

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

**In the Matter of the Petition for Early Termination of  
Probation by:**

**JAMES POON, Pharm.D., Petitioner**

**Agency Case No. 5280**

**OAH No. 2021110661**

**DECISION**

A quorum of the Board of Pharmacy (Board) heard this matter by video conference on December 2, 2021. Heather M. Rowan, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, presided.

Nicole Trama, Deputy Attorney General, appeared pursuant to Government Code section 11522.

Petitioner James Poon, Pharm.D., represented himself.

Oral and documentary evidence was received on December 2, 2021. The record was held open to allow the Deputy Attorney General to submit redacted documents. The record then closed and the matter was submitted for decision on December 6, 2021.

## **ISSUE**

Whether petitioner established cause to terminate his probation early.

## **FACTUAL FINDINGS**

### **Background and Procedural History**

1. On March 17, 2016, the Board issued petitioner pharmacist license No. RPH 74515. Petitioner's license will expire on June 30, 2023, unless renewed or revoked.

2. On January 27, 2011, complainant Virginia K. Herold, a former Executive Officer for the Board, issued a Statement of Issues against petitioner seeking to deny his application for a Pharmacist Intern License. Pursuant to a Stipulation and Settlement with the Board, effective June 1, 2011, the Board granted petitioner's application for a Pharmacist Intern License, License No. INT 27733. The license was revoked, the revocation was stayed, and petitioner was placed on Board probation for four years, subject to terms and conditions. The circumstances underlying this discipline involved petitioner's 2007 conviction for driving under the influence of alcohol (DUI) and proximately causing bodily injury to another, a 2010 conviction for DUI, and a 2010 conviction for violating probation by having 0.01 percent alcohol in his system while driving.

3. A condition of his Board probation was that petitioner complete the Pharmacists Recovery Program (PRP) and attend Alcoholics Anonymous (AA) meetings. In March 2014, the Board heard petitioner's Petition for Early Termination of Probation, during which he expressed his intention to complete the remaining year of

the PRP, continue going to AA meetings, and maintain his sobriety. With those assertions, the Board granted the petition. Petitioner withdrew from the PRP prior to completing the program, however.

4. On December 5, 2014, complainant issued a Statement of Issues seeking to deny petitioner's application for a pharmacist license based on his acts of dishonesty. Specifically, petitioner affirmed to the Board under oath that he would complete the PRP, but withdrew from the program prior to completion.

5. On April 5, 2015, petitioner entered into a Stipulated Settlement and Disciplinary Order (Stipulation) with the Board. Under the Stipulation, petitioner admitted the truth of the allegations in the Statement of Issues. Effective May 6, 2015, petitioner's application was granted and pharmacist license RPH 74515 issued. The license was revoked, the revocation stayed, and the license put on probation for the time it would take petitioner to complete the PRP plus one year. The probationary terms included that petitioner: 1) not supervise interns or act as pharmacist in charge (PIC); 2) "complete the treatment program already begun;" 3) abstain from alcohol; 4) submit to alcohol and drug screening; 5) take an ethics course; and 6) complete 40 hours of health-related community service. The Stipulation also stated that if petitioner did not practice for at least 40 hours per month in California, his probation would be tolled until he began practicing again.

6. Petitioner has complied with all probation terms. He tolled his probation twice, for a total of 24 months. He completed the PRP in September 2021.

### **Petition for Early Termination of Probation**

7. On February 8, 2021, petitioner signed and thereafter filed with the Board the instant Petition for Early Termination of Probation (petition). He has not previously

applied for early termination of probation. With his petition, a letter to the Board, and testimony at hearing, petitioner explained why he believes his probation should terminate. Petitioner has complied with all terms and conditions of probation, has submitted to drug and alcohol testing, never missed a check-in or tested positive, and completed the PRP.

8. Petitioner has been sober for more than ten years. His sobriety date is May 4, 2011. He has been attending AA since then, has regular contact with his sponsor and others in AA, and has worked the 12 steps of AA several times. He has identified his triggers that may lead him to relapse either by drinking alcohol or engaging in the patterns of thought that would lead him to drink alcohol. Petitioner has a detailed relapse prevention plan. He is married with a three-year-old son. His wife, friends, and family all support his sobriety and are available to him when and if needed.

