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

In the Matter of the Accusation Against:
**RALEY'S CORP. dba RALEY'S
PHARMACY #247
1842 Fort Jones Street
Yreka, CA 96097**
Original Permit Number PHY 30855
and
**RALEY'S HOLDING COMPANY dba
RALEY'S PHARMACY #247
1842 Fort Jones Street, Yreka, CA 96097
Yreka, CA 96097**
Original Permit Number PHY 53495
and
**RUSSELL DEAN SANDERS
P.O. Box 9
Grenada, CA 96038-0009**
Original Pharmacist License No. RPH 30311

Respondents.

Case No. 5536
**DEFAULT DECISION AND ORDER
[RUSSELL DEAN SANDERS ONLY]**

[Gov. Code, §11520]

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FINDINGS OF FACT

1
2 1. On or about February 20, 2016, Complainant Virginia K. Herold, in her official
3 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,
4 filed Accusation No. 5536 against Raley's Corp. dba Raley's Pharmacy #247, Raley's Holding
5 Company dba Raley's Pharmacy #247 (Respondent Raley's), and Russell Dean Sanders
6 (Respondent Sanders) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

7 2. On or about June 22, 1976, the Board of Pharmacy issued Original Pharmacist
8 License Number RPH 30311 to Russell Dean Sanders (Respondent Sanders). Respondent
9 Sanders was the Pharmacist-in-Charge of Respondent Raley's from May 3, 1990 through January
10 18, 2014. The Original Pharmacist License was in full force and effect at all times relevant to the
11 charges brought herein, however it expired on September 30, 2014, and has not been renewed.

12 3. On or about March 10, 2016, Respondent Sanders was served by Certified and First
13 Class Mail copies of Accusation No. 5536, Statement to Respondent, Notice of Defense, Request
14 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
15 11507.7) at Respondent Sanders's address of record which, pursuant to Business and Professions
16 Code section 4100, is required to be reported and maintained with the Board. Respondent
17 Sanders's address of record was and is:

18 P.O. Box 9
19 Grenada, CA 96038.

20 4. Service of the Accusation was effective as a matter of law under the provisions of
21 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
22 124.

23 5. On or about March 18, 2016, the aforementioned Certified and First Class Mail
24 documents were returned by the U.S. Postal Service marked "Return To Sender Unable To
25 Forward."

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1 a. Respondent Sanders violated Business and Professions Code section 4301(d), by and
2 through violations of Health and Safety Code section 11153(a) and Code of Federal Regulations,
3 title 21, section 1306.04(a), in that Sanders, as the Pharmacist-in-Charge of Respondent Raley's,
4 allowed the excessive furnishing of controlled substances by Raley's pharmacy employees
5 without a legitimate medical purpose to seven patients between May 18 and July 22, 2013.

6 ORDER

7 IT IS SO ORDERED that Original Pharmacist License No. RPH 30311, heretofore issued
8 to Respondent Russell Dean Sanders, is revoked.

9 Pursuant to Government Code section 11520, subdivision (c), Respondent Sanders may
10 serve a written motion requesting that the Decision be vacated and stating the grounds relied on
11 within seven (7) days after service of the Decision on Respondent Sanders. The agency in its
12 discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in
13 the statute.

14 This Decision shall become effective at 5:00 p.m. on August 19, 2016.

15 It is so ORDERED on July 20, 2016.

16 BOARD OF PHARMACY
17 DEPARTMENT OF CONSUMER AFFAIRS
18 STATE OF CALIFORNIA

19 

20
21 By _____

Amy Gutierrez, Pharm.D.
Board President

22
23
24
25 12219548.DOC
SA2015104446
Attachment:
26 Exhibit A: Accusation
27
28

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 PHILLIP L. ARTHUR
Deputy Attorney General
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Facsimile: (916) 327-8643
7 E-mail: Phillip.Arthur@doj.ca.gov
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:
12
13 **RALEY'S CORP. dba RALEY'S**
PHARMACY #247
14 **1842 Fort Jones Street**
Yreka, CA 96097
15 **Original Permit Number PHY 30855**
16 **and**
17 **RALEY'S HOLDING COMPANY dba**
RALEY'S PHARMACY #247
18 **1842 Fort Jones Street, Yreka, CA 96097**
Yreka, CA 96097
19 **Original Permit Number PHY 53495**
20 **and**
21 **RUSSELL DEAN SANDERS**
22 **P.O. Box 9**
Grenada, CA 96038-0009
23 **Original Pharmacist License No. RPH 30311**
24
25 **Respondents.**

