

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

In the Matter of the Accusation Against:

**COSTCO CORP. DBA COSTCO
PHARMACY #454
115 Technology Drive
Irvine, CA 92618**

Pharmacy Permit No. PHY 41247

**LAURA CODY MORRIS
215 Deinenger Circle
Corona, CA 92880**

Pharmacist License No. RPH 46609

Case No. 5324

OAH No. 2015081057

**STIPULATED SETTLEMENT AND
ORDER (COSTCO)**

Respondents.

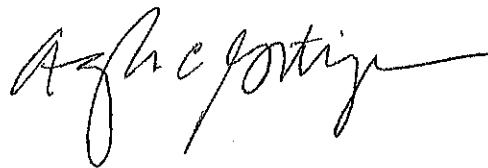
DECISION AND ORDER

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 at 5:00 p.m. on September 23, 2016.

It is so ORDERED on August 24, 2016.

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 GREGORY J. SALUTE
Supervising Deputy Attorney General
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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. 5324

12 **COSTCO CORP. DBA COSTCO**
13 **PHARMACY #454**
14 **115 Technology Drive**
Irvine, CA 92618

OAH No. 2015081057

**STIPULATED SETTLEMENT AND
ORDER (COSTCO)**

15 **Pharmacy Permit No. PHY 41247**

16 **LAURA CODY MORRIS**
17 **215 Deinenger Circle**
Corona, CA 92880

18 **Pharmacist License No. RPH 46609**

19 Respondents.
20

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
28

1 D. Harris, Attorney General of the State of California, by Desiree I. Kellogg, Deputy Attorney
2 General.

3 2. Costco Wholesale Corporation, doing business as Costco Pharmacies (Non-
4 Respondent Costco) and Respondent Costco Corporation, doing business as Costco Pharmacy
5 #454 (Respondent Costco #454) are represented in this proceeding by attorneys Helaine W.
6 Heydemann and Brandie Gasper of Locke Lord LLP, whose address is: 111 South Wacker Drive,
7 Chicago, IL 60606 and 300 South Grand Avenue, Suite 2600, Los Angeles, CA 90071.

8 3. On or about November 12, 1995, the Board of Pharmacy issued Pharmacy Permit No.
9 PHY 41247 to Respondent Costco #454. The Pharmacy Permit was in full force and effect at all
10 times relevant to the charges brought in Accusation No. 5324, and will expire on October 1, 2016,
11 unless renewed.

12 4. On or about August 19, 1993, the Board of Pharmacy issued Pharmacist License
13 Number RPH 46609 to Laura Cody Morris. The Pharmacist License was in full force and effect
14 at all times relevant to the charges brought herein and will expire on June 30, 2017, unless
15 renewed.

16 JURISDICTION

17 5. Accusation No. 5324 was filed before the Board of Pharmacy (Board), Department of
18 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other
19 statutorily required documents were properly served on Respondent on April 13, 2015.
20 Respondent Costco #454 denied the allegations of wrongdoing, denied any violation of law, and
21 timely filed its Notice of Defense contesting the Accusation. Non-Respondent Costco #454
22 consents to jurisdiction through its management and supervision of Respondent Costco #454. For
23 purposes of this Stipulated Settlement Order, Non-Respondent Costco includes all Costco
24 pharmacies in California.

25 6. A copy of Accusation No. 5324 and of Costco #454's Answer and Notice of Defense
26 are attached as exhibit A and incorporated herein by reference.

1 and the staff of the Board of Pharmacy may communicate directly with the Board regarding this
2 stipulation and settlement, without notice to or participation by Respondent Costco #454 and
3 Non-Respondent Costco or their counsel. By signing the stipulation, Respondent Costco #454
4 and Non-Respondent Costco understand and agree that they may not withdraw its agreement or
5 seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board
6 fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
7 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
8 action between the parties, and the Board shall not be disqualified from further action by having
9 considered this matter.