9. Petitioner described the PRP as an essential aspect of his recovery. His "perspective has dramatically changed" since he began the program in 2011. He has stepped back through the decisions in his life and identified what led him to start drinking alcohol and why he made decisions that were detrimental to himself and his family. Importantly, petitioner has learned how to identify his emotions, express his thoughts and feelings, and ask for help when he needs it.

10. Petitioner admitted he is not perfect and acknowledged he has character flaws such as defensiveness and resistance to authority. He takes one day at a time, tries to see and acknowledge his flaws, and do better when he can.

11. Petitioner explained that when the Board granted his petition for early termination of his initial probation, he intended to finish the PRP. He was in the final

phase of the program and was transitioning out, with less than one year remaining. When he was offered a job in 2014, he called the Board and asked about the status of his license and how the status impacted his probationary terms. A Board employee told him his petition had been granted and there was no need to complete the PRP. Based on that information, he withdrew.

12. When petitioner applied for his pharmacist license, he understood that it looked as though he made the Board a promise and did not fulfill it and he understood why the Board wanted him to finish the PRP. But when he returned to the PRP to complete the final year, he was told he would have to start from the beginning and he could not enroll in only the final phase. Petitioner agreed to complete the entire program.

13. Petitioner submitted proof of multiple hours of continuing education, including an ethics course. He also submitted reviews and updates from the PRP and his assigned psychologist. The psychologist recommended petitioner be released from one-on-one therapy due to petitioner's progress.

14. On February 26 through 28, 2018, petitioner submitted to a Comprehensive Diagnostic Evaluation conducted by Gregory Skipper, M.D., and Matthew Goldenberg, D.O., at the Center for Professional Recovery. Petitioner was administered several cognitive and psychological evaluations, a thorough and comprehensive interview, and a physical evaluation. His wife was also interviewed. The doctors offered a detailed description of petitioner's personal and professional life and ultimately concluded that though petitioner may have some interpersonal struggles, his alcoholism is in remission and he has maintained sobriety since May 4, 2011.

15. Robert Durazzo, MFT, was the counselor for the Health Professionals Support Group petitioner attended starting in 2016. Mr. Durazzo described petitioner's participation in the group as "exemplary." Petitioner was punctual and consistent, demonstrated empathy and provided feedback to his peers, and was vulnerable in his sharing. Mr. Durazzo believes petitioner regrets his decisions and has taken responsibility for his actions.

## **Letters of Recommendation**

16. Pursuant to Business and Professions Code section 4309, subdivision (b), petitioner submitted letters of recommendation. The authors are aware of the circumstances behind petitioner's Board discipline and his current probationary status.

a. Annia Raysberg, MFT, is an addiction and recovery specialist and petitioner's therapist. She wrote a letter in April 2020 in support of his petition. Ms. Raysberg noted petitioner was fully compliant with the PRP, sober since 2011, and active in AA. Ms. Raysberg also wrote petitioner has a strong support system and showed no signs of relapse.

b. Anh Thuc Truong, Pharm.D., was petitioner's worksite monitor when he worked as a pharmacist at Walgreens. She wrote that petitioner worked hard, had a good relationship with staff and patients, and was a good employee.

c. Emily Chuun, Pharm.D., has known petitioner for over ten years. She wrote that petitioner has accepted and learned from his mistakes. Petitioner is a "passionate pharmacist" who is dedicated to his community.

d. Jacqueline Co, RPh, worked with petitioner when he was an intern pharmacist at Walgreens. She described respondent as enthusiastic, intelligent, and

motivated. He contributed positively to the pharmacy staff, provided excellent patient care, and displayed leadership and dedication as a pharmacist.

e. Michael Kuei is petitioner's AA sponsor. He wrote that petitioner has a dedicated and strong AA program, a long history of sobriety, and support from family and friends. Petitioner is dependable, helpful for new members, and a role model in the program.

