

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

In the Matter of the Accusation Against:

Case No. 3101

PACIFIC PHARMACY
Le Thuy Truong, sole proprietor
9898 Bolsa Avenue
Westminster, CA 92683

Original Pharmacy Technician
Registration No. PHY 40567

Respondent.

DECISION AND ORDER

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

This decision shall become effective on April 8, 2010.

It is so ORDERED on March 9, 2010.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

Kenneth H. Schell

KENNETH H. SCHELL
Board President

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BOARD OF PHARMACY
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1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 BEN E. JOHNSON, State Bar No. 84406
Deputy Attorney General
4 110 West "A" Street, Suite 1100
San Diego, CA 92101.

5 P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2195
7 Facsimile: (619) 645-2061

8 Attorneys for Complainant

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

13 In the Matter of the Accusation Against:

Case No. 3101

14 PACIFIC PHARMACY
15 Le Thuy Truong, sole proprietor

16 9898 Bolsa Avenue
Westminster, CA 92683

Original Pharmacy Permit No. PHY 40567
Respondent.

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

Re: Pacific Pharmacy

17 In the interest of a prompt and speedy resolution of this matter, consistent with the public
18 interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs
19 the parties hereby agree to the following Stipulated Surrender of License and Order which will be
20 submitted to the Board for approval and adoption as the final disposition of the Accusation solely
21 with respect to Pacific Pharmacy.

22 **PARTIES**

23 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
24 She brought this action solely in her official capacity and is represented in this matter by Edmund
25 G. Brown Jr., Attorney General of the State of California, by Ben E. Johnson, Deputy Attorney
26 General.

27 2. On or about January 11, 1995, the Board of Pharmacy issued Original Pharmacy
28 Permit No. PHY 40567 to Pacific Pharmacy, a sole proprietorship owned by Le Thuy Truong .

1 Le Thuy Truong, sole owner of Pacific Pharmacy (Respondent), is represented in this proceeding
2 by attorney Stanley L. Friedman, whose address is 445 South Figueroa Street, 27th Floor, Los
3 Angeles, CA 90071-1631; telephone 213 629-1500; fax 213 489-6899.

4 JURISDICTION

5 3. Accusation No. 3101 was filed before the Board of Pharmacy (Board) ,
6 Department of Consumer Affairs, and is currently pending against Pacific Pharmacy
7 (Respondent). The Accusation and all other statutorily required documents were properly served
8 on Respondent on December 3, 2007. Respondent timely filed her Notice of Defense contesting
9 the Accusation. A copy of Accusation No. 3101 is attached as exhibit A and incorporated herein
10 by reference.

11 ADVISEMENT AND WAIVERS

12 4. Le Thuy Truong, for Respondent, has carefully read, and understands the charges
13 and allegations in Accusation No. 3101. Le Thuy Truong, for Respondent, has also carefully
14 read, and understands the effects of this Stipulated Surrender of License and Order.

15 5. Le Thuy Truong, for Respondent, is fully aware of Respondent's legal rights in
16 this matter, including the right to a hearing on the charges and allegations in the Accusation; the
17 right to be represented by counsel at her own expense; the right to confront and cross-examine
18 the witnesses against her; the right to present evidence and to present testimony on her own
19 behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the
20 production of documents; the right to reconsideration and court review of an adverse decision;
21 and all other rights accorded by the California Administrative Procedure Act and other applicable
22 laws.

23 6. Le Thuy Truong, for Respondent, voluntarily, knowingly, and intelligently waives
24 and gives up each and every right set forth above.

25 CULPABILITY

26 For the purpose of resolving the Accusation without the expense and uncertainty
27 of further proceedings, Le Thuy Truong, for Respondent, agrees that, at a hearing, Complainant
28 contends that it could establish a factual basis for the charges in the Accusation and that those

1 charges, if established, would constitute cause for discipline. Le Thuy Truong, for Respondent,
2 hereby gives up her right to contest that cause for discipline exists based on those charges.

3 7. Le Thuy Truong, for Respondent, further understands that by signing this
4 stipulation she enables the Board to issue orders disciplining Respondent's license.