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

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

19 16. 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 Costco Wholesale Corporation, doing business as Costco
24 Pharmacies (Non-Respondent Costco) shall:

25 1. **Continuing Education**

26 Within sixty (60) days of the effective date of this decision, Non-Respondent Costco shall
27 submit to the Board or its designee, for prior approval, an appropriate program of continuing
28 education (C.E.) related to corresponding responsibility for all of its Pharmacy Regional

1 Managers with supervisory authority over California pharmacies. The program of C.E. shall
2 consist of at least six (6) hours, which shall be completed in-person within one (1) year of the
3 effective date of this decision, at Non-Respondent Costco's own expense. Failure to timely
4 submit or complete the approved C.E. shall be considered a violation of this agreement, unless an
5 individual Pharmacy Regional Manager was unable to complete the training for personal reasons
6 or other good cause shown acceptable to the Board. Non-Respondent Costco shall submit written
7 proof in a form acceptable to the board, of such successful completion of C.E. to the board or its
8 designee:

9 **2. Controlled Substance Prescription Documentation**

10 Non-Respondent Costco shall continue to have in place policies and procedures to identify
11 and respond to circumstances raising suspicions about the legitimacy or legitimate medical
12 purpose of a prescription for controlled substances and documentation used to implement those
13 policies and procedures which is consistent with such policies and procedures. Non-Respondent
14 Costco shall also continue to have its pharmacy staff document the pharmacists' (full-time and
15 part-time pharmacists who are currently employed and will be employed by Non-Respondent
16 Costco) exercise of their corresponding responsibility, including patient information obtained,
17 any "red flag" assessments, the manner in which due diligence to assess the "red flags" was
18 exercised, the decision to reject filling a prescription for controlled substances and the identity of
19 the pharmacist who made the decision to fill or reject a prescription for controlled substances.

20 **3. Corresponding Responsibility Policy**

21 Non-Respondent Costco shall have its California pharmacists (full-time and part-time
22 pharmacists who are currently employed and will be employed by Non-Respondent Costco)
23 execute a document which reflects or electronically acknowledges that Non-Respondent Costco:
24 (a) understands and recognizes that pursuant to Health & Safety Code section 11153(a), a
25 corresponding responsibility rests with the pharmacist who fills a prescription for a controlled
26 substance to ensure that a prescription for a controlled substance shall only be issued for a
27 legitimate medical purpose by an individual practitioner acting in the usual course of his or her
28 professional practice; and (b) Non-Respondent Costco understands and recognizes the law which

1 prevents the impairment of the pharmacist's exercise of his or her corresponding responsibility set
2 forth in Health & Safety Code section 11153. Failure to have its pharmacists execute such a
3 document within 60 days of this Stipulated Settlement Order shall be a violation of this
4 agreement.

5 **4. Readily Retrievable Corresponding Responsibility Records**

6 Non-Respondent Costco shall maintain and make available for inspection all records
7 pertaining to the dispensing of controlled substances in a readily retrievable form, for the period
8 required by law. Failure to maintain such records or make them available for inspection shall be
9 considered a violation of this agreement.

10 IT IS HEREBY FURTHER ORDERED that Pharmacy Permit No. PHY 41247 issued to
11 Respondent Costco Corporation, doing business as Costco Pharmacy #454 is revoked. However,
12 the revocation is stayed and Respondent Costco #454 is placed on probation for three (3) years on
13 the following terms and conditions.

14 **5. Obey All Laws**

15 Respondent Costco #454 shall obey all state and federal laws and regulations.
16 Respondent Costco #454 shall report any of the following occurrences to the board, in writing,
17 within seventy-two (72) hours of such occurrence:

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

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

1 **6. Report to the Board**

2 Respondent Costco #454 shall report to the board quarterly, on a schedule as directed by the
3 board or its designee. The report shall be made either in person or in writing, as directed. Among
4 other requirements, Costco #454 shall state in each report under penalty of perjury whether there
5 has been compliance with all the terms and conditions of probation. Failure to submit timely
6 reports in a form as directed shall be considered a violation of probation. Any period(s) of
7 delinquency in submission of reports as directed may be added to the total period of probation.
8 Moreover, if the final probation report is not made as directed, probation shall be automatically
9 extended until such time as the final report is made and accepted by the board.