## **PRINCIPLES OF LAW**

17. In a proceeding for reinstatement of a license, including early termination of probation, the burden at all times is on the petitioner to establish rehabilitation. (See *Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398, citing *Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315.) The standard of proof is clear and convincing evidence to a reasonable certainty. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1091-1092; *Feinstein v. State Bar* (1952) 39 Cal.2d 541.)

18. Business and Professions Code section 4309, subdivision (d), sets forth the following factors to consider when the Board reviews a petition for early termination of probation:

- (1) All the activities of the petitioner since the disciplinary action was taken.
- (2) The offense for which the petitioner was disciplined.
- (3) The petitioner's activities during the time the license was in good standing.

- (4) The petitioner's documented rehabilitative efforts.
- (5) The petitioner's general reputation for truth and professional ability.

19. "A person whose license has been revoked or suspended or who has been placed on probation may petition the board for reinstatement or modification of penalty, including modification or termination of probation, after not less than . . . two years for early termination of probation of three years or more [or] at least one year for . . . termination of probation of less than three years." (Bus. & Prof. Code, § 4309, subd. (a)(2), (3).)

## **ANALYSIS**

20. All told, petitioner has completed eight years of probation and nearly two complete PRPs. He has been sober for ten years, acknowledged his mistakes, and taken responsibility for his actions. Petitioner has a strong support system, relapse prevention plan, and recovery program. He has complied with all terms of probation. His testimony was sincere and credible. Petitioner persuasively argued he has rehabilitated in the years since his original probation as well as the current term.

21. When all the evidence is considered in light of the relevant rehabilitation criteria set forth in Business and Professions Code section 4309, subdivision (d), petitioner established it would be consistent with the public health, safety, and welfare to terminate his probation. No further public interest will be served by continuing petitioner on probation. His petition should be granted.



**ORDER**

Petitioner James Poon's Petition for Early Termination of Probation is GRANTED.

This decision shall become effective on February 10, 2022.

It is so ORDERED on January 11, 2022.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Seung W. Oh". The signature is written in a cursive style with a large initial "S" and "O".

By

Seung W. Oh, Pharm.D.  
Board President

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

In the Matter of the Statement of Issues Against:

Case No. 5280

**JAMES POON  
429 Rickover Street  
Vallejo, CA 94592  
Pharmacist License**

Respondent.

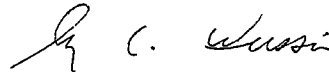
**DECISION AND ORDER**

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

This decision shall become effective on May 6, 2015.

It is so ORDERED on April 29, 2015.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
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Board President

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

10 In the Matter of the Statement of Issues  
Against:

11 **JAMES POON**  
12 **429 Rickover Street**  
13 **Vallejo, CA 94592**  
**Pharmacist License**

14 Respondent.

Case No. 5280

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

15  
16 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
17 entitled proceedings that the following matters are true:

18 PARTIES

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

23 2. Respondent James Poon ("Respondent") is represented in this proceeding by attorney  
24 Van Le, whose address is: Law Offices of Van Le, 8218 Lea Court, Rosemead, CA 91770.

25 3. On or about May 19, 2014, Respondent filed an application dated April 22, 2014,  
26 with the Board of Pharmacy to obtain a Pharmacist License.

27 JURISDICTION

28 4. Statement of Issues No. 5280 was filed before the Board of Pharmacy (Board),

1 Department of Consumer Affairs, and is currently pending against Respondent. The Statement of  
2 Issues and all other statutorily required documents were properly served on Respondent on  
3 January 7, 2015.

4 5. A copy of Statement of Issues No. 5280 is attached as exhibit A and incorporated by  
5 reference.

6 ADVISEMENT AND WAIVERS

7 6. Respondent has carefully read, fully discussed with counsel, and understands the  
8 charges and allegations in Statement of Issues No. 5280. Respondent has also carefully read,  
9 fully discussed with counsel, and understands the effects of this Stipulated Settlement and  
10 Disciplinary Order.

11 7. Respondent is fully aware of his legal rights in this matter, including the right to a  
12 hearing on the charges and allegations in the Statement of Issues; the right to be represented by  
13 counsel at his own expense; the right to confront and cross-examine the witnesses against him;  
14 the right to present evidence and to testify on his own behalf; the right to the issuance of  
15 subpoenas to compel the attendance of witnesses and the production of documents; the right to  
16 reconsideration and court review of an adverse decision; and all other rights accorded by the  
17 California Administrative Procedure Act and other applicable laws.

