

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

In the Matter of the Accusation Against:

**CHARLENE A. SIERRA, aka  
CHARLENE AGRIPINA BERNAL**  
5655 Huntington Street, #211  
Fresno, CA 93727

Pharmacy Technician Registration  
No. TCH 39666

Respondent.

Case No. 3299

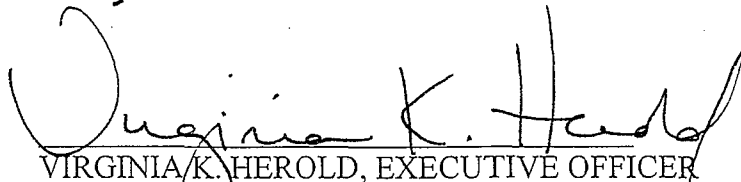
OAH No. 2010030485

**NOTICE OF DECISION AND ORDER**

No action having been taken and processed timely on the attached Proposed Decision, pursuant to Government Code section 11517(c)(2) the attached decision is hereby deemed adopted by operation of law on November 24, 2010, by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in the above entitled matter.

Pursuant to Government Code section 11519, this Decision shall become effective on January 7, 2011.

Date December 8, 2010



VIRGINIA K. HEROLD, EXECUTIVE OFFICER  
BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

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

In the Matter of the Accusation Against:

CHARLENE A. SIERRA, aka  
CHARLENE AGRIPINA BERNAL  
Fresno, California 93727

Original Pharmacy Technician  
Registration No. TCH 39666

Respondent.

Case No. 3299

OAH No. 2010030485

**PROPOSED DECISION**

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, on August 2, 2010, in Fresno, California.

Janice K. Lachman, Supervising Deputy Attorney General, represented Virginia Herrold (complainant), Executive Officer, Board of Pharmacy (Board), Department of Consumer Affairs.

Charlene A. Sierra, aka Charlene Agripina Bernal (respondent) appeared on her own behalf.

Evidence was received, the record was closed, and the matter was submitted for decision on August 2, 2010.

**FACTUAL FINDINGS**

1. Complainant made and filed the Accusation in her official capacity.
2. On October 31, 2001, the Board issued Original Pharmacy Technician Registration No. TCH 39666 (registration) to respondent. Respondent's registration was in effect at all times relevant to this matter. Complainant seeks to revoke respondent's registration based upon her conviction for methamphetamine possession described below.

3. On August 7, 2008, respondent, on a plea of nolo contendere, was convicted of violating Health and Safety Code section 11377, subdivision (a), unlawful possession of a controlled substance (methamphetamine), a misdemeanor. Imposition of judgment was suspended and respondent was placed on informal probation for two years. She was also ordered to pay fines and fees.

4. The incident underlying respondent's arrest occurred on April 2, 2008. The Fresno Police Department received information that a male was selling methamphetamine from a tent outside an apartment complex. When police officers approached the tent, the male fled. Respondent emerged from the tent and identified the male as her boyfriend, Angel Guzman. Respondent admitted that there was crystal methamphetamine in the tent and she and Mr. Guzman had smoked methamphetamine an hour before the police arrived.

5. Respondent is currently 30 years old. At the hearing, she admitted that she smoked methamphetamine for almost three years, from 2007 until her sobriety date on October 9, 2009. According to respondent, she "fell into addiction." She described smoking methamphetamine as "something to do with friends." When she began, she smoked only on weekends. She progressed to smoking two to three times a week.

6. In October 2009, on her own, respondent joined Pathways to Recovery, a nine-month intensive outpatient program. While in the program, she was randomly drug-tested. All her drug tests were negative. As part of the program, she took an anger management course. She successfully completed the program approximately two months ago.

7. Respondent now attends Narcotics Anonymous once a week and Celebrate Recovery every Friday night. She has a sponsor and is working the 12 Steps. She is currently on Step 3.

8. Respondent had two children with Mr. Guzman, a daughter who is almost two, and a son who is almost one. She no longer sees Mr. Guzman. She obtained a restraining order against him in about July 2009. She now lives with her father and stepmother. She attends church with them every Sunday.

9. At the hearing, respondent testified that she began using methamphetamine because she "wasn't happy." She asserted that she stopped using methamphetamine for her children. She described her children as "her world." She has learned coping techniques that she applies when she becomes stressed or unhappy. She asserted that she intends to remain clean and sober for her children.

