

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

In the Matter of the Accusation Against:

**DANIELS PHARMACY  
943 Geneva Avenue  
San Francisco, CA 94112**

**Original Permit No. PHY 36740**

and

**IYAD I. NASRAH  
488 Gellert Drive  
San Francisco, CA 94132**

**Pharmacist License No. RPH 40241**

Case No. 4125

OAH No. 2014100384

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

Respondents.

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary 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 June 18, 2015.

It is so ORDERED on June 4, 2015.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
AMARYLIS GUTIERREZ  
Board President

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19 Respondents.

Case No. 4125

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**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER**

20 In the interest of a prompt and speedy settlement of this matter, consistent with the public  
21 interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs,  
22 the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will  
23 be submitted to the Board of Pharmacy for approval and adoption as the final disposition of the  
24 Accusation as to both Respondent Daniels Pharmacy and Respondent Iyad I. Nasrah.

25 PARTIES

26 1. Virginia Herold ("Complainant"), Executive Officer, Board of Pharmacy, brought this  
27 action solely in her official capacity and is represented in this matter by Kamala D. Harris,  
28 Attorney General of the State of California, by Jonathan D. Cooper, Deputy Attorney General.



1 witnesses against them; the right to present evidence and to testify on their own behalf; the right  
2 to the issuance of subpoenas to compel the attendance of witnesses and the production of  
3 documents; the right to reconsideration and court review of an adverse decision; and all other  
4 rights accorded by the California Administrative Procedure Act and other applicable laws.

5 8. Respondents voluntarily, knowingly, and intelligently waive and give up each and  
6 every right set forth above.

7 CULPABILITY

8 9. Respondents understand that the charges and allegations in Accusation No. 4125, if  
9 proven at a hearing, constitute cause for imposing discipline upon their licenses.

10 10. Respondents admit that at hearing Complainant could establish a factual basis for the  
11 charges and allegations in Accusation No. 4125, and that those charges and allegations are cause  
12 for discipline. Respondents hereby give up their right to contest those charges and allegations.

13 11. Respondent Daniels agrees that its Pharmacy License is subject to discipline and it  
14 agrees to be bound by the board's probationary terms as set forth in the Disciplinary Order below.

15 12. Respondent Nasrah agrees that his Pharmacist License is subject to discipline and he  
16 agrees to be bound by the board's probationary terms as set forth in the Disciplinary Order below.

17 RESERVATION

18 13. Admissions made by Respondents herein are only for the purposes of this proceeding,  
19 or any other proceedings in which the Board of Pharmacy or other professional licensing agency  
20 is involved, and shall not be admissible in any other criminal or civil proceeding.

21 CONTINGENCY

22 14. This stipulation shall be subject to approval by the Board of Pharmacy. Respondents  
23 understand and agree that counsel for Complainant and the staff of the Board may communicate  
24 directly with the board regarding this stipulation and settlement, without notice to or participation  
25 by Respondents or their counsel. By signing the stipulation, Respondents understand and agree  
26 that they may not withdraw their agreement or seek to rescind the stipulation prior to the time the  
27 board considers and acts upon it. If the board fails to adopt this stipulation as its Decision and  
28 Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for

1 this paragraph, it shall be inadmissible in any legal action between the parties, and the board shall  
2 not be disqualified from further action by having considered this matter.

3 15. The parties understand and agree that Portable Document Format (PDF) and facsimile  
4 copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format  
5 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

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

12 17. In consideration of the foregoing, the parties agree that the board may, without  
13 further notice or formal proceeding, issue and enter the following Disciplinary Order:

14 **DISCIPLINARY ORDER**

15 IT IS HEREBY ORDERED that Pharmacy License No. PHY 36740, issued to Respondent  
16 Daniels, and Pharmacist License No. RPH 40241, issued to Respondent Nasrah, are each and  
17 both revoked. However, each revocation is stayed and each respondent is placed on probation for  
18 five (5) years on the following terms and conditions.

19 **TERMS APPLICABLE TO BOTH RESPONDENTS<sup>1</sup>**

20 **1. Obey All Laws**

21 Each respondent shall obey all state and federal laws and regulations.

22 Each respondent shall report any of the following occurrences to the board, in writing,  
23 within seventy-two (72) hours of such occurrence:

- 24 • an arrest or issuance of a criminal complaint for violation of any provision of the  
25 Pharmacy Law, state and federal food and drug laws, or state and federal controlled  
26 substances laws involving either respondent

27 \_\_\_\_\_  
28 <sup>1</sup> All actions required of Respondent Daniels shall be undertaken by an owner or officer.