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

20 CULPABILITY

21 9. Respondent admits the truth of each and every charge and allegation in Statement of  
22 Issues No. 5280.

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

25 CIRCUMSTANCES IN MITIGATION

26 11. Respondent James Poon is admitting responsibility at an early stage in the  
27 proceedings and he wishes to resolve this matter amicably rather than proceeding to hearing.  
28

1 CONTINGENCY

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

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

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

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

23 DISCIPLINARY ORDER

24 IT IS HEREBY ORDERED that upon satisfaction of all statutory and regulatory  
25 requirements for licensure, a license will be issued, immediately revoked, with the revocation  
26 stayed and the Respondent placed on probation for the time it takes for him to finish through the  
27 Transition Phase the Pharmacy Recovery Program (PRP) that he has already begun, plus an  
28 additional 1 year probation after successful completion of the PRP on the following terms and

1 conditions.

2 **1. Obey All Laws**

3 Respondent shall obey all state and federal laws and regulations.

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

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

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

17 **2. Report to the Board**

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

26 **3. Interview with the Board**

27 Upon receipt of reasonable prior notice, respondent shall appear in person for interviews  
28 with the board or its designee, at such intervals and locations as are determined by the board or its

1 designee. Failure to appear for any scheduled interview without prior notification to board staff,  
2 or failure to appear for 2 or more scheduled interviews with the board or its designee during the  
3 period of probation, shall be considered a violation of probation.

4 **4. Cooperate with Board Staff**

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

8 **5. Continuing Education**

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

11 **6. Notice to Employers**

12 During the period of probation, respondent shall notify all present and prospective  
13 employers of the decision in case number 5280 and the terms, conditions and restrictions imposed  
14 on respondent by the decision, as follows:

15 Within 30 days of the effective date of this decision, and within 15 days of respondent  
16 undertaking any new employment, respondent shall cause his direct supervisor, pharmacist-in-  
17 charge (including each new pharmacist-in-charge employed during respondent's tenure of  
18 employment) and owner to report to the board in writing acknowledging that the listed  
19 individual(s) has/have read the decision in case number 5280, and terms and conditions imposed  
20 thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s)  
21 submit timely acknowledgment(s) to the board.

22 If respondent works for or is employed by or through a pharmacy employment service,  
23 respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity  
24 licensed by the board of the terms and conditions of the decision in case number 5280 in advance  
25 of the respondent commencing work at each licensed entity. A record of this notification must be  
26 provided to the board upon request.

27 Furthermore, within 30 days of the effective date of this decision, and within 15 days of  
28 respondent undertaking any new employment by or through a pharmacy employment service,

1 respondent shall cause his direct supervisor with the pharmacy employment service to report to  
2 the board in writing acknowledging that he has read the decision in case number 5280 and the  
3 terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his  
4 employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

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

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

18 **8. Probation Monitoring Costs**

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

23 **9. Status of License**

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

27 If respondent's license expires or is cancelled by operation of law or otherwise at any time  
28 during the period of probation, including any extensions thereof due to tolling or otherwise, upon



1 renewal or reapplication respondent's license shall be subject to all terms and conditions of this  
2 probation not previously satisfied.

3 **10. License Surrender While on Probation/Suspension**

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

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

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

18 Respondent shall notify the board in writing within 10 days of any change of employment.  
19 Said notification shall include the reasons for leaving, the address of the new employer, the name  
20 of the supervisor and owner, and the work schedule if known. Respondent shall further notify the  
21 board in writing within 10 days of a change in name, residence address, mailing address, or phone  
22 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 **12. Tolling of Probation**

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

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

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

9 It is a violation of probation for respondent's probation to remain tolled pursuant to the  
10 provisions of this condition for a total period, counting consecutive and non-consecutive months,  
11 exceeding 36 months.