10. Respondent obtained her registration when she was 21 years old. She worked as a pharmacy technician at Gary's Pharmacy for three years after she received her registration. She then worked in the pharmacy of a workers' compensation doctor for almost three years. In about August 2006, she moved to Texas. She obtained a pharmacy technician registration there and worked in a pharmacy for four to five months. She returned home to California in about January 2007 because she was "homesick." She has not worked

as a pharmacy technician since she returned to California. She asserted that she did not take or use any drugs from a pharmacy when she was a pharmacy technician. For the past two months, she has worked as an office assistant for Natural Vision, a group of five eye doctors.

11. Respondent testified that she had successfully completed her criminal probation.<sup>1</sup> Respondent submitted numerous certifications of achievement and recognition she received while she was in Pathways to Recovery. She did not, however, submit any letters of recommendation from any family members, friends, employers or other persons familiar with her recovery.

12. At the hearing, respondent testified in a candid and forthright fashion. She readily admitted her drug use and took responsibility for her illegal conduct. Her commitment to sobriety appeared sincere. Her efforts towards recovery should be commended and encouraged.

13. But it has been only two years since respondent was convicted of methamphetamine possession, and less than one year since she stopped using methamphetamine. Her sobriety date – October 9, 2009 – was more than one year after her conviction. Her criminal probation has just ended. Although respondent's commitment to sobriety is praiseworthy, given the recency of her conviction and the short period of time that she has been clean, it would not be consistent with the public interest to allow her to retain her registration. When respondent has established a longer period of sobriety, she may apply for reinstatement of her registration.

14. Complainant has requested costs of investigation and enforcement pursuant to Business and Professions Code section 125.3 in the total amount of \$974.50. In support of this request, complainant submitted a Declaration from the Deputy Attorney General and a computer printout of the tasks performed by the Office of the Attorney General. From the information presented, the time spent was reasonable, and the activities conducted were necessary and appropriate to the development and presentation of the case. Respondent did not testify concerning her current income or ability to pay the requested costs.

## LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 4301, the Board may take action against the holder of any license who has engaged in unprofessional conduct, including:

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other

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<sup>1</sup> From the exhibits submitted by complainant, it appears that respondent's criminal probation expired on August 6, 2010.

person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

[¶] ... [¶]

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

[¶] ... [¶]

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. ... The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

[¶] ... [¶]

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

2. Business and Professions Code section 118, subdivision (c), defines the term “license” as used in statutory provisions such as section 4301 to include respondent’s pharmacy technician registration.

3. Respondent was convicted of unlawful possession of a controlled substance (methamphetamine), a crime substantially related to the qualifications, responsibilities and duties of a pharmacy technician. (Finding 3.) Complainant therefore established cause to disciplined respondent’s registration pursuant to Business and Professions Code section 4301, subdivision (l).

4. For approximately three years respondent self-administered the controlled substance methamphetamine to an extent and in a manner dangerous and injurious to herself and others. (Finding 5.) Complainant therefore established cause to discipline respondent’s registration pursuant to Business and Professions Code section 4301, subdivision (h).

5. During the period from 2007 to October 9, 2009, respondent possessed the controlled substance methamphetamine in violation of Business and Professions Code section 4060<sup>2</sup> and Health and Safety Code section 11377, subdivision (a). Complainant therefore established cause to discipline respondent’s registration pursuant to Business and Professions Code section 4301, subdivision (j).

6. By possessing and using methamphetamine, respondent violated the laws governing pharmacy. Complainant therefore established cause to discipline respondent’s registration pursuant to Business and Professions Code section 4301, subdivision (o).

7. As set forth in Findings 12 and 13, while respondent’s efforts towards recovery should be commended and encouraged, it has been less than one year since she stopped using methamphetamine. Given this short period of sobriety, it would not be consistent with the public interest to allow her to retain her registration. Respondent’s registration should therefore be revoked. When she has established a longer period of sobriety, she may apply for reinstatement of her registration.

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<sup>2</sup> Business and Professions Code section 4060, in relevant part, provides:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either Section 4052.1 or 4052.2. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

8. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated a licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

9. As set forth in Finding 14, complainant has requested costs of investigation and enforcement pursuant to Business and Professions Code section 125.3 in the total amount of \$974.50. These costs are reasonable in light of the nature of the wrongdoing alleged in this matter.