10 **7. Interview with the Board**

11 Upon receipt of reasonable prior notice, Respondent Costco #454 shall appear in person for
12 interviews with the board or its designee, at such intervals and locations as are determined by the
13 board or its designee. Failure to appear for any scheduled interview without prior notification to
14 board staff, or failure to appear for two (2) or more scheduled interviews with the board or its
15 designee during the period of probation, shall be considered a violation of probation.

16 **8. Cooperate with Board Staff**

17 Respondent Costco #454 shall cooperate with the board's inspection program and with the
18 board's monitoring and investigation of respondent's compliance with the terms and conditions of
19 their probation. Failure to cooperate shall be considered a violation of probation.

20 **9. Reimbursement of Board Costs**

21 As a condition precedent to successful completion of probation, Respondent Costco #454
22 shall pay to the board its costs of investigation and prosecution in the amount of \$16,866.00
23 within thirty (30) days of the effective date of this Decision. Failure to pay costs by the
24 deadline(s) as directed shall be considered a violation of probation.

25 The filing of bankruptcy by Respondent Costco #454 shall not relieve it of its responsibility
26 to reimburse the board its costs of investigation and prosecution.

27 **10. Probation Monitoring Costs**

28 Respondent Costco #454 shall pay any costs associated with probation monitoring as

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

4 **11. Status of License**

5 Respondent Costco #454 shall, at all times while on probation, maintain current licensure
6 with the board. If Respondent Costco #454 submits an application to the board, and the
7 application is approved, for a change of location, change of permit or change of ownership, the
8 board shall retain continuing jurisdiction over the license, and the respondent shall remain on
9 probation as determined by the board. Failure to maintain current licensure shall be considered a
10 violation of probation.

11 If Respondent Costco #454's license expires or is cancelled by operation of law or
12 otherwise at any time during the period of probation, including any extensions thereof or
13 otherwise, upon renewal or reapplication Respondent Costco #454's license shall be subject to all
14 terms and conditions of this probation not previously satisfied.

15 **12. License Surrender While on Probation/Suspension**

16 Following the effective date of this decision, should Respondent Costco #454 discontinue
17 business, Respondent Costco #454 may tender the premises license to the board for surrender.
18 The board or its designee shall have the discretion whether to grant the request for surrender or
19 take any other action it deems appropriate and reasonable. Upon formal acceptance of the
20 surrender of the license, Respondent Costco #454 will no longer be subject to the terms and
21 conditions of probation.

22 Upon acceptance of the surrender, Respondent Costco #454 shall relinquish the premises
23 wall and renewal license to the board within ten (10) days of notification by the board that the
24 surrender is accepted. Respondent Costco #454 shall further submit a completed Discontinuance
25 of Business form according to board guidelines and shall notify the board of the records inventory
26 transfer.

27 Respondent Costco #454 shall also, by the effective date of this decision, arrange for the
28 continuation of care for ongoing patients of the pharmacy by, at minimum, providing a written

1 notice to ongoing patients that specifies the anticipated closing date of the pharmacy and that
2 identifies one or more area pharmacies capable of taking up the patients' care, and by cooperating
3 as may be necessary in the transfer of records or prescriptions for ongoing patients. Within five
4 days of its provision to the pharmacy's ongoing patients, Respondent Costco #454 shall provide a
5 copy of the written notice to the board. For the purposes of this provision, "ongoing patients"
6 means those patients for whom the pharmacy has on file a prescription with one or more refills
7 outstanding, or for whom the pharmacy has filled a prescription within the preceding sixty (60)
8 days.

9 Respondent Costco #454 may not apply for any new licensure from the board for three (3)
10 years from the effective date of the surrender. Respondent Costco #454 shall meet all
11 requirements applicable to the license sought as of the date the application for that license is
12 submitted to the board.