5 **RESERVATION**

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

10 **CONTINGENCY**

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

20 10 The parties understand and agree that facsimile copies of this Stipulated
21 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
22 force and effect as the originals.

23 11. In consideration of the foregoing admissions and stipulations, the parties agree
24 that the Board may, without further notice or formal proceeding, issue and enter the following
25 Disciplinary Order:

26 ///

27 ///

28 ///

1 ORDER

2 IT IS HEREBY ORDERED that Original Pharmacy Permit No. PHY 40567 issued to
3 Pacific Pharmacy is surrendered and accepted by the Board of Pharmacy.

4 12. The voluntary surrender of Respondent's Pharmacy license and the acceptance of
5 the surrendered license by the Board shall constitute the imposition of discipline against
6 Respondent. This stipulation constitutes a record of the discipline and shall become a part of
7 Respondent's license history with the Board.

8 13. Respondent shall lose all rights and privileges as a Pharmacy in California as of
9 the effective date of the Board's Decision and Order.

10 14. Respondent shall cause to be delivered to the Board both her Pharmacy wall
11 license certificate and, if one was issued, the pocket license on or before the effective date of the
12 Decision and Order.

13 15. Respondent fully understands and agrees that if she ever files an application for
14 licensure or a petition for reinstatement in the State of California, the Board shall treat it as a
15 petition for reinstatement. Respondent must comply with all the laws, regulations and
16 procedures for reinstatement of a voluntarily surrendered license in effect at the time the petition
17 is filed, and all of the charges and allegations contained in Accusation No. 3101 shall be deemed
18 to be true, correct and admitted by Respondent when the Board determines whether to grant or
19 deny the petition.

20 16. Should Respondent ever apply for a new license or certification, or petition for
21 reinstatement of a license, by any other health care licensing agency in the State of California, all
22 of the charges and allegations contained in Accusation No. 3101 shall be deemed to be true,
23 correct, and admitted by Respondent for the purpose of any Statement of Issues or any other
24 proceeding seeking to deny or restrict licensure.

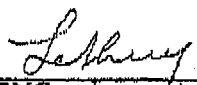
25 17. Respondent further understands and agrees that as a result of this stipulation she
26 must wait three (3) years after the effective date of the Decision and Order before she submits an
27 application for either reinstatement or a new license.

28

ACCEPTANCE

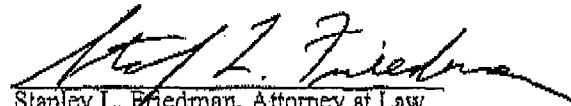
I, Le Thuy Truong, sole owner of Pacific Pharmacy, have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on Pacific Pharmacy's Original Pharmacy Permit. I have the authority to enter into this Stipulated Surrender of License and Order and do so voluntarily, knowingly, and intelligently, and agree, on behalf of Pacific Pharmacy, to be bound by the Decision and Order of the Board.

DATED: December 22, 2009


LE THUY TRUONG, sole proprietor
Pacific Pharmacy
Respondent

I have read and fully discussed with Le Thuy Truong, sole owner of Pacific Pharmacy, the terms and conditions and other matters contained in the Stipulated Surrender of License and Order. I approve its form and content.

Dated: December 22, 2009

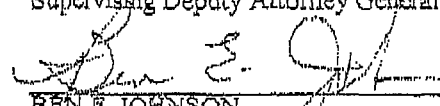

Stanley L. Friedman, Attorney at Law
for Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

DATED: Dec. 21, 2009

EDMUND G. BROWN JR., Attorney General
of the State of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General


BEN E. JOHNSON
Deputy Attorney General
Attorneys for Complainant

ACCEPTANCE

I, Le Thuy Truong, sole owner of Pacific Pharmacy, have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on Pacific Pharmacy's Original Pharmacy Permit. I have the authority to enter into this Stipulated Surrender of License and Order and do so voluntarily, knowingly, and intelligently, and agree, on behalf of Pacific Pharmacy, to be bound by the Decision and Order of the Board.

DATED: _____.