12 "Cessation of practice" means any calendar month during which respondent is  
13 not practicing as a pharmacist for at least 40 hours, as defined by Business and  
14 Professions Code section 4000 et seq. "Resumption of practice" means any calendar  
15 month during which respondent is practicing as a pharmacist for at least 40 hours as a  
16 pharmacist as defined by Business and Professions Code section 4000 et seq.

17 **13. Violation of Probation**

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

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

1 extended until the petition to revoke probation or accusation is heard and decided.

2 **14. Completion of Probation**

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

5 **15. Pharmacists Recovery Program (PRP)**

6 Within thirty 30 days of the effective date of this decision, respondent shall contact the  
7 Pharmacists Recovery Program (PRP) for evaluation, and shall immediately thereafter re-enroll,  
8 successfully participate in, and complete the treatment contract already begun and any subsequent  
9 addendums, including any phase of transition as recommended and provided by the PRP and as  
10 approved by the board or its designee. The costs for PRP participation shall be borne by the  
11 respondent.

12 If respondent is currently enrolled in the PRP, said participation is now mandatory and as of  
13 the effective date of this decision is no longer considered a self-referral under Business and  
14 Professions Code section 4362(c)(2). Respondent shall successfully participate in and complete  
15 his current contract and any subsequent addendums with the PRP.

16 Failure to timely contact or enroll in the PRP, or successfully participate in and complete  
17 the treatment contract and/or any addendums, shall be considered a violation of probation.

18 Probation shall be automatically extended until respondent completes the PRP and  
19 completes the one additional year of probation. Any person terminated from the PRP program  
20 shall be automatically suspended by the board. Respondent may not resume the practice of  
21 pharmacy until notified by the board in writing.

22 Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a  
23 licensed practitioner as part of a documented medical treatment shall result in the automatic  
24 suspension of practice by respondent and shall be considered a violation of probation.  
25 Respondent may not resume the practice of pharmacy until notified by the board in writing.

26 During suspension, respondent shall not enter any pharmacy area or any portion of the  
27 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of  
28 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices

1 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act  
2 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient  
3 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the  
4 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs  
5 and controlled substances. Respondent shall not resume practice until notified by the board.

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

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

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

14 Respondent shall pay administrative fees as invoiced by the PRP or its designee. Fees not  
15 timely paid to the PRP shall constitute a violation for probation. The board will collect unpaid  
16 administrative fees as part of the annual probation monitoring costs if not submitted to the PRP.

17 **16. Random Drug Screening**

18 Respondent, at his own expense, shall participate in random testing, including but not  
19 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug  
20 screening program as directed by the board or its designee. Respondent may be required to  
21 participate in testing for the entire probation period and the frequency of testing will be  
22 determined by the board or its designee. At all times, respondent shall fully cooperate with the  
23 board or its designee, and shall, when directed, submit to such tests and samples for the detection  
24 of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its  
25 designee may direct. Failure to timely submit to testing as directed shall be considered a violation  
26 of probation. Upon request of the board or its designee, respondent shall provide documentation  
27 from a licensed practitioner that the prescription for a detected drug was legitimately issued and is  
28 a necessary part of the treatment of the respondent. Failure to timely provide such documentation

1 shall be considered a violation of probation. Any confirmed positive test for alcohol or for any  
2 drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment  
3 shall be considered a violation of probation and shall result in the automatic suspension of  
4 practice of pharmacy by respondent. Respondent may not resume the practice of pharmacy until  
5 notified by the board in writing.

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

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

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

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

22 **17. Abstain from Drugs and Alcohol Use**

23 Respondent shall completely abstain from the possession or use of alcohol, controlled  
24 substances, dangerous drugs and their associated paraphernalia except when the drugs are  
25 lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon  
26 request of the board or its designee, respondent shall provide documentation from the licensed  
27 practitioner that the prescription for the drug was legitimately issued and is a necessary part of the  
28 treatment of the respondent. Failure to timely provide such documentation shall be considered a

1 violation of probation. Respondent shall ensure that he is not in the same physical location as  
2 individuals who are using illicit substances even if respondent is not personally ingesting the  
3 drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia  
4 not supported by the documentation timely provided, and/or any physical proximity to persons  
5 using illicit substances, shall be considered a violation of probation.