13 Respondent Costco #454 further stipulates that it shall reimburse the board for its costs of
14 investigation and prosecution prior to the acceptance of the surrender.

15 13. Notice to Employees

16 Respondent Costco #454 shall, upon or before the effective date of this decision, ensure that
17 all employees involved in permit operations are made aware of all the terms and conditions of
18 probation, either by posting a notice of the terms and conditions, circulating such notice, or both.
19 If done by notice, it shall be posted in a prominent place in the employee area and shall remain
20 posted throughout the probation period. Respondent Costco #454 shall ensure that any
21 employees hired or used after the effective date of this decision are made aware of the terms and
22 conditions of probation by posting a notice, circulating a notice, or both. Additionally,
23 respondent owner shall submit written notification to the board, within thirty (30) days of the
24 effective date of this decision, that this term has been satisfied. Failure to submit such
25 notification to the board shall be considered a violation of probation. "Employees" as used in this
26 provision includes all full-time, part-time, volunteer, temporary and relief employees and
27 independent contractors employed or hired involved in pharmacy permit operations at any time
28 during probation.

1 **14. Owners and Officers: Knowledge of the Law**

2 Respondent Costco #454 shall provide, within thirty (30) days after the effective date of
3 this decision, signed and dated statements from Non-Respondent Costco's pharmacy officers
4 (vice president and senior vice president), stating under penalty of perjury that said individuals
5 have read and are familiar with state and federal laws and regulations governing the practice of
6 pharmacy. The failure to timely provide said statements under penalty of perjury shall be
7 considered a violation of probation.

8 **15. Posted Notice of Probation**

9 Respondent Costco #454 shall prominently post a probation notice provided by the board in
10 a place conspicuous and readable to the public. The probation notice shall remain posted during
11 the entire period of probation.

12 Respondent Costco #454 shall not, directly or indirectly, engage in any conduct or make
13 any statement which is intended to mislead or is likely to have the effect of misleading any
14 patient, customer, member of the public, or other person(s) as to the nature of and reason for the
15 probation of the licensed entity.

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

17 **16. Violation of Probation**

18 If Respondent Costco #454 has not complied with any term or condition of probation, the
19 board shall have continuing jurisdiction over respondent license, and probation shall be
20 automatically extended until all terms and conditions have been satisfied or the board has taken
21 other action as deemed appropriate to treat the failure to comply as a violation of probation, to
22 terminate probation, and to impose the penalty that was stayed.

23 If Respondent Costco #454 violates probation in any respect, the board, after giving
24 Respondent Costco #454 notice and an opportunity to be heard, may revoke probation and carry
25 out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for
26 those provisions stating that a violation thereof may lead to automatic termination of the stay
27 and/or revocation of the license. If a petition to revoke probation or an accusation is filed against
28 Costco #454 during probation, the board shall have continuing jurisdiction and the period of

1 probation shall be automatically extended until the petition to revoke probation or accusation is
2 heard and decided.

3 **17. Completion of Probation**

4 This Stipulated Settlement Order incorporates and resolves any open or pending
5 investigation of corresponding responsibility obligations involving Costco #454 of which the
6 Board has notice at the time of the execution of the Order. Upon written notice by the board or its
7 designee indicating successful completion of probation, Respondent Costco #454's license will be
8 fully restored.

9 **18. Consultant for Owner**

10 During the period of probation, Respondent Costco #454 shall retain an independent
11 consultant at its own expense who shall be responsible for reviewing pharmacy operations on a
12 quarterly basis for compliance by Respondent Costco #454 with state and federal laws and
13 regulations governing the practice of pharmacy. The consultant shall be a pharmacist licensed by
14 and not on probation with the Board who has expertise in corresponding responsibility
15 requirements and whose name shall be submitted to the Board or its designee, for prior approval,
16 within thirty (30) days of the effective date of this decision. Failure to timely retain, seek
17 approval of, or ensure timely reporting by the consultant shall be considered a violation of
18 probation.

19 During the period of probation, the Board or its designee, retains the discretion to reduce
20 the frequency of the pharmacist consultant's review of Respondent Costco #454's operations.

21 **19. Community Service Program**

22 Within sixty (60) days of the effective date of this decision, Respondent Costco #454 shall
23 submit to the Board or its designee, for prior approval, a community service program in which
24 Respondent Costco #454 shall provide free sharp disposal containers or provide free or at a
25 reduced cost immunizations, brown bag consultations, or other healthcare related services to a
26 community, charitable facility or agency valuing \$50,000.00. Within thirty (30) days of board
27 approval thereof, Respondent Costco #454 shall submit documentation to the Board
28 demonstrating commencement of the community service program. Respondent Costco #454 shall

1 complete the community service program and report on that completion to the board within six
2 (6) months of the effective date of the decision. Alternatively, Costco #454 may pay to the Board
3 \$50,000.00 as settlement of the obligation in this Section 19.

4 ACCEPTANCE

5 On behalf of Non-Respondent Costco and Respondent Costco #454, I have carefully read
6 the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my
7 attorney, Helaine W. Heydemann and Brandie Gasper. I understand the stipulation and the effect
8 it will have on Non-Respondent Costco and Respondent Costco #454's Pharmacy Permit No.
9 PIY 41247 and other pharmacy permits. I enter into this Stipulated Settlement and Disciplinary
10 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
11 of the Board of Pharmacy.

12
13 DATED: 6/17/16
14 Authorized agent on behalf of COSTCO
15 WHOLESALE CORPORATION, DOING BUSINESS
16 AS COSTCO PHARMACIES AND COSTCO
17 CORPORATION, DOING BUSINESS AS COSTCO
18 PHARMACY #454
19 Respondent and Non-Respondent

20 I have read and fully discussed with Respondent Costco Corporation the terms and
21 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
22 I approve its form and content.

23 DATED: 6/17/16
24 HELAINE W. HEYDEMANN
25 Attorney for Respondent
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ENDORSEMENT

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

DATED: 6/17/16

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General



DESIREE J. KELLOGG
Deputy Attorney General
Attorney for Complainant

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Exhibit A

Accusation No. 5324

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 DESIREE I. KELLOGG
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Attorneys for Complainant

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13 **PHARMACY #454**
14 115 Technology Drive
Irvine, CA 92618

ACCUSATION

15 Pharmacy Permit No. PHY 41247

16 **LAURA CODY MORRIS**
17 2900 Bakers St.
Costa Mesa, CA

18 Pharmacist License No. RPH 46609

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 November 12, 1995, the Board of Pharmacy issued Pharmacy Permit
27 Number PHY 41247 to Costco Corp., doing business as Costco Pharmacy #454 (Respondent
28

1 Costco Pharmacy). The Pharmacy Permit was in full force and effect at all times relevant to the
2 charges brought herein and will expire on October 1, 2015, unless renewed.

3 3. On or about August 19, 1993, the Board of Pharmacy issued Pharmacist License
4 Number RPH 46609 to Laura Cody Morris (Respondent Laura Cody Morris). The Pharmacist
5 License was in full force and effect at all times relevant to the charges brought herein and will
6 expire on June 30, 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 4301 of the Code states in pertinent part:

23 The board shall take action against any holder of a license who is guilty of
24 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:

25 ...
26 (j) The violation of any of the statutes of this state, or any other state, or of the
27 United States regulating controlled substances and dangerous drugs....
28 ...

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

6 ...
7 9. Section 4113(c) of the Code states:

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

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

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

23 ...
24 11. Section 1707.3 of title 16, California Code of Regulations states:

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

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

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

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

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COST RECOVERY

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

DRUGS

14. Ambien is the brand name for zolpidem, a Schedule IV controlled substance pursuant to Health and Safety Code section 11057(d) and a dangerous drug pursuant to Business and Professions Code section 4022.

15. Klonopin is the brand name for clonazepam, a Schedule IV controlled substance pursuant to Health and Safety Code section 11057(b)(7) and a dangerous drug pursuant to Business and Professions Code section 4022.

16. MS Contin is the brand name for morphine sulfate, a Schedule II controlled substance pursuant to Health and Safety Code section 11055(b)(1)(L) and a dangerous drug pursuant to Business and Professions Code section 4022.

17. Oxycontin and OxyIR are brand names for oxycodone or oxycodone ER respectively and are Schedule II controlled substances pursuant to Health and Safety Code section 11055(b)(1)(M) and dangerous drugs pursuant to Business and Professions Code section 4022.

18. Percocet is the brand name for acetaminophen/oxycodone, a Schedule II controlled substance pursuant to Health and Safety Code section 11055(b)(1)(L) and a dangerous drug pursuant to Business and Professions Code section 4022.

19. Soma is the brand name for carisporodol, a Schedule IV controlled substance pursuant to Health and Safety Code section 11055(b)(1)(L) and a dangerous drug pursuant to Business and Professions Code section 4022.

20. Vicodin/Norco is the brand name for acetaminophen/hydrocodone, 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 21. Xanax is the brand name for alprazolam, a Schedule IV controlled substance pursuant
2 to Health and Safety Code section 11057(d)(1) and a dangerous drug pursuant to Business and
3 Professions Code section 4022.

4 FACTUAL ALLEGATIONS

5 22. From November 17, 1995 through February 21, 2014, Respondent Laura Morris was
6 the Pharmacist-in-Charge of Respondent Costco Pharmacy.

7 23. Effective 2000 through October 2009, Respondent Costco Pharmacy implemented a
8 policy setting forth the parameters for its pharmacists to dispense controlled substances to
9 patients. This policy and procedure provided that Respondent Costco Pharmacy could only
10 support its pharmacist's decision to decline to fill a prescription for controlled substances if it was
11 "based on sound medical reasoning and the appropriate communication with the prescriber and
12 the patient has occurred."

13 24. Effective November 28, 2009 through July 11, 2012, Respondent Costco Pharmacy
14 implemented a revised policy and procedure setting forth the parameters for its pharmacists to
15 dispense controlled substances to patients. This policy and procedure provided that Respondent
16 Costco Pharmacy would only support a pharmacist's decision to deny filling a prescription for
17 controlled substances if that decision was reviewed and approved by a Regional Pharmacy
18 Supervisor. The policy and procedure further provided that "only in extreme cases and only upon
19 collaboration with your Regional Pharmacy Supervisor will refusal of pharmacy service be
20 considered...Prior to refusing to fill a prescription OR denying any immediate or future pharmacy
21 service for suspicion of fraud, the pharmacist on duty or pharmacy manager must contact the
22 Regional Pharmacy Supervisor...There must be no doubt that a prescription is fraudulent prior to
23 taking any action or refusing pharmacy service and then only with the proper approvals...If need
24 be, dispense enough of the medication until the prescriber can be contacted to confirm fraud."

25 25. Effective July 12, 2012 through June 3, 2013, Respondent Costco Pharmacy
26 implemented a revised policy and procedure (Controlled Substance Dispensing Policy) setting
27 forth the parameters for its pharmacists to dispense controlled substances to patients. The revised
28 policy and procedure provided that "[w]hen presented with a controlled substance prescription,

1 Costco pharmacists must balance providing a high level of member service with ensuring that the
2 prescription is valid and issued for a legitimate medical purpose. Each controlled substance
3 prescription should be evaluated for 'when to fill, when to question, when to delay and when to
4 refuse.'" The policy and procedure still required the Regional Pharmacy Supervisor's review and
5 approval before the filling of a controlled substance prescription could be denied. In order to
6 deny filling a controlled substance prescription, a pharmacist had to show that there was "clear
7 evidence or sufficient reason to suspect a forgery or otherwise invalid prescription" except if there
8 was "confirmed evidence of overlapping therapy" or "confirmation of a fraudulent prescription."
9 The policy and procedure further provided that "[w]ith few exceptions (see Controlled Substance
10 Dispensing Policy) collaboration with your Regional Pharmacy Supervisor is necessary before
11 refusal of your pharmacy service... There must be no doubt that a prescription is fraudulent prior
12 to taking any action or refusing pharmacy services."

13 26. From 2000 through May 2013, the Regional Pharmacy Supervisor made the ultimate
14 decision as to whether to dispense a controlled substance prescription. A pharmacist could also
15 not contact law enforcement about a questionable controlled substance prescription without prior
16 approval and knowledge of the Regional Pharmacy Supervisor and Warehouse Management.
17 Pharmacists were disciplined for violating these policies and procedures.

18 27. As a result of these policies and procedures, Respondents impeded pharmacists from
19 exercising their professional judgment to fill controlled substance prescriptions and to fulfill their
20 corresponding responsibility to ensure that controlled substance prescriptions were issued for
21 legitimate medical purposes. These policies and procedures further allowed for the dispensing,
22 filling and furnishing of drugs without legitimate medical purposes by Respondents and for a lack
23 of research or verifying if prescriptions were written for a legitimate medical purpose before
24 filling them, as discussed in the following paragraphs.

25 28. From May 15, 2007 through August 25, 2010, Respondents filled and dispensed 156
26 controlled substances prescriptions written by Dr. L.T. The average age of Dr. L.T.'s patients was
27 29 years old. The majority of these prescriptions were paid in cash. Patients traveled an average
28 of 33 miles from Dr. L.T.'s offices to Respondent Costco Pharmacy. Dr. L.T. was not certified as

1 a pain management provider or affiliated with the American Board of Physical Medicine and
2 Rehabilitation. There was no stepwise plan for anti-anxiety as Dr. L.T.'s prescriptions were
3 written for an initial therapy that began with high doses of anti-anxiety medications without
4 evidence of prior therapy that would have suggested a stepwise approach.

5 29. On February 3, 2012, a Second Amended Accusation was filed against Dr. L.T. for
6 among other causes for discipline, gross negligence, repeated negligent acts, issuing controlled
7 substances prescriptions for an illegitimate purpose, making and signing false documents,
8 unprofessional conduct for dispensing, prescribing and furnishing dangerous drugs without an
9 appropriate prior examination and medical indication to patients, excessive prescribing and
10 committing dishonest/corrupt acts. Effective March 14, 2012, the Osteopathic Medical Board of
11 California accepted the surrender of Dr. L.T.'s osteopathic physician and surgeon certificate.

12 30. From February 2, 2006 through July 5, 2006, Respondents filled and dispensed 20
13 prescriptions written by Dr. V.L. The average age of Dr. V.L.'s patients was 24 years old. Dr.
14 V.L.'s prescriptions were written for an excessive quantity of controlled substances (*i.e.*,
15 hydrocodone/APAP 10/325mg with the average number of tablets equaling 180) and unusually
16 high dosages or strength (*i.e.*, 40-50 mg of hydrocodone and 1-1.5 mg of Tylenol per day).
17 Patients traveled an average of 17 miles from Dr. V.L.'s offices to Respondent Costco Pharmacy.
18 Dr. V.L. was not certified as a pain management provide or affiliated with the American Board of
19 Physical Medicine and Rehabilitation.

20 31. On June 15, 2009, in the United States District Court for the Central District of
21 California, Dr. V.L. pleaded guilty to 15 counts charging violations of Title 18 U.S.C. § 841
22 (a)(1), intentional and unlawful distribution and dispensing of Schedule II and III controlled
23 substances outside the scope of professional practice. Effective October 1, 2010, the Medical
24 Board of California adopted a Decision revoking his license for convictions of crimes that are
25 substantially related to the practice of medicine, violating federal laws regulating dangerous drugs
26 or controlled substances and engaging in acts involving dishonesty or corruption.

27 32. From July 27, 2005 through November 19, 2008, Respondents filled and dispensed 47
28 prescriptions written by Dr. C.G. The average age of Dr. C.G.'s patients was 26 years old.

1 Patients traveled an average of 27 miles from Dr. C.G.'s offices to Respondent Costco Pharmacy.
2 Dr. C.G. was not certified as a pain management provider or affiliated with the American Board
3 of Physical Medicine and Rehabilitation. There was no stepwise plan for anti-anxiety as Dr.
4 C.G.'s prescriptions were written for an initial therapy that began with high doses of anti-anxiety
5 medications without evidence of prior therapy that would have suggested a stepwise approach.

6 33. On or about June 11, 2008, Dr. C.G. was convicted upon her plea of *nolo contendere*
7 in a criminal proceeding filed in Los Angeles County Superior Court to the felonies of unlawfully
8 prescribing controlled substances, in violation of Health and Safety Code section 11153(a) and
9 prescribing or administering prescription drugs to an addict or habitual user, in violation of Health
10 and Safety Code section 11156. On or about September 12, 2008, a First Amended Accusation
11 was filed against Dr. C.G. for among other causes for discipline, gross negligence, repeated
12 negligent acts, prescribing to an addict, prescribing without appropriate examination, failure to
13 maintain adequate and accurate records and excessive prescribing. Effective March 23, 2009, Dr.
14 C.G.'s physician and surgeon's certificate was placed on probation for seven years by the Medical
15 Board of California.

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Failing to Comply with Corresponding Responsibility**
18 **for Legitimate Controlled Substance Prescriptions)**

19 34. Respondents are subject to disciplinary action under Code section 4301(j), for
20 violating Health and Safety Code section 11153(a), in that they failed to comply with their
21 corresponding responsibility to ensure that controlled substances were dispensed for a legitimate
22 medical purpose when Respondents furnished prescriptions for controlled substances even though
23 "red flags" were present, indicating those prescriptions were not issued for a legitimate medical
24 purpose, as set forth in paragraphs 22 through 33 above, which are incorporated herein by
25 reference.

1 SECOND CAUSE FOR DISCIPLINE

2 (Dispensing Controlled Substance Prescriptions with Significant Errors, Omissions,
3 Irregularities, Uncertainties, Ambiguities or Alterations)

4 35. Respondents are subject to disciplinary action under Code section 4301(o), for
5 violating title 16, California Code of Regulations, sections 1761(a) and (b) in that they dispensed
6 prescriptions for controlled substances, which contained significant errors, omissions,
7 irregularities, uncertainties, ambiguities or alterations, as set forth in paragraphs 22 through 33
8 above, which are incorporated herein by reference.

9 THIRD CAUSE FOR DISCIPLINE

10 (Unprofessional Conduct)

11 36. Respondents are subject to disciplinary action under Code section 4301 for
12 unprofessional conduct in that they engaged in the activities described in paragraphs 22 through
13 33 above, which are incorporated herein by reference.

14 DISCIPLINARY CONSIDERATIONS

15 37. To determine the degree of discipline, if any, to be imposed on Respondent Costco
16 Pharmacy, Complainant alleges that on May 17, 2012, the Board issued Citation number CI 2011
17 49350 against Respondent Costco Pharmacy for violating California Code of Regulations, title
18 16, section 1764 and Civil Code section 56.10 for the unauthorized disclosure of prescription and
19 medical information. The Board issued a fine which Respondent paid.

20 PRAAYER

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

- 23 1. Revoking or suspending Pharmacy Permit Number PHY 41247 issued to Costco
24 Corp., doing business as Costoo Pharmacy #454;
25 2. Revoking or suspending Pharmacist License Number RPH 46609 issued to Laura
26 Cody Morris;

- 1 3. Ordering Costco Corp., doing business as Costco Pharmacy #454 and Laura Cody
- 2 Morris to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of
- 3 this case, pursuant to Business and Professions Code section 125.3;
- 4 4. Taking such other and further action as deemed necessary and proper.
- 5

6

7 DATED: 3/31/15 Virginia Herold

8 VIRGINIA HEROLD
9 Executive Officer
10 Board of Pharmacy
11 Department of Consumer Affairs
12 State of California
13 *Complainant*

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