Respondent did not testify concerning her current income or ability to pay the requested costs. She was not successful in getting any of the charges dismissed.

Under all the circumstances, it is appropriate to order respondent to pay the full costs of investigation and enforcement if and when her registration is reinstated.

#### ORDER

1. Original Pharmacy Technician Registration No. TCH 39666, issued to respondent Charlene A. Sierra, aka Charlene Agripina Bernal is REVOKED.
2. Respondent is ordered to pay the Board of Pharmacy the costs of investigation and enforcement of this matter in the amount of \$974.50 if and when her registration is reinstated.

DATED: August 10, 2010

  
KAREN J. BRANDT  
Administrative Law Judge  
Office of Administrative Hearings

1 EDMUND G. BROWN JR.  
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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 3299

12 **CHARLENE A. SIERRA, A.K.A.**  
13 **CHARLENE AGRIPINA BERNAL**  
14 **5655 Huntington Street, #211**  
**Fresno, CA 93727**

**A C C U S A T I O N**

15 **Original Pharmacy Technician**  
16 **Registration No. TCH 39666**

17 Respondent.

18  
19 Complainant alleges:

20 **PARTIES**

- 21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
22 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 23 2. On or about October 31, 2001, the Board of Pharmacy issued Original Pharmacy  
24 Technician Registration Number TCH 39666 to Charlene A. Sierra, also known as Charlene  
25 Agripina Bernal (Respondent). The Original Pharmacy Technician Registration was in full force  
26 and effect at all times relevant to the charges brought herein and will expire on February 28,  
27 2011, unless renewed.



JURISDICTION

1  
2       3.    This Accusation is brought before the Board of Pharmacy (Board), Department of  
3 Consumer Affairs, under the authority of the following laws. All section references are to the  
4 Business and Professions Code unless otherwise indicated.

5       4.    Section 4300 of the Code states:

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

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

10       (1) Suspending judgment.

11       (2) Placing him or her upon probation.

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

13       (4) Revoking his or her license.

14       (5) Taking any other action in relation to disciplining him or her as the board in its  
15 discretion may deem proper.

16       ...

17       (e) The proceedings under this article shall be conducted in accordance with Chapter 5  
18 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board  
19 shall have all the powers granted therein. The action shall be final, except that the propriety of  
20 the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of  
21 Civil Procedure."

22       5.    Section 118 of the Code states:

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

1           (b) The suspension, expiration, or forfeiture by operation of law of a license issued by a  
2 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by  
3 order of a court of law, or its surrender without the written consent of the board, shall not, during  
4 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its  
5 authority to institute or continue a disciplinary proceeding against the licensee upon any ground  
6 provided by law or to enter an order suspending or revoking the license or otherwise taking  
7 disciplinary action against the licensee on any such ground.

8           (c) As used in this section, 'board' includes an individual who is authorized by any  
9 provision of this code to issue, suspend, or revoke a license, and 'license' includes 'certificate,'  
10 'registration,' and 'permit.'"

11           6. Section 4301 of the Code states:

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

15           ...

16           (h) The administering to oneself, of any controlled substance, or the use of any dangerous  
17 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to  
18 oneself, to a person holding a license under this chapter, or to any other person or to the public, or  
19 to the extent that the use impairs the ability of the person to conduct with safety to the public the  
20 practice authorized by the license.

21           ...

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

24           ...

25           (l) The conviction of a crime substantially related to the qualifications, functions, and  
26 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
27 (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
28 substances or of a violation of the statutes of this state regulating controlled substances or

1 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
2 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.  
3 The board may inquire into the circumstances surrounding the commission of the crime, in order  
4 to fix the degree of discipline or, in the case of a conviction not involving controlled substances  
5 or dangerous drugs, to determine if the conviction is of an offense substantially related to the  
6 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or  
7 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning  
8 of this provision. The board may take action when the time for appeal has elapsed, or the  
9 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
10 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
11 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
12 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
13 indictment.

14 ...

15 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
16 violation or conspiring to violate any provision or term of this chapter or of the applicable federal  
17 and state laws and regulations governing pharmacy..."