6 **18. Prescription Coordination and Monitoring of Prescription Use**

7 Within 10 days of receiving medical attention, including, but not limited to, hospital visits,  
8 clinic visits or doctor office visits, respondent shall submit to the board the name and  
9 qualifications of a single physician, nurse practitioner, physician assistant, or psychiatrist of  
10 respondent's choice, who shall be aware of the respondent's history with the use of alcohol, and  
11 who will coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled  
12 substances or mood-altering drugs. The approved practitioner shall be provided with a copy of  
13 the board's Statement of Issues and decision. A record of this notification must be provided to  
14 the board upon request. Respondent shall sign a release authorizing the practitioner to  
15 communicate with the board about respondent's treatment(s). The coordinating physician, nurse  
16 practitioner, physician assistant, or psychiatrist shall report to the board on a quarterly basis for  
17 the duration of probation regarding respondent's compliance with this condition. If any  
18 substances considered addictive have been prescribed, the report shall identify a program for the  
19 time limited use of any such substances. The board may require that the single coordinating  
20 physician, nurse practitioner, physician assistant or psychiatrist be a specialist in addictive  
21 medicine, or consult a specialist in addictive medicine. Should respondent, for any reason, cease  
22 supervision by the approved practitioner, respondent shall notify the board immediately and,  
23 within 30 days of ceasing treatment, submit the name of a replacement physician, nurse  
24 practitioner, physician assistant, or psychiatrist of respondent's choice to the board or its designee  
25 for its prior approval. Failure to timely submit the selected practitioner or replacement  
26 practitioner to the board for approval, or to ensure the required reporting thereby on the quarterly  
27 reports, shall be considered a violation of probation.

28 If at any time an approved practitioner determines that respondent is unable to practice

1 safely or independently as a pharmacist, the practitioner shall notify the board immediately by  
2 telephone and follow up by written letter within 3 working days. Upon notification from the  
3 board or its designee of this determination, respondent shall be automatically suspended and shall  
4 not resume practice until notified by the board that practice may be resumed.

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

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

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

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

21 **19. Community Services Program**

22 Within 30 days after becoming licensed as a pharmacist, respondent shall submit to the  
23 board or its designee, for prior approval, a community service program in which respondent shall  
24 provide free health-care related services on a regular basis to a community or charitable facility or  
25 agency for a total of 40 hours during the term of his probation. Within thirty (30) days of board  
26 approval thereof, respondent shall submit documentation to the board demonstrating  
27 commencement of the community service program. A record of this notification must be  
28 provided to the board upon request. Respondent shall report on progress with the community

1 service program in the quarterly reports. Failure to timely submit, commence, or comply with the  
2 program shall be considered a violation of probation.

3 **20. Supervised Practice**

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

9 Continuous – At least 75% of a work week

10 Substantial - At least 50% of a work week

11 Partial - At least 25% of a work week

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

13 Within 30 days of the effective date of this decision, respondent shall have his supervisor  
14 submit notification to the board in writing stating that the supervisor has read the decision in case  
15 number 5280 and is familiar with the required level of supervision as determined by the board or  
16 its designee. It shall be the respondent's responsibility to ensure that his employer(s), pharmacist-  
17 in-charge and/or supervisor(s) submit timely acknowledgement(s) to the board. Failure to cause  
18 the direct supervisor and the pharmacist-in-charge to submit timely acknowledgements to the  
19 board shall be considered a violation of probation.

20 If respondent changes employment, it shall be the respondent's responsibility to ensure that  
21 his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to  
22 the board. Respondent shall have his new supervisor, within 15 days after employment  
23 commences, submit notification to the board in writing stating the direct supervisor and  
24 pharmacist-in-charge have read the decision in case number 5280 and is familiar with the level of  
25 supervision as determined by the board. Respondent shall not practice pharmacy and his license  
26 shall be automatically suspended until the board or its designee approves a new supervisor.  
27 Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely  
28 acknowledgements to the board shall be considered a violation of probation.