- 1 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to any  
2 criminal complaint, information or indictment by either respondent  
3 • a conviction of any crime against either respondent  
4 • discipline, citation, or other administrative action filed by any state or federal agency  
5 which involves either respondent's pharmacy or pharmacist license or which is  
6 related to the practice of pharmacy or the manufacturing, obtaining, handling,  
7 distributing, billing, or charging for any drug, device or controlled substance.

8 Failure to timely report such occurrence shall be considered a violation of probation.

9 **2. Report to the Board**

10 Each respondent shall report to the board quarterly, on a schedule as directed by the board  
11 or its designee. The reports shall be made either in person or in writing, as directed. Among  
12 other requirements, each respondent shall state in each report under penalty of perjury whether  
13 there has been compliance with all the terms and conditions of probation. Failure to submit  
14 timely reports in a form as directed shall be considered a violation of probation. Any period(s) of  
15 delinquency in submission of reports as directed may be added to the total period of probation.  
16 Moreover, if the final probation report is not made as directed, probation shall be automatically  
17 extended until such time as the final report is made and accepted by the board.

18 **3. Interview with the Board**

19 Upon receipt of reasonable prior notice, each respondent shall appear in person for  
20 interviews with the board or its designee, at such intervals and locations as are determined by the  
21 board or its designee. Failure to appear for any scheduled interview without prior notification to  
22 board staff, or failure to appear for two (2) or more scheduled interviews with the board or its  
23 designee during the period of probation, shall be considered a violation of probation.

24 **4. Cooperate with Board Staff**

25 Each respondent shall cooperate with the board's inspection program and with the board's  
26 monitoring and investigation of respondents' compliance with the terms and conditions of this  
27 probation. Failure to cooperate shall be considered a violation of probation.

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1           **5. Reimbursement of Board Costs**

2           As a condition precedent to successful completion of probation, respondents shall be jointly  
3 and severally liable for payment to the board of its costs of investigation and prosecution in case  
4 number 4125 of \$25,000.00. Absent prior written approval by the board or its designee, neither  
5 respondent may successfully complete probation until this amount is paid in full. Each shall be  
6 responsible for the full amount and neither may claim to owe only a portion or a share.

7           Respondents shall make full payment within ninety (90) days. There shall be no deviation  
8 from this schedule absent prior written approval by the board or its designee. Failure to pay costs  
9 by the deadline(s) as directed shall be considered a violation of probation.

10          The filing of bankruptcy by either or both respondents shall not relieve either respondent of  
11 its or his responsibility to reimburse the board its costs of investigation and prosecution.

12           **6. Probation Monitoring Costs**

13          Each respondent shall pay any costs associated with probation monitoring as determined by  
14 the board each and every year of probation. Such costs shall be payable to the board on a  
15 schedule as directed by the board or its designee. Failure to pay such costs by the deadline(s) as  
16 directed shall be considered a violation of probation.

17           **7. Completion of Probation**

18          Upon written notice by the board or its designee indicating successful completion of  
19 probation, the successfully-completing respondent's license will be fully restored.

20           **8. Violation of Probation**

21          If either respondent has not complied with any term or condition of probation, the board  
22 shall have continuing jurisdiction over that respondent, and probation shall automatically be  
23 extended as to that respondent, until all terms and conditions have been satisfied or the board has  
24 taken other action as deemed appropriate to treat the failure to comply as a violation of probation,  
25 to terminate probation, and/or to impose the penalty that was stayed.

26          If either respondent violates probation in any respect, the board, after giving that respondent  
27 notice and an opportunity to be heard, may revoke probation as to that respondent and carry out  
28 the disciplinary order that was stayed. If a petition to revoke probation or an accusation is filed

1 during probation, the board shall have continuing jurisdiction and the period of probation shall be  
2 automatically extended until the petition to revoke probation or accusation is heard and decided.

3 **ADDITIONAL TERMS APPLICABLE TO RESPONDENT DANIELS**

4 **9. Civil Penalty**

5 Respondent shall pay to the Board a civil penalty of \$60,000.00 within ninety (90) days of  
6 the effective date of the decision.

7 Respondent understands and agrees that this civil penalty is an administrative fine as  
8 defined in 11 U.S.C. § 523(a)(7), and is non-dischargeable in bankruptcy. The filing of  
9 bankruptcy by respondent shall not relieve respondent of the obligation to pay the civil penalty.

10 Failure to timely pay this civil penalty shall be considered a violation of probation. Further,  
11 absent prior written approval by the board or its designee, respondent may not successfully  
12 complete probation until this amount is paid in full.

13 **10. Posted Notice of Probation**

14 Respondent shall prominently post a probation notice provided by the board in a place  
15 conspicuous and readable to the public. The probation notice shall remain posted during the  
16 entire period of probation ordered by this decision.

17 Respondent and its employees, contractors, and agents shall not, directly or indirectly,  
18 engage in any conduct or make any statement which is intended to mislead or is likely to have the  
19 effect of misleading any patient, customer, member of the public, or other person(s) as to the  
20 nature of and reason for the probation of the licensed entity.

