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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 Accusation Against:

Case No. 3040

12 **IMELDA D. OSTEN**
13 **475 Buena Vista Ave., #101**
Alameda, CA 94501

OAH No. 2009050443

DEFAULT DECISION AND ORDER

14 Pharmacist License No. RPH 40002,

[Gov. Code, §11520]

15 Respondent.

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18 **FINDINGS OF FACT**

19 On or about October 14, 2008, Complainant Virginia Herold, in her official capacity
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
21 Accusation No. 3040 against Imelda D. Osten (Respondent) before the Board of Pharmacy.

22 1. On or about March 20, 1986, the Board of Pharmacy (Board) issued Pharmacist
23 License No. RPH 40002 to Respondent.

24 2. On or about October 17, 2008, Donna H. Parker, an employee of the
25 Department of Justice, served by Certified and First Class Mail a copy of the Accusation
26 No. 3040, Statement to Respondent, Request for Discovery, Notice of Defense (two copies),
27 Government Code sections 11507.5, 11507.6, and 11507.7, to Respondent's address of record

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1 with the Board, which was: 475 Buena Vista Avenue, #101, Alameda, California 94501.

2 A copy of the Accusation is attached as exhibit A, and is incorporated herein by reference.

3 4. Service of the Accusation was effective as a matter of law under the provisions
4 of Government Code section 11505, subdivision (c).

5 5. Respondent failed to file a Notice of Defense within 15 days after service upon
6 her of the Accusation, and therefore waived her right to a hearing on the merits of Accusation
7 No. 3040.

8 6. A Notice of Hearing was served by mail at Respondent's address of record, and
9 it informed her that an administrative hearing in this matter was scheduled for August 17, 2009.
10 Respondent failed to appear at that hearing.

11 7. Government Code section 11506 states, in pertinent part:

12 (c) The respondent shall be entitled to a hearing on the merits if the respondent
13 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the
14 accusation not expressly admitted. Failure to file a notice of defense shall constitute a
waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless
grant a hearing.

15 8. California Government Code section 11520 states, in pertinent part:

16 (a) If the respondent either fails to file a notice of defense or to appear at the
17 hearing, the agency may take action based upon the respondent's express admissions or
18 upon other evidence and affidavits may be used as evidence without any notice to
respondent.

19 9. Pursuant to its authority under Government Code section 11520, the Board
20 finds Respondent is in default. The Board will take action without further hearing and, based on
21 the evidence on file herein, finds that the allegations in Accusation No. 3040 are true.

22 10. The total cost for investigation and enforcement in connection with the
23 Accusation are \$434.54 as of August 12, 2009.

24 **DETERMINATION OF ISSUES**

25 1. Based on the foregoing findings of fact, Respondent Imelda D. Osten has
26 subjected her Pharmacist License No. 40002 to discipline.

27 2. A copy of the Accusation is attached.

28 3. The agency has jurisdiction to adjudicate this case by default.

1 4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacist
2 License based upon the following violations alleged in the Accusation: Violation of Business &
3 Professions Code section 4301, subdivision (a), on the ground of unprofessional conduct in that
4 Respondent was disciplined on September 25, 1999, by a reprimand issued by the Oregon Board
5 of Pharmacy in Case No. 99-0188, and Respondent was disciplined by the Oregon Board on
6 August 24, 2006, in an order revoking her Oregon Pharmacist License.

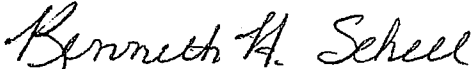
7 **ORDER**

8 IT IS SO ORDERED that Pharmacist License No. RPH 40002, heretofore issued to
9 Respondent Imelda D. Osten, is revoked.

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

14 This Decision shall become effective on November 25, 2009.

15 IT IS SO ORDERED October 26, 2009

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17 KENNETH H. SCHELL, BOARD PRESIDENT
18 FOR THE BOARD OF PHARMACY
19 DEPARTMENT OF CONSUMER AFFAIRS

20 10481466.DOC
21 DOJ docket number: SA2006102796

22 Attachments:
23 Exhibit A: Accusation No. 3040
24 Exhibit B: Cost of Suit Summary
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26
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EXHIBIT A

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 ARTHUR D. TAGGART, State Bar No. 083047
Supervising Deputy Attorney General
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P.O. Box 944255
5 Sacramento, CA 94244-2550
Telephone: (916) 324-5339
6 Facsimile: (916) 327-8643

7 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 3040

13 IMELDA D. OSTEN
475 Buena Vista Ave., #101
Alameda, CA 94501

ACCUSATION

14 Pharmacist License No. 40002,

15 Respondent.

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17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about March 20, 1986, the Board of Pharmacy issued Pharmacist
23 License Number 40002 to Imelda D. Osten (Respondent). Respondent's Pharmacist License will
24 expire on April 30, 2009, unless renewed.

25 **JURISDICTION**

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

1 4. Section 4300 of the Code states, in pertinent part:

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

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

6 “(1) Suspending judgment.

7 “(2) Placing him or her upon probation.

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

10 “(4) Revoking his or her license.

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

14 5. Section 4301 of the Code states:

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

19 * * * *

20 “(n) The revocation, suspension, or other discipline by
21 another state of a license to practice pharmacy,
22 operate a pharmacy, or do any other act for which a
23 license is required by this chapter. . . .

