

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

In the Matter of the Accusation Against:

Case No. 3591

**MARK ELDON CESSNA**  
2116 Winthrop Drive  
Alhambra, CA 91803

Pharmacy Technician Registration No. TCH  
57069

Respondent.

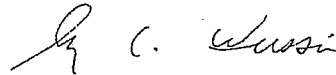
**DECISION AND ORDER**

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 August 19, 2011.

It is so ORDERED July 20, 2011.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
STANLEY C. WEISSER  
Board President

1 KAMALA D. HARRIS  
Attorney General of California  
2 MARC D. GREENBAUM  
Supervising Deputy Attorney General  
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7

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13 Alhambra, CA 91803  
14 Pharmacy Technician Registration No. TCH  
57069  
15 Respondent.  
16

**STIPULATED SURRENDER OF  
LICENSE AND ORDER**

17 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this  
18 proceeding that the following matters are true:

19 PARTIES

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

24 2. Mark Eldon Cessna (Respondent) is representing himself in this proceeding and has  
25 chosen not to exercise his right to be represented by counsel.

26 3. On or about June 25, 2004, the Board of Pharmacy issued Pharmacy Technician  
27 Registration No. TCH 57069 to Mark Eldon Cessna (Respondent). The Pharmacy Technician  
28

1 Registration was in full force and effect at all times relevant to the charges brought in Accusation.  
2 No. 3591 and will expire on June 30, 2012, unless renewed.

3 JURISDICTION

4 4. Accusation No. 3591 was filed before the Board of Pharmacy (Board), Department of  
5 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other  
6 statutorily required documents were properly served on Respondent on March 22, 2011.  
7 Respondent filed his Notice of Defense contesting the Accusation. A copy of Accusation No.  
8 3591 is attached as Exhibit A and incorporated by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, and understands the charges and allegations in  
11 Accusation No. 3591. Respondent also has carefully read, and understands the effects of this  
12 Stipulated Surrender of License and Order.

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

20 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
21 every right set forth above.

22 CULPABILITY

23 8. Respondent admits the truth of each and every charge and allegation in Accusation  
24 No. 3591, agrees that cause exists for discipline and hereby surrenders his Pharmacy Technician  
25 Registration No. TCH 57069 for the Board's formal acceptance.

26 9. Respondent understands that by signing this stipulation he enables the Board to issue  
27 an order accepting the surrender of his Pharmacy Technician Registration without further process.  
28

CONTINGENCY

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

11. The parties understand and agree that facsimile copies of this Stipulated Surrender of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

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

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

ORDER OF SURRENDER

Respondent surrenders Pharmacy Technician Registration No. TCH 57069 as of the effective date of this decision. Respondent shall relinquish his pharmacy technician license to the board within ten (10) days of the effective date of this decision.

1. The surrender of respondent's license and the acceptance of the surrendered license by the board shall constitute the imposition of discipline against respondent. This decision

1 constitutes a record of discipline and shall become a part of respondent's license history with the  
2 board.

3 2. Respondent understands and agrees that if he ever files an application for licensure or  
4 a petition for reinstatement in the State of California, the board shall treat it as a new application  
5 for licensure.

6 3. Respondent may not apply for any license, permit, or registration from the board for  
7 three (3) years from the effective date of this decision. Respondent stipulates that should he apply  
8 for any license from the board on or after the effective date of this decision, all allegations set  
9 forth in the accusation shall be deemed to be true, correct and admitted by respondent when the  
10 board determines whether to grant or deny the application. Respondent shall satisfy all  
11 requirements applicable to that license as of the date the application is submitted to the board,  
12 including, but not limited to certification by a nationally recognized body prior to the issuance of  
13 a new license. Respondent is required to report this surrender as disciplinary action.

14 4. Respondent stipulates that should he or she apply for any license from the board on or  
15 after the effective date of this decision, investigation and prosecution costs in the amount of  
16 \$5,153 shall be paid to the board prior to issuance of the license.

17 ACCEPTANCE

18 I have carefully read the Stipulated Surrender of License and Order. I understand the  
19 stipulation and the effect it will have on my Pharmacy Technician Registration. I enter into this  
20 Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to  
21 be bound by the Decision and Order of the Board of Pharmacy.

22  
23 DATED: 5/11/11



24 MARK ELDON CESSNA  
25 Respondent  
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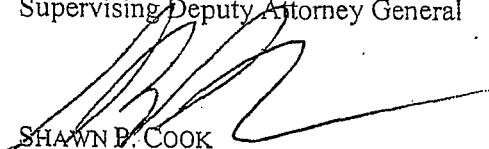
ENDORSEMENT

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: May 3, 2011

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
MARC D. GREENBAUM  
Supervising Deputy Attorney General



SHAWN P. COOK  
Deputy Attorney General  
*Attorneys for Complainant*

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Stipulation.rtf

1 KAMALA D. HARRIS  
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2 MARC D. GREENBAUM  
Supervising Deputy Attorney General  
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14 **Pharmacy Technician Registration No. TCH**  
**57069**

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

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about June 25, 2004, the Board of Pharmacy issued Pharmacy Technician  
22 Registration Number TCH 57069 to Mark Eldon Cessna (Respondent). The Pharmacy  
23 Technician Registration was in full force and effect at all times relevant to the charges brought  
24 herein and will expire on June 30, 2012, unless renewed.

25 **JURISDICTION**

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

1           4.       Section 22 of the Code states:

2           "(a) 'Board' as used in any provisions of this Code, refers to the board in which the  
3 administration of the provision is vested, and unless otherwise expressly provided, shall include  
4 'bureau,' 'commission,' 'committee,' 'department,' 'division,' 'examining committee,' 'program,' and  
5 'agency.'

6           "(b) Whenever the regulatory program of a board that is subject to review by the Joint  
7 Committee on Boards, Commissions, and Consumer Protection, as provided for in Division 1.2  
8 (commencing with Section 473), is taken over by the department, that program shall be  
9 designated as a 'bureau.'"

10          5.       Section 150 of the Code states: "The department is under the control of a civil  
11 executive officer who is known as the Director of Consumer Affairs."

12          6.       Section 477 of the Code states:

13           As used in this division:

14           "(a) 'Board' includes 'bureau,' 'commission,' 'committee,' 'department,' 'division,'  
15 'examining committee,' 'program,' and 'agency.'

16           "(b) 'License' includes certificate, registration or other means to engage in a  
17 business or profession regulated by this code."

18          7.       Section 118, subdivision (b), of the Code provides that the suspension/ expiration/  
19 surrender/cancellation of a license shall not deprive the Board/Registrar/Director of jurisdiction to  
20 proceed with a disciplinary action during the period within which the license may be renewed,  
21 restored, reissued or reinstated.

22          8.       Section 4011 of the Code provides that the Board shall administer and enforce both  
23 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances  
24 Act [Health & Safety Code, § 11000 et seq.].

25          9.       Section 4038 of the Code states:

26           "(a) 'Pharmacy technician' means an individual who assists a pharmacist in a pharmacy in  
27 the performance of his or her pharmacy related duties, as specified in Section 4115."

28          10.       Section 4060 of the Code provides in pertinent part:



1 "No person shall possess any controlled substance, except that furnished to a person upon  
2 the prescription of a physician, dentist, podiatrist, or veterinarian, or furnished pursuant to a drug  
3 order issued by a certified nurse midwife, . . . a nurse practitioner. . . , or a physician assistant. . ."

4 11. Section 4104, subd. (a) provides: "Every pharmacy shall have in place procedures  
5 for taking action to protect the public when a licensed individual employed by or with the  
6 pharmacy is discovered or known to be chemically, mentally, or physically impaired to the extent  
7 it affects his or her ability to practice the profession or occupation authorized by his or her  
8 license, or is discovered or known to have engaged in the theft, diversion, or self-use of  
9 dangerous drugs."

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

12 13. Section 4301 of the Code provides, in pertinent part, that the Board shall take action  
13 against any holder of a license that is guilty of "unprofessional conduct," defined to include, but  
14 not be limited to, any of the following:

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

18 . . .

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

24 (i) Except as otherwise authorized by law, knowingly selling, furnishing, giving away, or  
25 administering, or offering to sell, furnish, give away, or administer, any controlled substance to an  
26 addict.

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

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

5 (p) Actions or conduct that would have warranted denial of a license."

6 14. Section 4324 of the Code states: "Any person who, while on duty, sells, dispenses  
7 or compounds any drug while under the influence of any dangerous drug or alcoholic beverages  
8 shall be guilty of a misdemeanor."

9 15. Health and Safety Code section 11550 (a) states in pertinent part:

10 "(a) No person shall use, or be under the influence of any controlled substance which is (1)  
11 specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054,  
12 specified in paragraph (14), (15), (21), (22), or (23) of subdivision (d) of Section 11054, specified  
13 in subdivision (b) or (c) of Section 11055, or specified in paragraph (1) or (2) of subdivision (d)  
14 or in paragraph (3) of subdivision (e) of Section 11055, or (2) a narcotic drug classified in  
15 Schedule III, IV, or V, except when administered by or under the direction of a person licensed  
16 by the state to dispense, prescribe, or administer controlled substances. . . ."

17 16. Health and Safety Code section 11170, states:

18 "No person shall prescribe, administer, or furnish a controlled substance for himself."

19 17. Health and Safety Code section 11173(a) provides that no person shall obtain or  
20 attempt to obtain controlled substances, or procure or attempt to procure the administration of or  
21 prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or  
22 (2) by the concealment of a material fact.

23 **COST RECOVERY**

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

27 **CONTROLLED SUBSTANCES / DANGEROUS DRUGS**

28 19. Section 4021 of the Code states:

1 “Controlled substance’ means any substance listed in Chapter 2 (commencing with  
2 Section 11053) of Division 10 of the Health and Safety Code.”

3 20. Section 4022 of the Code states, in pertinent part:

4 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self-use,  
5 except veterinary drugs that are labeled as such, and includes the following:

6 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without  
7 prescription,’ ‘Rx only,’ or words of similar import.

8 ...

9 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only  
10 on prescription or furnished pursuant to Section 4006.”

11 21. "Hydrocodone" with Acetaminophen is a Schedule III narcotic controlled  
12 substance as defined by Health and Safety Code section 11056 and is categorized as a "dangerous  
13 drug" pursuant to section 4022 of the Code.

14 22. Soma is a trade name for Carisoprodol, a muscle relaxant with dependence and  
15 side effect issues, and is categorized as a "dangerous drug" pursuant to section 4022 of the Code.

#### 16 FIRST CAUSE FOR DISCIPLINE

17 (Unprofessional Conduct based on Theft of a Controlled Substance)

18 23. Respondent is subject to disciplinary action under sections 4300, 4301, subdivisions  
19 (f), (j), and (o), in conjunction with Health and Safety Code section 11173, subd. (a) in that  
20 between May 1, 2006 and June 21, 2007, Respondent unlawfully appropriated approximately  
21 4,454 tablets of Hydrocodone with Acetaminophen (HA) from his employer, Costco Pharmacy  
22 #428 (Costco). The circumstances are as follows:

23 24. Respondent was employed as a pharmacy technician at Costco from July 27, 2005  
24 through June 28, 2007. In or about April, 2007, Costco manager and Pharmacist in charge,  
25 (PIC) J.L. began monitoring controlled substances, specifically the inventory of HA, following  
26 reports from two technicians, T.C. and V.P. that they witnessed Respondent place a bottle of HA  
27 10/325 mg in a tray for an order that did not contain HA 10/325 mg. PIC J.L. found the following  
28 drug shortages:

<u>Dates</u>	<u>Drug</u>	<u>Quantity</u>
1/21/07-4/8/07	HA 10/325 mg	559
5/15/07-5/29/07	HA 10/325 mg	50
5/10/07-6/04/07	HA 10/650 mg	85
6/04/07-6/09/07	HA 7.5/650 mg	19
6/04/07-6/09/07	HA 10/660 mg	39
6/19/07-6/19/07	HA 10/325 mg	81
6/21/07-6/21/07	HA 10/500 mg	10

25. On June 16, 2007, video surveillance was installed and on June 19, 2007, PIC J.L. found two empty stock bottles of HA 10/325 mg in the trash. J.L. and another employee reviewed footage for June 19, 2007 and saw Respondent's suspicious behavior that corresponded with the two empty bottles of HA found in the trash.

26. On June 21, 2007, another pharmacy technician, L.B., told J.L. that she had observed Respondent discard an empty bottle of combination HA 10/500 mg. in the trash. J.L. had observed there were ten (10) tablets of HA 10/500 mg. in the stock bottle that morning and when he retrieved it from the trash, saw that it was empty. Video monitoring confirmed that Respondent had taken the ten (10) tablets without authorization.

27. On June 21, 2007, Costco Loss Prevention manager S.B. and Assistant Warehouse Manager C.V. interviewed Respondent at the warehouse office in the presence of PIC J.L. Respondent admitted to taking HA from the pharmacy. Respondent admitted that he had begun pilfering the HA the previous year and that it was for his personal use. Respondent took J.L. to his car, where ten (10) tablets of HA 10/500mg. that had been taken earlier that day without authorization from Costco were recovered.

28. The following drugs were contained in an "over-the-counter" container of Loratadine 10 mg. that was recovered from Respondent's car:

<u>Drug</u>	<u>Quantity</u>
Carisoprodol	46

1	HA 10/660 mg	11
2	HA 10/325 mg	3

3           29. Subsequently, Respondent took both J.L. and S.B. to his apartment where they  
4 retrieved additional tablets of HA. The following drugs were contained in an "over- the- counter"  
5 container of Ibuprofen 200 mg. that was recovered from Respondent's apartment:

6	<u>Drug</u>	<u>Quantity</u>
7	Carisoprodol	46
8	HA 10/660 mg	11
9	HA 10/325 mg	3
10	HA 10/325 mg	31
11	HA 10/500 mg	8

12           30. Respondent voluntarily signed a statement admitting to the theft of the HA.  
13 Respondent was placed on suspension pending further review and was terminated from  
14 employment at Costco on June 28, 2007.

15           31. Respondent admitted to Board investigator Dolly Harris that he had begun taking the  
16 drugs from Costco in July, 2006 because of "job stress". Respondent admitted to diverting HA  
17 and Soma from Costco. Respondent stated he would only ingest a couple of tablets while  
18 working to avoid withdrawal symptoms and that he secreted tablets in his pockets to take home  
19 where he then ingested ten to fifteen (10-15) tablets.

20           32. Respondent admitted that he had never been prescribed HA and that he was addicted  
21 to the drug.

22           33. An audit conducted at Costco for the period of May 1, 2007 through July 28, 2007  
23 revealed the following shortages of HA tablets:

24	<u>Drug</u>	<u>Shortage</u>
25	HA 7.5 mg/500 mg	700
26	HA 7.5 mg/750 mg	539
27	HA 10mg/325 mg	2,213

1	HA 10mg/500 mg	270
2	HA 10mg/650 mg	160
3	HA 10mg/660 mg	56
4	HA 5mg/500 mg	501
5	HA 7.5mg/325 mg	15
6	Total HA tablets missing	4,454

**SECOND CAUSE FOR DISCIPLINE**

(Unprofessional Conduct based on Self Administration of  
a Controlled Substance or Dangerous Drug)

34. Respondent is subject to disciplinary action under sections 4300, 4301, subdivisions (h) and (j), in conjunction with Health and Safety Code sections 11550, subd. (a) and 11170 in that between May 1, 2006 and June 21, 2007, Respondent unlawfully self-administered approximately 4,454 tablets of Hydrocodone with Acetaminophen (HA) and unknown quantities of Soma. The circumstances are as alleged in the preceding paragraphs 24 through 33, which are incorporated herein by reference as though fully set forth.

**THIRD CAUSE FOR DISCIPLINE**

(Unprofessional Conduct Based on Furnishing a Controlled Substance or Dangerous Drug)

35. Respondent is subject to disciplinary action under sections 4300, 4301, subdivisions (i) and (j), in conjunction with Health and Safety Code sections 11170 and 11173, subd. (a), in that between May 1, 2006 and June 21, 2007, Respondent unlawfully furnished himself with approximately 4,454 tablets of Hydrocodone with Acetaminophen (HA) and an unknown quantity of Soma. The circumstances are as alleged in the preceding paragraphs 24 through 33, which are incorporated herein by reference as though fully set forth.

**FOURTH CAUSE FOR DISCIPLINE**

(Unprofessional Conduct Based on Possession of a Controlled Substance or Dangerous Drug)

36. Respondent is subject to disciplinary action under sections 4300, 4060, and 4301, subdivision (j), in that between May 1, 2006 and June 21, 2007, Respondent unlawfully

1 possessed approximately 4,454 tablets of Hydrocodone with Acetaminophen (HA) and an  
2 unknown quantity of Soma. The circumstances are as alleged in the preceding paragraphs 24  
3 through 33, which are incorporated herein by reference as though fully set forth.

4 **FIFTH CAUSE FOR DISCIPLINE**

5 (Unprofessional Conduct Based on Dispensing a Controlled Substance  
6 While Under the Influence)

7 37. Respondent is subject to disciplinary action under sections 4300, 4301, subdivisions  
8 (h) and (j), in conjunction with Health and Safety Code sections 11550, subd. (a) and Code  
9 section 4324, in that between May 1, 2006 and June 21, 2007, Respondent unlawfully dispensed  
10 controlled substances while under the influence of Hydrocodone with Acetaminophen (HA)  
11 and/or Soma. The circumstances are as alleged in the preceding paragraphs 24 through 33, which  
12 are incorporated herein by reference as though fully set forth.

13 **SIXTH CAUSE FOR DISCIPLINE**

14 (Unprofessional Conduct Based on Conduct That Would Have Warranted Denial of a License)

15 38. Respondent is subject to disciplinary action under sections 4300, and 4301,  
16 subdivision (p), in that his conduct between May 1, 2006 and June 21, 2007, wherein he  
17 unlawfully possessed, furnished, and administered the controlled substance Hydrocodone with  
18 Acetaminophen (HA) and/or dangerous drug Soma to himself constitutes conduct that would  
19 have warranted denial of a pharmacy technician license. The circumstances are as alleged in the  
20 preceding paragraphs 24 through 33, which are incorporated herein by reference as though fully  
21 set forth.

22 **PRAYER**

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

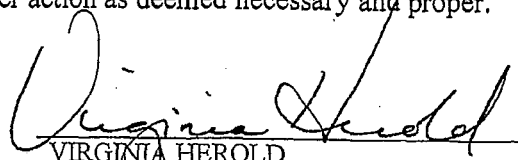
25 1. Revoking or suspending Pharmacy Technician Registration Number TCH 57069,  
26 issued to Mark Eldon Cessna;

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2. Ordering Mark Eldon Cessna 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: 2/23/11



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

LA2010500693  
accusation.rtf