Case No. 5536

ACCUSATION

26 ///
27 ///:
28

1 Complainant alleges:

2 PARTIES

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

5 2. On or about November 1, 1984, the Board of Pharmacy issued Original Permit
6 Number PHY 30855 to Raley's Corp. dba Raley's Pharmacy #247 (Respondent Raley's). The
7 Original Permit was in full force and effect at all times relevant to the charges brought herein,
8 however it was canceled on May 20, 2015 pursuant to a change of ownership and has not been
9 renewed.

10 3. On or about May 19, 2015, the Board of Pharmacy issued Original Permit Number
11 PHY 53495 to Raley's Holding Company dba Raley's Pharmacy #247 (Respondent Raley's).
12 The Original Permit is in full force and effect and will expire on May 1, 2016, unless renewed.

13 4. On or about June 22, 1976, the Board of Pharmacy issued Original Pharmacist
14 License Number RPH 30311 to Russell Dean Sanders (Respondent Sanders). Respondent
15 Sanders was the Pharmacist-in-Charge of Respondent Raley's from May 3, 1990 through January
16 18, 2014. The Original Pharmacist License was in full force and effect at all times relevant to the
17 charges brought herein, however it expired on September 30, 2014, and has not been renewed.

18 JURISDICTION

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

22 6. Code section 4300.1 states:

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

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1 BUSINESS AND PROFESSIONS CODE

2 7. Code section 4301 states, in pertinent part:

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

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

8 8. Code section 4081 states:

9 (a) All records of manufacture and of sale, acquisition, receipt, shipment,
10 or disposition of dangerous drugs or dangerous devices shall be at all times during
11 business hours open to inspection by authorized officers of the law, and shall be
12 preserved for at least three years from the date of making. A current inventory shall
13 be kept by every manufacturer, wholesaler, third-party logistics provider, pharmacy,
14 veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian,
15 laboratory, clinic, hospital, institution, or establishment holding a currently valid and
16 unrevoked certificate, license, permit, registration, or exemption under Division 2
17 (commencing with Section 1200) of the Health and Safety Code or under Part 4
18 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code
19 who maintains a stock of dangerous drugs or dangerous devices.

20 (b) The owner, officer, and partner of a pharmacy, wholesaler, third-party
21 logistics provider, or veterinary food-animal drug retailer shall be jointly responsible,
22 with the pharmacist-in-charge, responsible manager, or designated representative-in-
23 charge, for maintaining the records and inventory described in this section.

24 (c) The pharmacist-in-charge, responsible manager, or designated
25 representative-in-charge shall not be criminally responsible for acts of the owner,
26 officer, partner, or employee that violate this section and of which the pharmacist-in-
27 charge, responsible manager, or designated representative-in-charge had no
28 knowledge, or in which he or she did not knowingly participate.

HEALTH AND SAFETY CODE

9. Health and Safety Code section 11153 states, in pertinent part:

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

1 CONTROLLED SUBSTANCES

2 14. "Hydrocodone w/APAP" (hydrocodone with acetaminophen tablets) is a
3 semisynthetic narcotic analgesic, a dangerous drug as defined in Code section 4022, a Schedule
4 III controlled substance and narcotic as defined by section 11056(e) of the Health and Safety
5 Code, and a Schedule III controlled substance as defined by section 1308.13(e) of Title 21 of the
6 Code of Federal Regulations.

7 15. "Carisoprodol" is a muscle-relaxant and sedative. It is a dangerous drug as defined in
8 Code section 4022 and a schedule IV controlled substance as defined by section 1308.14(c)(6) of
9 Title 21 of the Code of Federal Regulations.

10 16. "Oxycodone" with acetaminophen and oxycodone with aspirin both contain
11 oxycodone, a white odorless crystalline powder derived from the opium alkaloid, thebaine.
12 Oxycodone is a semisynthetic narcotic analgesic with multiple actions qualitatively similar to
13 those of morphine. It is a dangerous drug as defined in Code section 4022, a schedule II
14 controlled substance and narcotic as defined by section 11055(b)(1)(M) of the Health and Safety
15 Code, and a Schedule II controlled substance as defined by section 1308.12(b)(1) of Title 21 of
16 the Code of Federal Regulations.