24 **COST RECOVERY**

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

FIRST CAUSE FOR DISCIPLINE

(Disciplinary Action by the State of Oregon Board of Pharmacy)

7. Respondent is subject to disciplinary action pursuant to Code section
4301, subdivision (a), on the ground of unprofessional conduct, in that she was the subject of two

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1 disciplinary orders issued by the State of Oregon Board of Pharmacy, as specified in the
2 following paragraphs:

3 A. Consent Order (Reprimand). On or about September 20, 1999, the State
4 of Oregon Board of Pharmacy (Oregon Board) issued a Notice of Proposed Disciplinary Action
5 (“Notice”) in Case No. 99-0199 against Respondent. The Notice alleged that on June 19, 1999,
6 while employed at the Rite Aid Pharmacy #5359, located at 11930 S.E. Division Street, Portland,
7 Oregon, Respondent erroneously dispensed Lanoxin 250 mcg. (a heart medication used for
8 Congestive Heart Failure or Atrial Fibrillation) in place of the prescribed Lanoxin 125 mcg., in
9 violation of an Oregon regulation and statute governing the practice of pharmacy. In a Consent
10 Order executed on September 25, 1999, Respondent admitted that the allegations in the Notice
11 were true, that legal cause existed to discipline her pharmacy license, and that she consented to
12 disciplinary action in the form of a reprimand.

13 B. Final Order (Revocation). On or about August 24, 2006, the Oregon
14 Board issued a Final Order in Case No. 2004-0276. The Final Order concluded that Respondent
15 had violated Oregon law in the following manner: (1) Respondent created false prescription
16 records; (2) Respondent possessed and distributed prescription drugs without a practitioner’s
17 prescription, and (3) Respondent’s violations of Oregon law constitute unprofessional conduct.
18 The Oregon Board revoked Respondent’s pharmacist license and denied her renewal application
19 on the basis of these violations.

20 PRAYER

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

23 1. Revoking or suspending Pharmacist License Number RPH 40002, issued
24 to Imelda D. Osten;

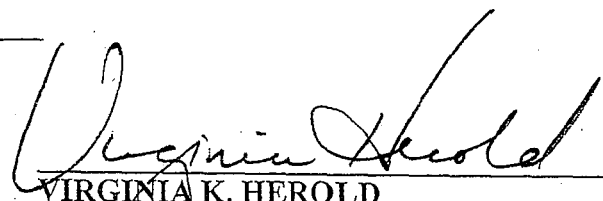
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2. Ordering Imelda D. Osten to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 10/14/08



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

Complainant

SA2006102796
30530445.wpd

DECLARATION OF SERVICE BY CERTIFIED MAIL AND FIRST CLASS MAIL
(Separate Mailings)

Case Name: **In the Matter of the Accusation Against: Imelda D. Osten**
Board of Pharmacy Case No. 3040

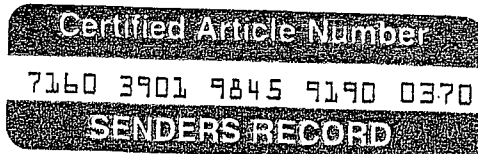
I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On October 17, 2008, I served the attached **ACCUSATION; STATEMENT TO RESPONDENT; REQUEST FOR DISCOVERY; NOTICE OF DEFENSE (2 blank forms); and COPY OF GOVERNMENT CODE SECTIONS** by placing a true copy thereof enclosed in a sealed envelope as certified mail with postage thereon fully prepaid and return receipt requested, and another true copy of the **above-listed documents** was enclosed in a second sealed envelope as first class mail with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

Imelda D. Osten
475 Buena Vista Ave. #101
Alameda, CA 94501

CERTIFIED ARTICLE NUMBER



Courtesy copy sent via U.S. Mail only:

Virginia Herold, Executive Officer
Board of Pharmacy
1625 North Market Boulevard, Suite N-219
Sacramento, CA. 95834

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on October 17, 2008, at Sacramento, California.

Donna H. Parker
Declarant



Signature

7160 3901 9845 9190 0370

TO: Imelda D. Osten
475 Buena Vista Ave. #101
Alameda, CA 94501

SENDER: Arthur D. Taggart

REFERENCE: SA2006102796

PS Form 3800, January 2005

RETURN RECEIPT SERVICE	Postage	
	Certified Fee	
	Return Receipt Fee	
	Restricted Delivery	
	Total Postage & Fees	

US Postal Service
**Receipt for
Certified Mail**

No Insurance Coverage Provided
Do Not Use for International Mail

POSTMARK OR DATE

EXHIBIT B

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE
1300 I Street, Sacramento, CA 95814
Billing Inquiries: (916) 324-5090



Matter Time Activity By Professional Type

As Of 8/12/2009

Trans #	Date	Section	Client	Task	Hours Worked	Rate	Amount	Adj?	Term Date
Matter ID: SA2006102796 Date Opened: 10/05/2006									
Description: Osten, Imelda D.									
Professional Type: ATTORNEY									
Fiscal Year: 2008-2009									
Professional: Arthur D. Taggart									
300840405	01/27/09	CV-LIC:110	03583	Pleading Preparation	1.00	\$158.00	\$158.00		01/31/09
300840562	01/28/09	CV-LIC:110	03583	Pleading Preparation	1.00	\$158.00	\$158.00		01/31/09
300988074	06/04/09	CV-LIC:110	03583	Trial Preparation	0.25	\$158.00	\$39.50		06/30/09
300988102	06/05/09	CV-LIC:110	03583	Trial Preparation	0.25	\$158.00	\$39.50		06/30/09
Arthur D. Taggart Totals:					2.50		\$395.00		
2008-2009 Totals:					2.50		\$395.00		
Fiscal Year: 2006-2007									
Professional: Arthur D. Taggart									
105769953	10/05/06	CV-LIC:110	03583	Case Management	0.25	\$158.00	\$39.50		10/31/06
Arthur D. Taggart Totals:					0.25		\$39.50		
2006-2007 Totals:					0.25		\$39.50		
ATTORNEY Totals:					2.75		\$434.50		
SA2006102796 Totals:					2.75		\$434.50		