LE THUY TRUONG, sole proprietor
Pacific Pharmacy
Respondent

I have read and fully discussed with Le Thuy Truong, sole owner of Pacific Pharmacy, the terms and conditions and other matters contained in the Stipulated Surrender of License and Order. I approve its form and content.

Dated: _____

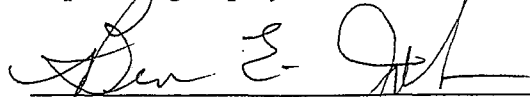
Stanley L. Friedman, Attorney at Law
for Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

DATED: Dec. 21, 2009

EDMUND G. BROWN JR., Attorney General
of the State of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General



BEN E. JOHNSON
Deputy Attorney General
Attorneys for Complainant

Exhibit A
Accusation No. 3101

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 JAMES LEDAKIS
Supervising Deputy Attorney General
3 SUSAN FITZGERALD, State Bar No. 112278
Deputy Attorney General
4 California Department of Justice
110 West "A" Street, Suite 1100
5 San Diego, CA 92101

6 P.O. Box 85266
San Diego, CA 92186-5266
7 Telephone: (619) 645-2066
Facsimile: (619) 645-2061

8 Attorneys for Complainant
9

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

13 In the Matter of the Accusation Against:

Case No. 3101

14 LE THUY TROUNG
dba PACIFIC PHARMACY
15 9898 Bolsa Avenue
Westminster, CA 92683

A C C U S A T I O N

16 Original Pharmacy Permit No. PHY 40567

17 and

18 QUE BUU
19 10151 Tyler Ct
Westminster, CA 92683

20 Pharmacist License No. RPH 45364

21 Respondents.
22

23 Complainant alleges:

24 PARTIES

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

27 2. On or about January 11, 1995, the Board of Pharmacy issued Original Pharmacy
28 Permit Number PHY 40567 to Le Thuy Troung, dba Pacific Pharmacy (Pacific Pharmacy). The

1 original pharmacy permit was in full force and effect at all times relevant to the charges brought
2 herein and will expire on January 1, 2008, unless renewed.

3 3. On or about July 6, 1992, the Board of Pharmacy issued Pharmacist License
4 Number RPH 45364 to Que Buu (Buu). The pharmacist license was in full force and effect at all
5 times relevant to the charges brought herein and will expire on December 31, 2007, unless
6 renewed. At all times relevant herein, Buu was the pharmacist-in-charge (PIC) for Pacific
7 Pharmacy.

8 JURISDICTION

9 4. This Accusation is brought before the Board of Pharmacy (Board), Department of
10 Consumer Affairs, under the authority of the following laws:

11 A. Section 4300 of the Code provides that every license issued by the Board may be
12 suspended or revoked.

13 B. Section 4301 of the Code states in pertinent part:

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

18 ". . . .

19 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
20 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
21 whether the act is a felony or misdemeanor or not.

22 ". . . .

23 "(j) The violation of any of the statutes of this state, or any other state, or of the United
24 States regulating controlled substances and dangerous drugs.

25 ". . . .

26 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting
27 the violation of or conspiring to violate any provision or term of this chapter or of the applicable
28 federal and state laws and regulations governing pharmacy, including regulations established by

1 the board or by any other state or federal regulatory agency.

2 ". . . ."

3 C. Section 4059 of the Code states in pertinent part:

4 "(a) A person may not furnish any dangerous drug, except upon prescription. . .

5 "(b) This section does not apply to the furnishing of any dangerous drug or dangerous
6 device by a manufacturer, wholesaler, or pharmacy to each other or to a physician, dentist,
7 podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7., or to a
8 laboratory under sales and purchase records that correctly give the date, the names and addresses
9 of the supplier and the buyer, the drug or device, and its quantity. This section does not apply to
10 the furnishing of any dangerous device by a manufacturer, wholesaler, or pharmacy to a physical
11 therapist acting within the scope of his or her license under sales and purchase records that
12 correctly provide the date the device is provided, the names and addresses of the supplier and the
13 buyer, a description of the device, and the quantity supplied.

14 ". . . ."

15 D. Section 4081 of the Code states in pertinent part:

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

25 ". . . ."