21 Failure to post such notice shall be considered a violation of probation.

22 **11. Notice to Employees**

23 Respondent shall, upon or before the effective date of this decision, ensure that all  
24 employees now or in future involved in pharmacy operations are made aware of all the terms and  
25 conditions of probation, either by posting a notice of the terms and conditions, circulating such  
26 notice, or both. If the notice required by this provision is posted, it shall be posted in a prominent  
27 place and shall remain posted throughout the probation period. Respondent shall ensure that any  
28 employees, contractors, or agents hired or used after the effective date of this decision are made



1 aware of the terms and conditions of probation by posting a notice, circulating a notice, or both.  
2 Additionally, respondent shall submit written notification to the board, within fifteen (15) days of  
3 the effective date of this decision, that this term has been satisfied. Failure to provide such notice  
4 or submit such notification to the board shall be considered a violation of probation.

5 "Employees" as used in this provision includes all full-time, part-time, volunteer, temporary  
6 and relief employees and independent contractors employed or hired at any time during  
7 probation.

#### 8 12. Pharmacy Consultant

9 Within thirty (30) days of the effective date of this decision, and prior to the completion of  
10 the suspension period ordered by this decision, respondent shall submit to the board or its  
11 designee, for prior approval, the name and license number of a pharmacist that shall then be  
12 retained by the pharmacy at its own expense as an independent consultant responsible for  
13 reviewing pharmacy operations on a monthly basis during the period of probation for compliance  
14 by respondent with state and federal laws and regulations governing the practice of pharmacy.  
15 The consultant shall be a pharmacist licensed by and not on probation with the board.  
16 Respondent shall be responsible for ensuring that the consultant submits timely reports. After six  
17 monthly reports have been submitted timely, respondent may request that the board or its  
18 designee approve transition to quarterly review and reporting by the consultant. Approval or  
19 denial of such transition shall be within the discretion of the board or its designee.

20 If an approved consultant is no longer able or willing to serve as a consultant for  
21 respondent, respondent shall seek approval of a new consultant within thirty (30) days, and to  
22 ensure timely reporting by the newly-approved consultant. Respondent may not operate as a  
23 pharmacy without a consultant approved by the board or its designee, and failure to secure  
24 approval of a consultant shall result in a further suspension of the pharmacy's operations until  
25 such time as a consultant is approved and respondent is informed by the board or its designee that  
26 it may resume pharmacy operations.

27 Failure to timely seek approval of, retain, or ensure timely reporting by the consultant shall  
28 be considered a violation of probation.

1           **13. Owners and Officers: Knowledge of the Law**

2           Within thirty (30) days of the effective date of this decision, and prior to the completion of  
3 the suspension period ordered by this decision, respondent shall submit to the board or its  
4 designee signed and dated statements from its owners, including any owner or holder of ten  
5 percent (10%) or more of the interest in respondent or respondent's stock, and any officer(s),  
6 stating under penalty of perjury that said individuals have read and are familiar with state and  
7 federal laws and regulations governing the practice of pharmacy. Failure to timely provide said  
8 statements under penalty of perjury shall be considered a violation of probation.

9           **14. Designation of New Pharmacist in Charge**

10           Within thirty (30) days of the effective date of this decision, and prior to the completion of  
11 the suspension period ordered by this decision, respondent shall submit to the board or its  
12 designee in writing the name and license number of a pharmacist for which approval of the board  
13 or its designee is sought for that pharmacist to serve as pharmacist in charge for respondent.

14           The board or its designee shall have discretion whether to approve or deny the designated  
15 pharmacist in charge. It may not be Respondent Nasrah. Respondent may not operate as a  
16 pharmacy without a pharmacist in charge approved by the board or its designee, and failure to  
17 secure approval of a designated pharmacist in charge shall result in a further suspension of the  
18 pharmacy's operations until such time as a pharmacist in charge is approved and respondent is  
19 informed by the board or its designee that it may resume pharmacy operations.

20           Failure to timely seek approval of, designate, or ensure pharmacy supervision by a new  
21 pharmacist in charge shall be considered a violation of probation.

22           **15. Community Service Program**

23           Within sixty (60) days of the effective date of this decision, respondent shall submit to the  
24 board or its designee, for prior approval, a community service program in which respondent shall  
25 provide free health-care related goods or services on a regular basis to a community or charitable  
26 facility or agency having a total value of at least \$100,000.00 (one hundred thousand dollars).  
27 The value of goods and services donated to this program will be determined as follows: services  
28 at actual payroll amounts, and goods at retail value.

1 This total value must be met within the first four (4) years of probation. Examples of goods  
2 and services that may be provided to constitute this value include sharps disposal containers,  
3 mail-back containers, immunizations, and other similar community/charitable goods and services.  
4 Within thirty (30) days of board approval thereof, respondent shall submit documentation to the  
5 board demonstrating commencement of the community service program. Respondent shall report  
6 on progress with the community service program in the quarterly reports. Failure to timely  
7 submit, commence, or comply with the program shall be considered a violation of probation.

8 **16. Status of License**

9 Respondent shall, at all times while on probation, maintain current pharmacy licensure with  
10 the board. If respondent submits an application to the board, and the application is approved, for  
11 a change of location, change of permit or change of ownership, the board shall retain continuing  
12 jurisdiction over the license, and respondent shall remain on probation as determined by the  
13 board. Failure to maintain current licensure shall be considered a violation of probation.

14 If respondent's license expires or is cancelled by operation of law or otherwise at any time  
15 during the period of probation, including any extensions thereof or otherwise, upon renewal or  
16 reapplication respondent owner's license shall be subject to all terms and conditions of this  
17 probation not previously satisfied.

18 **17. Prerequisites to Dispensing Controlled Substances**

19 Respondent and its employees, contractors, and agents shall not dispense or furnish any  
20 controlled substances until the pharmacy is notified in writing by the board or its designee that  
21 two prerequisites to doing so have been satisfied:

- 22 (1) All pharmacists that perform any dispensing or furnishing in, for, or from respondent,  
23 including any full-time, part-time, volunteer, temporary or relief employees or independent  
24 contractors employed or hired at any time during probation, have taken all steps necessary  
25 for registration with the California Prescription Drug Monitoring Program (PDMP), aka  
26 CURES; and  
27 (2) The board or its designee have approved written pharmacy policies and procedures  
28 relating to dispensing or furnishing controlled substances submitted by the pharmacy.

1 Dispensing or furnishing of controlled substances by respondent or its employee, contractor, or  
2 agent without satisfying these prerequisites and receiving notification from the board or its  
3 designee that dispensing or furnishing is permitted shall be considered a violation of probation.

4 **18. Separate File of Controlled Substance Records**

5 Respondent shall maintain and make available for inspection a separate file of all records  
6 pertaining to the acquisition or disposition of all controlled substances. Failure to maintain such  
7 file or make it available for inspection shall be considered a violation of probation.

8 **19. Report of Controlled Substances**

9 Respondent shall submit quarterly reports to the board detailing the total acquisition and  
10 disposition of such controlled substances as the board may direct. Respondent shall specify the  
11 manner of disposition (e.g., by prescription, due to burglary, etc.) or acquisition (e.g., from a  
12 manufacturer, from another retailer, etc.) of such controlled substances. Respondent shall report  
13 on a quarterly basis or as directed by the board. The report shall be delivered or mailed to the  
14 board no later than ten (10) days following the end of the reporting period. Failure to timely  
15 prepare or submit such reports shall be considered a violation of probation.

16 **20. License Surrender While on Probation/Suspension**

17 Following the effective date of this decision, should respondent discontinue business,  
18 respondent may tender the premises license to the board for surrender. The board or its designee  
19 shall have the discretion whether to grant the request for surrender or take any other action it  
20 deems appropriate and reasonable. Respondent shall reimburse the board for its costs of  
21 investigation and prosecution prior to the surrender. Upon formal acceptance of the surrender of  
22 the license, respondent will no longer be subject to the terms and conditions of probation.

23 Upon acceptance of the surrender, respondent shall relinquish the premises wall and  
24 renewal license to the board within ten (10) days of notification by the board that the surrender is  
25 accepted. Respondent shall further submit a completed Discontinuance of Business form  
26 according to board guidelines and shall notify the board of the records inventory transfer.  
27 Respondent shall also, by the time that the Board notifies respondent that the surrender is  
28 accepted, arrange for the continuation of care for ongoing patients of the pharmacy by, at

1 minimum, providing a written notice to ongoing patients that specifies the anticipated closing  
2 date of the pharmacy and that identifies one or more area pharmacies capable of taking up the  
3 patients' care, and by cooperating as may be necessary in the transfer of records or prescriptions  
4 for ongoing patients. Within five days of its provision to the pharmacy's ongoing patients,  
5 respondent shall provide a copy of the written notice to the board. For the purposes of this  
6 provision, "ongoing patients" means those patients for whom the pharmacy has on file a  
7 prescription with one or more refills outstanding, or for whom the pharmacy has filled a  
8 prescription within the preceding sixty (60) days.

9 Respondent may not apply for any new licensure from the board for three (3) years from the  
10 effective date of the surrender. Respondent shall meet all requirements applicable to the license  
11 sought as of the date the application for that license is submitted to the board.

#### 12 **ADDITIONAL TERMS APPLICABLE TO RESPONDENT NASRAH**

##### 13 **21. Suspension**

14 As part of probation, Pharmacist License No. RPH 40241, issued to Respondent Nasrah, is  
15 suspended for a period of thirty (30) days beginning the effective of this decision.

16 During the period of suspension, respondent shall not enter any pharmacy area or any  
17 portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other  
18 distributor of drugs which is licensed by the board, or any manufacturer, or where dangerous  
19 drugs and devices or controlled substances are maintained. Respondent shall not practice  
20 pharmacy nor do any act involving drug selection, selection of stock, manufacturing,  
21 compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be  
22 a consultant to any licensee of the board, or have access to or control the ordering, manufacturing  
23 or dispensing of dangerous drugs and devices or controlled substances.

24 During the period of suspension, respondent shall not engage in any activity that requires  
25 the professional judgment of a pharmacist. Respondent shall not direct or control any aspect of  
26 the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a  
27 designated representative for any entity licensed by the board.

28

1 Subject to the above restrictions, respondent may continue to own or hold an interest in any  
2 licensed premises in which he holds an interest at the time this decision becomes effective.

3 Failure to comply with this suspension shall be considered a violation of probation.

4 **22. Tolling of Suspension**

5 During the period of suspension, respondent shall not leave California for any period  
6 exceeding thirty (30) days, regardless of purpose (including vacation). Any such absence in  
7 excess of thirty (30) days during suspension shall be considered a violation of probation.

8 Moreover, any absence from California during the period of suspension exceeding ten (10) days  
9 shall toll the suspension, i.e., the suspension shall be extended by one day for each day over ten  
10 (10) days respondent is absent from California. During any such period of tolling of suspension,  
11 respondent must nonetheless comply with all terms and conditions of probation.

12 Respondent must notify the board in writing within ten (10) days of any departure from  
13 California during the period of suspension, and must further notify the board in writing within ten  
14 (10) days of return. The failure to provide such notification(s) shall constitute a violation of  
15 probation. Upon such departure and return, respondent shall not resume the practice of pharmacy  
16 until notified by the board that the period of suspension has been satisfactorily completed.

17 **23. Ethics Course**

18 Within sixty (60) days of the effective date of this decision, respondent shall enroll in a  
19 course in ethics, at respondent's expense, approved in advance by the board or its designee.  
20 Failure to initiate the course during the first year of probation, and complete it within the second  
21 year of probation, is a violation of probation.

22 Respondent shall submit a certificate of completion to the board or its designee within five  
23 (5) days of completing the course.

24 **24. Status of License**

25 Respondent shall, at all times while on probation, maintain an active, current pharmacist  
26 license with the board, including any period during which suspension or probation is tolled.  
27 Failure to maintain an active, current license shall be considered a violation of probation.

28

1 If respondent's license expires or is cancelled by operation of law or otherwise at any time  
2 during the period of probation, including any extensions thereof due to tolling or otherwise, upon  
3 renewal or reapplication respondent's license shall be subject to all terms and conditions of this  
4 probation not previously satisfied.

5 **25. Continuing Education**

6 Respondent shall provide evidence of efforts to maintain skill and knowledge as a  
7 pharmacist as directed by the board or its designee.

8 **26. No New Ownership of Licensed Premises**

9 Respondent shall not acquire any new ownership, legal or beneficial interest nor serve as a  
10 manager, administrator, member, officer, director, trustee, associate, or partner of any additional  
11 business, firm, partnership, or corporation licensed by the board. If respondent currently owns or  
12 has any legal or beneficial interest in, or serves as a manager, administrator, member, officer,  
13 director, trustee, associate, or partner of any business, firm, partnership, or corporation currently  
14 or hereinafter licensed by the board, respondent may continue to serve in such capacity or hold  
15 that interest, but only to the extent of that position or interest as of the effective date of this  
16 decision. Violation of this restriction shall be considered a violation of probation.

17 **27. Notification of Change in Employment, Name, or Contact Information**

18 Respondent shall notify the board in writing within ten (10) days of any change of  
19 employment. Said notification shall include the reasons for leaving, the address of the new  
20 employer, the name of the supervisor and owner, and the work schedule if known. Respondent  
21 shall further notify the board in writing within ten (10) days of a change in name, residence  
22 address, mailing address, or phone number.

23 Failure to timely notify the board of any change in employer(s), name(s), address(es), or  
24 phone number(s) shall be considered a violation of probation.

25 **28. Pharmacist Examination**

26 Respondent shall take and pass the California Pharmacist Jurisprudence Examination  
27 (CPJE) within six (6) months of the effective date of this decision. If respondent fails to take and  
28 pass the examination within six (6) months, respondent shall be automatically suspended from

1 practice. Respondent shall not resume the practice of pharmacy until he or she takes and passes  
2 the CPJE and is notified, in writing, that he or she has passed the examination and may resume  
3 practice. Respondent shall bear all costs of the examination(s).

4 During any such suspension, respondent shall not enter any pharmacy area or any portion of  
5 the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor  
6 of drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and  
7 devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do  
8 any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or  
9 patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee  
10 of the board, or have access to or control the ordering, manufacturing or dispensing of dangerous  
11 drugs and devices or controlled substances.

12 During any such suspension, respondent shall not engage in any activity that requires the  
13 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the  
14 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a  
15 designated representative for any entity licensed by the board.

16 Subject to the above restrictions, respondent may continue to own or hold an interest in any  
17 licensed premises in which he holds an interest at the time this decision becomes effective.

18 Failure to comply with any such suspension shall be considered a violation of probation.

19 If respondent fails to pass the CPJE after four attempts, respondent shall successfully  
20 complete, at a minimum, sixteen (16) additional semester units of pharmacy education as  
21 approved by the board.

22 Failure to take the examination within one (1) year of the effective date of this decision  
23 shall be considered a violation of probation. Failure to complete coursework as required shall be  
24 considered a violation of probation.

25 **29. Employment as a Pharmacist/Tolling of Probation**

26 Except during periods of suspension, respondent shall, at all times while on probation, be  
27 employed as a pharmacist in California for a minimum of forty (40) hours per calendar month.  
28 Any month during which this minimum is not met shall toll the period of probation, i.e., the



1 period of probation shall be extended by one month for each month during which this minimum is  
2 not met. During any such period of tolling of probation, respondent must nonetheless comply  
3 with all terms and conditions of probation.

4       Should respondent, regardless of residency, for any reason (including vacation) cease  
5 practicing as a pharmacist for a minimum of forty (40) hours per calendar month in California,  
6 respondent must notify the board in writing within ten (10) days of the cessation of practice, and  
7 must further notify the board in writing within ten (10) days of the resumption of practice. Any  
8 failure to provide such notification(s) shall be considered a violation of probation.

9       It is a violation of probation for respondent's probation to remain tolled pursuant to the  
10 provisions of this condition for a total period, counting consecutive and non-consecutive months,  
11 exceeding thirty-six (36) months.

12       "Cessation of practice" means any calendar month during which respondent is  
13 not practicing for at least forty (40) hours as a pharmacist, as defined by Business and  
14 Professions Code section 4000 et seq. "Resumption of practice" means any calendar  
15 month during which respondent is practicing for at least forty (40) hours as a  
16 pharmacist, as defined by Business and Professions Code section 4000 et seq.

17       **30. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as**  
18 **Designated Representative-in-Charge, or Serving as a Consultant**

19       During the period of probation, respondent shall not supervise any intern pharmacist, be the  
20 pharmacist-in-charge or designated representative-in-charge of any entity licensed by the board  
21 nor serve as a consultant. Assumption of any such unauthorized supervision responsibilities shall  
22 be considered a violation of probation.

23       **31. Notice to Employers**

24       During the period of probation, respondent shall notify all present and prospective  
25 employers of the decision in case number 4125 and the terms, conditions and restrictions imposed  
26 on respondent by the decision, as follows: Within thirty (30) days of the effective date of this  
27 decision, and within fifteen (15) days of respondent undertaking any new employment,  
28 respondent shall cause his direct supervisor, pharmacist-in-charge (including each new

1 pharmacist-in-charge employed during respondent's tenure of employment) and owner to report  
2 to the board in writing acknowledging that the listed individual(s) has/have read the decision in  
3 case number 4125, and terms and conditions imposed thereby.

4 It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s)  
5 submit timely acknowledgment(s) to the board. If respondent works for or is employed by or  
6 through a pharmacy employment service, respondent must notify his direct supervisor,  
7 pharmacist-in-charge, and owner at every entity licensed by the board of the terms and conditions  
8 of the decision in case number 4125 in advance of the respondent commencing work at each  
9 licensed entity. A record of this notification must be provided to the board upon request.

10 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen  
11 (15) days of respondent undertaking any new employment by or through a pharmacy employment  
12 service, respondent shall cause his direct supervisor with the pharmacy employment service to  
13 report to the board in writing acknowledging that he has read the decision in case number 4125  
14 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure  
15 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

16 Failure to timely notify present or prospective employer(s) or to cause the employer(s) to  
17 submit timely acknowledgments to the board shall be considered a violation of probation.

18 "Employment" within the meaning of this provision shall include any full-time,  
19 part-time, temporary, relief or pharmacy management service as a pharmacist or any  
20 position for which a pharmacist license is a requirement or criterion for employment,  
21 whether the respondent is an employee, independent contractor or volunteer.

### 22 32. Supervised Practice

23 During the period of probation, respondent shall practice only under the supervision of a  
24 licensed pharmacist not on probation with the board. Upon and after the effective date of this  
25 decision, respondent shall not practice pharmacy and his license shall be automatically suspended  
26 until a supervisor is approved by the board or its designee. The supervision shall be, as required  
27 by the board or its designee, either:

28 Continuous – At least 75% of a work week

1           Substantial - At least 50% of a work week

2           Partial - At least 25% of a work week

3           Daily Review - Supervisor's review of probationer's daily activities within 24 hours

4           Within thirty (30) days of the effective date of this decision, respondent shall have his  
5 supervisor submit notification to the board in writing stating that the supervisor has read the  
6 decision in case number 4125 and is familiar with the required level of supervision as determined  
7 by the board or its designee. It shall be respondent's responsibility to ensure that his employer(s),  
8 pharmacist-in-charge, and supervisor(s) submit timely acknowledgement(s) to the board. Failure  
9 to cause the direct supervisor and the pharmacist-in-charge to submit timely acknowledgements  
10 to the board shall be considered a violation of probation.

11           If respondent changes employment, it shall be respondent's responsibility to ensure that his  
12 new employer(s), pharmacist-in-charge, and supervisor(s) submit timely acknowledgement(s) to  
13 the board. Respondent shall have his new supervisor, within fifteen (15) days after employment  
14 commences, submit notification to the board in writing stating the direct supervisor and  
15 pharmacist-in-charge have read the decision in case number 4125 and are familiar with the level  
16 of supervision as determined by the board. Respondent shall not practice pharmacy and his  
17 license shall be automatically suspended until the board or its designee approves a new  
18 supervisor. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely  
19 acknowledgements to the board shall be considered a violation of probation.

20           During any such suspension, respondent shall not enter any pharmacy area or any portion of  
21 the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor  
22 of drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and  
23 devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do  
24 any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or  
25 patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee  
26 of the board, or have access to or control the ordering, manufacturing or dispensing of dangerous  
27 drugs and devices or controlled substances.

28

1           During any such suspension, respondent shall not engage in any activity that requires the  
2 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the  
3 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a  
4 designated representative for any entity licensed by the board.

5           Subject to the above restrictions, respondent may continue to own or hold an interest in any  
6 licensed premises in which he holds an interest at the time this decision becomes effective.

7           Failure to comply with any such suspension shall be considered a violation of probation.

8           **33. License Surrender While on Probation/Suspension**

9           Following the effective date of this decision, should respondent cease practice due to  
10 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, he  
11 may tender his license to the board for surrender. The board or its designee shall have the  
12 discretion whether to grant the request for surrender or take any other appropriate and reasonable  
13 action. Upon formal acceptance of the surrender of the license, respondent will no longer be  
14 subject to the terms and conditions of probation. Any such surrender constitutes a record of  
15 discipline and shall become a part of respondent's license history with the board.

16           Upon acceptance of the surrender, respondent shall relinquish his pocket and wall license(s)  
17 to the board within ten (10) days of notification by the board the surrender is accepted.  
18 Respondent may not reapply for any license from the board for three (3) years from the effective  
19 date of the surrender. Respondent shall meet all requirements applicable to the license sought as  
20 of the date application for that license is submitted to the Board, including any examination  
21 requirements and any outstanding costs.

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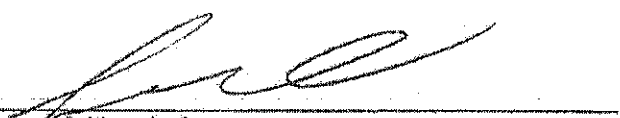
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ACCEPTANCE

I am authorized to sign for Respondent Daniels. I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Kurt W. Melchior. I understand the stipulation and the effect it will have on my Pharmacy License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED:

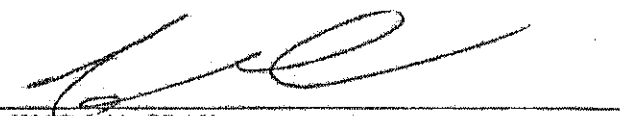
4/16/15

  
Iyad I. Nasrah, for  
DANIELS PHARMACY  
Respondent

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Kurt W. Melchior. I understand the stipulation and the effect it will have on my Pharmacist License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED:

4/16/15

  
IYAD I. NASRAH  
Respondent

I have read and fully discussed with Respondent Daniels and Respondent Nasrah the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED:

\_\_\_\_\_

KURT W. MELCHIOR  
Nossaman LLP  
Attorneys for Respondents

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DATED: \_\_\_\_\_  
Iyad I. Nasrah, for  
DANIELS PHARMACY  
Respondent

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Kurt W. Melchior. I understand the stipulation and the effect it will have on my Pharmacist License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: \_\_\_\_\_  
IYAD I. NASRAH  
Respondent

I have read and fully discussed with Respondent Daniels and Respondent Nasrah the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: April 16, 2015 Kurt W. Melchior  
KURT W. MELCHIOR  
Nossaman LLP  
Attorneys for Respondents

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy.