17 BACKGROUND

18 Events occurring in 2013

19 17. On or about September 24, 2013, the Board received a complaint alleging that during
20 a two-month period, Respondent Sanders, as the Pharmacist-in-Charge of Respondent Raley's,
21 failed to consider red-flag warnings and dispensed controlled substances to over eight people
22 from a physician 450 miles away in Fresno, Dr. J. F.

23 18. In response to the complaint, Board Inspector K. R.-P. ("Inspector") requested
24 CURES¹ reports for Dr. J. F. (from January 1, 2012 through October 10, 2013) and Respondent
25 Raley's (from January 1 through October 10, 2013).

26
27 ¹ CURES is a database containing information on Schedule II through IV controlled
28 substances dispensed in California. It is a valuable investigative, preventive, and educational tool
for the healthcare community, regulatory boards, and law enforcement.

1 19. The Inspector reviewed the CURES reports and selected the following patients which
2 had prescriptions written by Dr. J. F.: A. F., B. B., D. W., E. N., E. B., J. N., S. W., and D. M.
3 The Inspector requested various information from Respondents Raley's and Sanders regarding
4 prescriptions that had been issued to these patients from January 1, 2011 through November 4,
5 2013. When Sanders responded to the request, he admitted filling the referenced prescriptions
6 from May 18 through July 22, 2013. Sanders admitted there were oddities in the prescriptions in
7 that they were issued from Dr. J. F., in Fresno, for patients residing in Weed, California (which is
8 400 miles from Dr. J. F.'s office and twenty-four miles from Raley's). Sanders also admitted that
9 all of the prescriptions were brought in by a "caregiver," R. B., who picked up prescriptions for
10 six of the seven patients. Sanders further admitted that all seven patients paid cash for their
11 prescriptions; no third-party insurance was billed.

12 20. According to prescription documents provided by Respondent Raley's, Raley's filled
13 a total of twenty-two prescriptions written by Dr. J. F. between January 1 and October 10, 2013.
14 The Inspector confirmed twenty prescriptions with CURES data reports from Dr. J. F. and
15 Raley's.

16 21. A review of the patient profiles from the CURES report, selected by the Inspector,
17 which had prescriptions written by Dr. J. F. and filled by Respondent Raley's between May 18
18 and July 22, 2013, revealed the following: (1) all seven of the patients received oxycodone 30 mg
19 (2) six of the seven patients received hydrocodone/apap 10/325mg; (3) six of the seven patients
20 received carisoprodol 350mg; (4) two of the seven patients received meloxicam 15mg; (5) two of
21 the seven patients received ibuprofen 800mg; (6) one of the seven patients received alprazolam
22 2mg; and (7) two of the seven patients received methadone 10mg. Every prescription presented
23 was filled and picked up.

24 **Events occurring in 2014**

25 22. On or about September 11, 2014, Respondent Raley's provided the Board with a copy
26 of Report of Theft or Loss of Controlled Substances DEA Form 106 stating that a Pharmacy
27 Clerk had been terminated for theft of hydrocodone/apap 10mg/325mg on or about September 6,
28 2014.

1 23. On or about October 22, 2014, the Board received an audit summary from
 2 Respondent Raley's regarding the amount of loss/theft of hydrocodone/apap. The audit summary
 3 indicated the following:

| | <u>Count</u> <u>at</u> <u>Last</u> <u>Inventory</u> | <u>Purchases</u> | <u>Dispensed RXs</u> | <u>Returns/</u> <u>Destruction</u> | <u>Actual</u> <u>Inventory</u> <u>10/9/14</u> <u>COB</u> | <u>Variance</u> | |
|----|--|------------------|----------------------|---------------------------------------|---|-----------------|--------|
| 7 | <u>DRUG</u> | | | | | | |
| 8 | hc/apap 10/325 | 6,368 | 118,421 | 121,888 | 0 | 564 | -2,337 |
| 9 | | | | | | | |
| 10 | hc/apap 5/300 | 432 | 700 | 913 | 0 | 160 | -59 |
| 11 | | | | | | | |
| 12 | hc/apap 5/500 | 1,667 | 57,900 | 59,102 | 0 | 0 | -465 |
| 13 | | | | | | | |
| 14 | hc/apap 7.5/500 | 1,240 | 0 | 120 | 1,120 | 0 | 0 |
| 15 | | | | | | | |
| 16 | hc/apap 7.5/325 | 120 | 1,720 | 1,590 | 0 | 230 | -20 |
| 17 | | | | | | | |
| 18 | hc/apap 5/325 | 624 | 10,170 | 10,715 | 0 | 0 | -79 |

18 24. Board Inspector J. W. reviewed the audit summary and discovered several
 19 discrepancies with the identification of the reported drug loss. J. W. subsequently requested a
 20 corrected or updated audit summary.

21 25. On or about February 9, 2015, the Board received an updated audit summary from
 22 Respondent Raley's. The audit summary indicated the following:

23 ///
 24 ///
 25 ///
 26 ///
 27 ///
 28 ///

| | <u>Count at Last Inventory</u> | <u>Purchases</u> | <u>Dispensed RXs</u> | <u>Returns/ Destruction</u> | <u>Actual Inventory 10/9/14 COB</u> | <u>Variance</u> | |
|----|--|------------------|----------------------|---------------------------------|---|-----------------|--------|
| 3 | <u>DRUG</u> | | | | | | |
| 4 | hc/apap 10/325 | 6,368 | 118,421 | 121,888 | 0 | 564 | -2,337 |
| 5 | | | | | | | |
| 6 | hc/apap 5/300 | 432 | 700 | 913 | 0 | 160 | -59 |
| 7 | | | | | | | |
| 8 | hc/apap 5/325 | 1,667 | 57,900 | 59,102 | 0 | 0 | -465 |
| 9 | | | | | | | |
| 10 | hc/apap 5/500 | 1,240 | 0 | 120 | 1,120 | 0 | 0 |
| 11 | | | | | | | |
| 12 | hc/apap 7.5/500 | 120 | 1,720 | 1,590 | 0 | 230 | 20 |
| 13 | | | | | | | |
| 14 | hc/apap 7.5/325 | 624 | 10,170 | 10,715 | 0 | 0 | -79 |

14 26. On or about February 17, 2015, Board Inspector J. W. obtained Respondent Raley's
15 DEA inventory for 2014 and DEA inventory of hydrocodone/apap products from October 6, 2014
16 (a snapshot showing inventory for that day).

17 27. On or about February 19, 2015, Respondent Raley's Pharmacist-in-Charge provided
18 Board Inspector J. W. with Raley's perpetual inventory log sheets for several hydrocodone/apap
19 products from October 6-20, 2015.

20 28. Using the DEA inventories and Respondent Raley's perpetual inventory log sheets,
21 Board Inspector J. W. reviewed Raley's updated audit summary and discovered a discrepancy in
22 the identification of the reported drug loss. Specifically, J. W. noted that 564 dosage units were
23 reported as ending inventory by Raley's for hydrocodone/apap 10mg/325mg, however the
24 perpetual inventory logs revealed that ending inventory was 156 dosage units. J. W. calculated
25 the following numbers for beginning and ending inventory as follows:

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28 ///

| | <u>DEA Inventory 1/17/14 (BOB)</u> | <u>Perpetual Log Inventory 10/9/14 (COB)</u> |
|----|------------------------------------|--|
| 1 | | |
| 2 | <u>DRUG</u> | |
| 3 | hc/apap 10/325 6,368 | 156 |
| 4 | hc/apap 5/300 374 | 160 |
| 5 | | |
| 6 | hc/apap 5/325 1,667 | 0 |
| 7 | | |
| 8 | hc/apap 5/500 1,240 | 0 |
| 9 | | |
| 10 | hc/apap 7.5/500 120 | 230 |
| 11 | hc/apap 7.5/325 624 | 0 |
| 12 | | |

13 29. Board Inspector J. W. revised Respondent Raley's updated audit summary, using 374
14 dosage units for the beginning inventory for hydrocodone/apap 5mg/300mg, and 156 dosage units
15 for the ending inventory for hydrocodone/apap 10mg/325mg, and generated the following audit
16 summary:

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| | <u>Count</u> at Last <u>Inventory</u> | <u>Purchases</u> | <u>Dispensed RXs</u> | <u>Returns/ Destruction</u> | <u>Actual Inventory 10/9/14 COB</u> | <u>Variance</u> | |
|----|--|------------------|----------------------|---------------------------------|---|-----------------|--------|
| 3 | <u>DRUG</u> | | | | | | |
| 4 | hc/apap 10/325 | 6,368 | 118,421 | 121,888 | 0 | 156 | -2,745 |
| 6 | hc/apap 5/300 | 374 | 700 | 913 | 0 | 160 | -1 |
| 8 | hc/apap 5/325 | 1,667 | 57,900 | 59,102 | 0 | 0 | -465 |
| 10 | hc/apap 5/500 | 1,240 | 0 | 120 | 1,120 | 0 | 0 |
| 12 | hc/apap 7.5/500 | 120 | 1,720 | 1,590 | 0 | 230 | 0 |
| 14 | hc/apap 7.5/325 | 624 | 10,170 | 10,715 | 0 | 0 | -79 |

30. Based upon Board Inspector J. W.'s corrected audit summary for Respondent Raley's, Raley's failed to account for the loss of approximately 2,745 dosage units of hydrocodone/apap 10mg/325mg, one dosage unit of hydrocodone/apap 5mg/300mg, 465 dosage units of hydrocodone/apap 5mg/325mg, and seventy-nine dosage units of hydrocodone/apap 7.5mg/325 mg.

RESPONDENT RALEY'S

FIRST CAUSE FOR DISCIPLINE

(Responsibility for Legitimacy of Prescription; Corresponding Responsibility of Pharmacist; Knowing Violation)

31. Respondent Raley's is subject to disciplinary action under Code section 4301(d), by and through Health and Safety Code section 11153(a) and Code of Federal Regulations, title 21, section 1306.04(a), in that Raley's, by and through its pharmacist employees, excessively furnished controlled substances without a legitimate medical purpose to seven patients between May 18 and July 22, 2013. The facts and circumstances are described with more particularity in paragraphs 17-21, above.

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Unsecured Pharmacy)**

3 32. Respondent Raley's is subject to disciplinary action under California Code of
4 Regulations, section 1714(b), in that Raley's facilities, space, fixtures, and equipment were not
5 maintained so that drugs were safely and properly maintained, secured, and distributed, when a
6 pharmacy clerk employed by Raley's stole hydrocodone/apap 10mg/325mg on or before
7 September 6, 2014. The circumstances are described with more particularity in paragraph 22,
8 above.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Failure to Maintain Current Inventory)**

11 33. Respondent Raley's is subject to disciplinary action under Code section 4081(a), and
12 California Code of Regulations, title 16, section 1718, in that Raley's, by and through its
13 pharmacist employees, failed to keep an accurate controlled substance current inventory for at
14 least three years after the date of the inventory, as alleged above in paragraphs 22-30.

15 **RESPONDENT SANDERS**

16 **FOURTH CAUSE FOR DISCIPLINE**

17 **(Responsibility for Legitimacy of Prescription; Corresponding Responsibility of**
18 **Pharmacist; Knowing Violation)**

19 34. Respondent Sanders is subject to disciplinary action under Code section 4301(d), by
20 and through Health and Safety Code section 11153(a) and Code of Federal Regulations, title 21,
21 section 1306.04(a), in that Sanders, as the Pharmacist-in-Charge of Respondent Raley's, allowed
22 the excessive furnishing of controlled substances by Raley's pharmacist employees without a
23 legitimate medical purpose to seven patients between May 18 and July 22, 2013. The facts and
24 circumstances are described with more particularity in paragraphs 17-21, above.

25 ///

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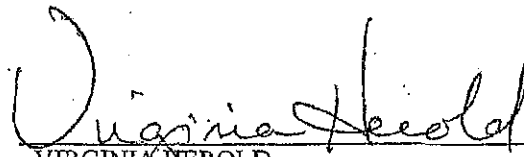
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PRAYER

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

1. Revoking or suspending Original Permit Number PHY 30855, issued to Raley's Corp. dba Raley's Pharmacy #247;
2. Revoking or suspending Original Permit Number PHY 53495, issued to Raley's Holding Company dba Raley's Pharmacy #247;
3. Revoking or suspending Original Pharmacist License Number RPH 30311, issued to Russell Dean Sanders;
4. Ordering Raley's Corp. dba Raley's Pharmacy # 247, Raley's Holding Company dba Raley's Pharmacy #247, and Russell Dean Sanders to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
5. Taking such other and further action as deemed necessary and proper.

DATED: 2/20/16



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

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