26 E. Section 4113 of the Code states in pertinent part:

27 ". . . ."

28 ///

1 “(b) the pharmacist-in-charge shall be responsible for a pharmacy’s compliance with all
2 state and federal laws and regulations pertaining to the practice of pharmacy.

3 “....”

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

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

11 5. This Accusation also refers to the following titles and sections of the California
12 Code of Regulations (CCR):

13 A. Title 16, CCR section 1718, states:

14 "Current Inventory' as used in Sections 4081 and 4332 of the Business and Professions
15 Code shall be considered to include complete accountability for all dangerous drugs handled by
16 every licensee enumerated in Sections 4081 and 4332.

17 "The controlled substances inventories required by Title 21, CFR, Section 1304 shall be
18 available for inspection upon request for at least 3 years after the date of the inventory."

19 B. Title 16, CCR section 1717 states in pertinent part:

20 “....

21 “(e) A pharmacist may transfer a prescription for Schedule III, IV or V controlled
22 substances to another pharmacy for refill purposes in accordance with Title 21, Code of Federal
23 Regulations, section 1306.26.

24 Prescriptions for other dangerous drugs which are not controlled substances may also be
25 transferred by direct communication between pharmacists or by the receiving pharmacist's
26 access to prescriptions or electronic files that have been created or verified by a pharmacist at the
27 transferring pharmacy. The receiving pharmacist shall create a written prescription; identifying it
28 as a transferred prescription; and record the date of transfer and the original prescription number.

1 When a prescription transfer is accomplished via direct access by the receiving pharmacist, the
2 receiving pharmacist shall notify the transferring pharmacy of the transfer. A pharmacist at the
3 transferring pharmacy shall then assure that there is a record of the prescription as having been
4 transferred, and the date of transfer. Each pharmacy shall maintain inventory accountability and
5 pharmacist accountability and dispense in accordance with the provisions of section 1716 of this
6 Division. Information maintained by each pharmacy shall at least include:

- 7 (1) Identification of pharmacist(s) transferring information;
- 8 (2) Name and identification code or address of the pharmacy from which the prescription
9 was received or to which the prescription was transferred, as appropriate;
- 10 (3) Original date and last dispensing date;
- 11 (4) Number of refills and date originally authorized;
- 12 (5) Number of refills remaining but not dispensed;
- 13 (6) Number of refills transferred.

14 “(f) The pharmacy must have written procedures that identify each individual pharmacist
15 responsible for the filling of a prescription and a corresponding entry of information into an
16 automated data processing system, or a manual record system, and the pharmacist shall create in
17 his/her handwriting or through hand-initializing a record of such filling, not later than the
18 beginning of the pharmacy's next operating day. Such record shall be maintained for at least
19 three years.”

20 C. Title 22, CCR section 51501 states in pertinent part:

21 “. . . .

22 “(d) No provider shall submit claims to the Medi-Cal program using any provider
23 number other than that issued to the provider by the Department.

24 “. . . .”

25 D. Title 22, CCR section 51484 states:

26 “ No provider shall bill or submit a claim for or on behalf of any provider who has been
27 suspended from participation in the California Medical Assistance Program, for any services
28 rendered in whole or in part by any such suspended provider during the term of such

1 suspension.”

2
3 CHARGES AND ALLEGATIONS

4 6. “CalOptima” is the name of an integrated health care system that administers
5 health insurance programs for Orange County, California children, low income families, and
6 persons with disabilities. It is a public/private partnership authorized by federal law to
7 administer Medi-Cal benefits within a defined geographic area.

8 7. Only those issued provider numbers by the California Medi-Cal program may
9 submit bills or claims to CalOptima for reimbursement.

10 8. Orange Pharmacy is a Board licensed pharmacy in Westminster, California. It
11 was a registered provider for the CalOptima program but as of at least August 2005 was no
12 longer a provider.

13 9. Respondent Pacific Pharmacy is also located in Westminster, California. It was
14 and is a registered provider for the CalOptima program.