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

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

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

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

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

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

19           Respondent shall not own, have any legal or beneficial interest in, or serve as a manager,  
20 administrator, member, officer, director, trustee, associate, or partner of any business, firm,  
21 partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell  
22 or transfer any legal or beneficial interest in any entity licensed by the board within 90 days  
23 following the effective date of this decision and shall immediately thereafter provide written  
24 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide  
25 documentation thereof shall be considered a violation of probation.

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**22. Ethics Course**

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

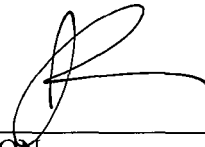
Respondent shall submit a certificate of completion to the board or its designee within five days after completing the course.

ACCEPTANCE

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

DATED:

4/5/15



JAMES POON  
Respondent

I have read and fully discussed with Respondent James Poon the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED:

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Van Le  
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: April 6, 2015

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California



DIANN SOKOLOFF  
Supervising Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**Statement of Issues No. 5280**

1 KAMALA D. HARRIS  
Attorney General of California  
2 DIANN SOKOLOFF  
Supervising Deputy Attorney General  
3 SUSANA A. GONZALES  
Deputy Attorney General  
4 State Bar No. 253027  
1515 Clay Street, 20th Floor  
5 P.O. Box 70550  
Oakland, CA 94612-0550  
6 Telephone: (510) 622-2221  
Facsimile: (510) 622-2270  
7 *Attorneys for Complainant*

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

11 In the Matter of the Statement of Issues  
Against:  
12 **JAMES POON**  
13 **Pharmacist License Applicant**  
14 **Respondent.**

Case No. 5280

**STATEMENT OF ISSUES**

16 Complainant alleges:

17 PARTIES

- 18 1. Virginia Herold ("Complainant") brings this Statement of Issues solely in her official  
19 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.  
20 2. On or about May 19, 2014, the Board of Pharmacy, Department of Consumer Affairs  
21 received an application for a Pharmacist License from James Poon ("Respondent"). On or about  
22 April 22, 2014, James Poon certified under penalty of perjury to the truthfulness of all statements,  
23 answers, and representations in the application. The Board denied the application on June 24,  
24 2014.

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1 JURISDICTION

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

5 4. Section 118 of the Code states:

6 “(a) The withdrawal of an application for a license after it has been filed with a board in the  
7 department shall not, unless the board has consented in writing to such withdrawal, deprive the  
8 board of its authority to institute or continue a proceeding against the applicant for the denial of  
9 the license upon any ground provided by law or to enter an order denying the license upon any  
10 such ground.”

11 STATUTORY AND REGULATORY PROVISIONS

12 5. Section 480 of the Code states, in pertinent part:

13 “(a) A board may deny a license regulated by this code on the grounds that the applicant has  
14 one of the following:

15 ...

16 “(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially  
17 benefit himself or herself or another, or substantially injure another.

18 “(3) (A) Done any act that if done by a licentiate of the business or profession in question,  
19 would be grounds for suspension or revocation of license.

20 “(B) The board may deny a license pursuant to this subdivision only if the crime or act is  
21 substantially related to the qualifications, functions, or duties of the business or profession for  
22 which application is made.”

23 6. Section 4301 of the Code states, in pertinent part:

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

27 ...

1           “(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or  
2 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and  
3 whether the act is a felony or misdemeanor or not.”

4           7. California Code of Regulations, title 16, section 1770, states:

5           “For the purpose of denial, suspension, or revocation of a personal or facility license  
6 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a  
7 crime or act shall be considered substantially related to the qualifications, functions or duties of a  
8 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a  
9 licensee or registrant to perform the functions authorized by his license or registration in a manner  
10 consistent with the public health, safety, or welfare.”

11   FIRST CAUSE FOR DENIAL OF APPLICATION

12   (Commission of Dishonest Act)

13   (Bus. & Prof. Code, § 480, subd. (a)(2))

14           8. Respondent’s application is subject to denial because he committed an act involving  
15 dishonesty, fraud, or deceit with the intent to substantially benefit himself or another. (Bus. &  
16 Prof. Code, § 480, subd. (a)(2).) The circumstances are as follows:

17           9. On or about May 16, 2011, in a matter entitled “*In the Matter of the Statement of*  
18 *Issues Against James Poon*,” Case No. 3843, the Board entered a Decision and Order, effective  
19 June 1, 2011, issuing Respondent a Pharmacy Intern license, then immediately revoking that  
20 license. That Decision and Order are fully incorporated by reference. The revocation of  
21 Respondent’s Pharmacy Intern license was stayed subject to Respondent’s successful completion  
22 of four years of probation under numerous terms and conditions. Among the conditions of  
23 Respondent’s probation was Condition 15, which required Respondent to enroll in the  
24 Pharmacists Recovery Program (“PRP”), successfully participate in the program, and complete  
25 the treatment contract and any subsequent addendums as recommended by the PRP and approved  
26 by the Board.

27           10. On or about April 18, 2014, in a matter entitled “*In the Matter of Petition for Early*  
28 *Termination of Probation of James Poon*” (“Petition”), Case No. 3843, the Board issued a

1 Decision granting Respondent's Petition and fully restoring his Pharmacist Intern license. The  
2 Decision is fully incorporated by reference.

3 11. On or about March 18, 2014, a quorum of the Board and Administrative Law Judge  
4 Jonathan Lew of the Office of Administrative Hearings heard Respondent's Petition. Supervising  
5 Deputy Attorney General Joshua A. Room also appeared pursuant to Government Code section  
6 11522. Respondent appeared on his own behalf and testified under oath. Respondent represented  
7 to the Board that he was willing to complete the PRP and continue with his AA program even if  
8 his probation were terminated. The Board found that Respondent demonstrated that he could be  
9 reinstated to the practice of pharmacy without risk to the public, however in making that  
10 determination and granting Respondent's Petition, the Board took into consideration and relied  
11 upon Respondent's representation that he is dedicated to his sobriety and that he intended to  
12 complete the PRP through transition. Despite Respondent's representations while under oath at  
13 the hearing, after the Board granted Respondent's Petition on April 18, 2014, Respondent  
14 withdrew from and did not complete the PRP.

15 SECOND CAUSE FOR DENIAL OF APPLICATION

16 (Commission of Any Act Involving Dishonesty, Fraud, or Deceit)  
17 (Bus. & Prof. Code, §§ 480, subd. (a)(3), 4301, subd. (f))

18 12. Respondent's application is subject to denial because he committed an act that, if  
19 done by a licentiate of the business or profession in question, would be grounds for suspension or  
20 revocation of his license. (Bus. & Prof. Code, § 480, subd. (a)(3).) Specifically, Respondent  
21 committed an act involving dishonesty, fraud, or deceit, which is substantially related to the  
22 qualifications, functions, or duties of a licensee. (Bus. & Prof. Code, § 4301, subd. (f), Cal. Code  
23 Regs., tit. 16, § 1770.) The circumstances are set forth in paragraphs 8 through 11, above.

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1 2010 denial of Respondent's August 3, 2009 application for a Pharmacy Intern License, and also  
2 led to the subsequent Statement of Issues filed against Respondent on January 27, 2011.

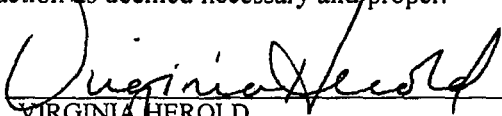
3 15. In addition, complainant alleges, by way of aggravation of any penalty to be imposed  
4 in this matter, that on or about February 28, 2010, Respondent was arrested for, and later  
5 convicted of, driving while under the influence of an alcoholic beverage. These actions led to the  
6 June 29, 2010 denial of Respondent's August 3, 2009 application for a Pharmacy Intern License,  
7 and also led to the subsequent Statement of Issues filed against Respondent on January 27, 2011.

8 PRAYER

9 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this  
10 Statement of Issues, and that following the hearing, the Board of Pharmacy issue a decision:

- 11 1. Denying the application of James Poon for a Pharmacist License;  
12 2. Taking such other and further action as deemed necessary and proper.

13 DATED: 12/5/14

  
14 VIRGINIA HEROLD  
15 Executive Officer  
16 Board of Pharmacy  
17 Department of Consumer Affairs  
18 State of California  
19 Complainant

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