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

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

25 8. Section 4060 of the Code states:

26 "No person shall possess any controlled substance, except that furnished to a person upon  
27 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
28 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified

1 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a  
2 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,  
3 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of  
4 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not  
5 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,  
6 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified  
7 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly  
8 labeled with the name and address of the supplier or producer.

9 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a  
10 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs  
11 and devices."

12 9. Health & Safety Code section 11377(a) provides that, except as otherwise authorized,  
13 by law, "every person who possesses any controlled substance which is (1) classified in Schedule  
14 III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054,  
15 except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (11) of  
16 subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section  
17 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the  
18 prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state,  
19 shall be punished by imprisonment in a county jail for a period of not more than one year or in the  
20 state prison."

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

25 **FIRST CAUSE FOR DISCIPLINE**

26 (Substantially Related Criminal Conviction)

27 11. Respondent is subject to disciplinary action under section 4301, subsection (l), in that  
28 on August 7, 2008, in the case entitled *People vs. Charlene Agripina Bernal, aka Charlene Sierra*

1 (Fresno Cnty Sup. Ct. Case No. F08902274), Respondent was convicted following her plea of  
2 nolo contendere of violating Health and Safety Code section 11377(a) (unlawful possession of  
3 controlled substance - methamphetamine), a misdemeanor. The underlying circumstances are  
4 that on April 2, 2008, while two officers from the Fresno Police Department were conducting  
5 proactive patrol, they received information that an individual was selling drugs from a tent in the  
6 area. The police officers investigated and found an outdoor makeshift tent located in an  
7 apartment complex. As the officers approached, a male exited the tent and fled the area.  
8 Respondent then emerged from the tent, telling the officers, she lived there with her boyfriend.  
9 Respondent admitted there was crystal methamphetamine in the tent and that she and her  
10 boyfriend had smoked methamphetamine an hour before the officers arrived. Respondent also  
11 admitted she had been dating her boyfriend for about a year, stating that this was the same  
12 amount of time she had been addicted to and smoking crystal methamphetamine. Respondent  
13 was subsequently arrested.

14 **SECOND CAUSE FOR DISCIPLINE**

15 (Self-Administration of Controlled Substance)

16 12. Respondent is subject to disciplinary action under section 4301, subsection (h), in that  
17 from approximately April 2007, through the beginning of April 2008, Respondent, by her own  
18 admission, self-administered the controlled substance methamphetamine to an extent or in a  
19 manner dangerous or injurious to herself or others, as more fully described above in paragraph 11.

20 **THIRD CAUSE FOR DISCIPLINE**

21 (Violation of Laws Governing Controlled Substances)

22 13. Respondent is subject to disciplinary action under section 4301, subsection (j), in that  
23 from approximately April 2007, through April 2, 2008, and specifically on April 2, 2008,  
24 Respondent possessed the controlled substance methamphetamine in violation of Code section  
25 4060 and Health and Safety Code section 11377(a).

1 FOURTH CAUSE FOR DISCIPLINE

2 (Violation of Pharmacy Laws)

3 14. Respondent is subject to disciplinary action under section 4301, subsection (o), in that  
4 Respondent committed violations of the laws governing pharmacy, as more fully described above  
5 in paragraphs 11 through 13.

6 PRAYER

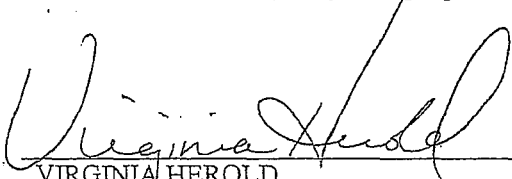
7 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
8 and that following the hearing, the Board of Pharmacy issue a decision:

9 1. Revoking or suspending Original Pharmacy Technician Registration Number TCH  
10 39666, issued to Charlene A. Sierra, a.k.a. Charlene Agripina Bernal;

11 2. Ordering Charlene A. Sierra, a.k.a. Charlene Agripina Bernal to pay the Board of  
12 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to  
13 Business and Professions Code section 125.3;

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

15  
16 DATED: 10/12/09

  
17 VIRGINIA HEROLD  
18 Executive Officer  
19 Board of Pharmacy  
20 Department of Consumer Affairs  
21 State of California  
22 Complainant

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