15 10. Between approximately August 8, 2005 and October 31, 2006, Pacific Pharmacy
16 billed CalOptima for \$149,230.00 worth of prescription claims not for it but for Orange
17 Pharmacy, which could no longer legally bill CalOptima. Pacific Pharmacy and Buu knew that
18 Orange Pharmacy was no longer a provider legally able to bill CalOptima. During the above
19 period of time, 38% of Pacific Pharmacy’s total billing to CalOptima was actually for Orange
20 Pharmacy.

21 11. During the above period, Pacific Pharmacy and Orange Pharmacy transferred
22 dangerous drugs between each using a “Borrowed and Purchased” log that did not meet
23 pharmacy law requirements.

24 12. During the above period, Pacific Pharmacy failed to maintain complete
25 accountability for dangerous drugs.

26 FIRST CAUSE FOR DISCIPLINE

27 (Unprofessional Conduct: Dishonesty, Fraud or Deceit)

28 13. Respondents Pacific Pharmacy and PIC Buu are each subject to disciplinary

1 action under section 4301(f) for dishonesty and fraud in that they aided and abetted Orange
2 Pharmacy to submit claims to CalOptima that were unlawful because Orange Pharmacy was no
3 longer a CalOptima provider at the times at issue and Pacific Pharmacy and Buu knew this, as
4 more particularly alleged above and incorporated here by reference.

5 SECOND CAUSE FOR DISCIPLINE

6 (Unprofessional Conduct: Violation of Board Statutes)

7 14. Respondents Pacific Pharmacy and PIC Buu are each subject to disciplinary
8 action under section 4301(j) in conjunction with 4059 in that the transfer of drugs between
9 Respondent Pharmacy and Orange Pharmacy did not identify, or adequately identify, the
10 necessary information required by Code section 4059 for purchase and sales, as more
11 particularly alleged above and incorporated here by reference.

12 THIRD CAUSE FOR DISCIPLINE

13 (Unprofessional Conduct: Violation of Board Statutes)

14 15. Respondents Pacific Pharmacy and PIC Buu are subject to disciplinary action
15 under section 4301(j) in conjunction with section 4081 for failure to keep a current inventory due
16 to their non-existent or inadequate record keeping with regard to the drug transfers with Orange
17 Pharmacy, as more particularly alleged above and incorporated here by reference.

18 FOURTH CAUSE FOR DISCIPLINE

19 (Unprofessional Conduct: Violation of Board Regulation)

20 16. Respondents Pacific Pharmacy and PIC Buu are subject to disciplinary action
21 under section 4301(j) in conjunction with CCR section 1718 for failure to maintain complete
22 accountability of dangerous drugs due to their non-existent or inadequate record keeping with
23 regard to the drug transfers with Orange Pharmacy, as more particularly alleged above and
24 incorporated here by reference.

25 FIFTH CAUSE FOR DISCIPLINE

26 (Unprofessional Conduct: Violation of Board Regulation)

27 17. Respondents Pacific Pharmacy and PIC Buu are subject to disciplinary action
28 under section 4301(j) in conjunction with CCR section 1717(f) for failure to comply with that

1 regulation's requirements concerning the transfer between pharmacies of prescriptions, as
2 more particularly alleged above and incorporated here by reference.

3

4

PRAYER

5

6

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:

7

8

1. Revoking or suspending Original Pharmacy Permit Number PHY 40567, issued
to Le Thuy Troung , dba Pacific Pharmacy;

9

10

2. Revoking or suspending Pharmacist License Number RPH 45364, issued to Que
Buu;

11

12

3. Ordering Le Thuy Troung and QUE BUU 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;

14

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

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DATED: 10/22/07

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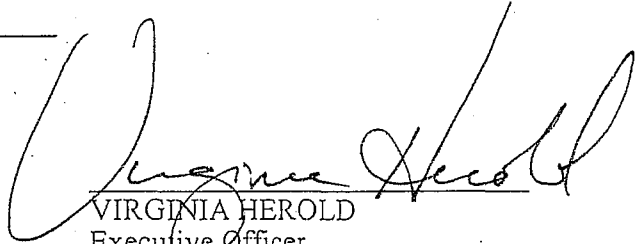
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VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant