his wife without a  
20 valid prescription, based upon a fraudulent signature on a document that was not a prescription  
21 pad, and without the verbal or written authorization of a lawfully prescriber, as described in  
22 paragraphs 15 to 30, which are incorporated herein by reference.

23 **PRAYER**

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

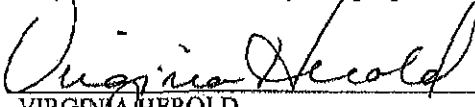
26 1. Revoking or suspending Pharmacist License Number RPH 25224, issued to Joseph  
27 Paul Macaluso;



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2. Ordering Joseph Paul Macaluso to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 9/14/14 

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

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