Dated: 4/17/2015

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
FRANK H. PACOE  
Supervising Deputy Attorney General

*for*   
JONATHAN D. COOPER  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**First Amended Accusation No. 4125**



1 KAMALA D. HARRIS  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 JONATHAN D. COOPER  
Deputy Attorney General  
4 State Bar No. 141461  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 703-1404  
6 Facsimile: (415) 703-5480  
Attorneys for Complainant  
7

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

10 In the Matter of the Accusation Against:  
11 **DANIELS PHARMACY**  
12 **943 Geneva Avenue**  
13 **San Francisco, CA 94112**  
14 **Pharmacy License No. PHY 36740**  
15 **and**  
16 **IYAD I. NASRAH**  
17 **488 Gellert Drive**  
18 **San Francisco, CA 94132**  
19 **Pharmacist License No. RPH 40241**  
Respondents.

Case No. 4125

**FIRST AMENDED ACCUSATION**

20 Complainant alleges:

21 **PARTIES**

- 22 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
23 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 24 2. On or about October 24, 1990, the Board of Pharmacy issued Pharmacy License No.  
25 PHY 36740 to Daniels Pharmacy (Respondent Daniels). The License was in full force and effect  
26 at all times relevant to the charges herein, and will expire on October 1, 2014, unless renewed.
- 27 3. On or about August 20, 1986, the Board of Pharmacy issued Pharmacist License No.  
28 RPH 40241 to Iyad I. Nasrah (Respondent Nasrah). The License was in full force and effect at all

1 times relevant to the charges herein and will expire on October 31, 2014, unless renewed. Since  
2 on or about October 24, 1990, Respondent Nasrah has served and/or has been reflected in Board  
3 records as the Pharmacist in Charge (PIC) for Respondent Daniels.

#### 4 JURISDICTION

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

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

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

13 7. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or  
14 suspension of a Board-issued license, the placement of a license on a retired status, or the  
15 voluntary surrender of a license by a licensee, shall not deprive the Board of jurisdiction to  
16 commence or proceed with any investigation of, or action or disciplinary proceeding against, the  
17 licensee or to render a decision suspending or revoking the license.

#### 18 STATUTORY AND REGULATORY PROVISIONS

##### 19 Business and Professions Code:

20 8. Section 4043(a) of the Code states:

21 "Wholesaler" means and includes a person who acts as a wholesale merchant, broker,  
22 jobber, customs broker, reverse distributor, agent, or a nonresident wholesaler, who sells for  
23 resale, or negotiates for distribution, or takes possession of, any drug or device included in  
24 Section 4022. Unless otherwise authorized by law, a wholesaler may not store, warehouse, or  
25 authorize the storage or warehousing of drugs with any person or at any location not licensed by  
26 the board.

27 9. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous  
28 drug or dangerous device except upon the prescription of an authorized prescriber.

1           10. Section 4059.5 of the Code, in pertinent part, permits ordering/delivery of dangerous  
2 drugs or devices only by and to entities licensed by the board and authorized prescribers, and  
3 requires that all deliveries to a licensed premises shall be signed for and received by a pharmacist.

4           11. Section 4061 of the Code provides, in pertinent part, that manufacturers' sales  
5 representatives may distribute complimentary samples of drugs only to and pursuant to a written  
6 request from an authorized prescriber that specifies the name and quantity of drug desired.

7           12. Section 4063 of the Code states:

8           No prescription for any dangerous drug or dangerous device may be refilled except upon  
9 authorization of the prescriber. The authorization may be given orally or at the time of giving the  
10 original prescription. No prescription for any dangerous drug that is a controlled substance may  
11 be designated refillable as needed.

12           13. Section 4064 of the Code states:

13           (a) A prescription for a dangerous drug or dangerous device may be refilled without the  
14 prescriber's authorization if the prescriber is unavailable to authorize the refill and if, in the  
15 pharmacist's professional judgment, failure to refill the prescription might interrupt the patient's  
16 ongoing care and have a significant adverse effect on the patient's well-being.

17           (b) The pharmacist shall inform the patient that the prescription was refilled pursuant to this  
18 section.

19           (c) The pharmacist shall inform the prescriber within a reasonable period of time of any  
20 refills dispensed pursuant to this section.

21           (d) Prior to refilling a prescription pursuant to this section, the pharmacist shall make every  
22 reasonable effort to contact the prescriber. The pharmacist shall make an appropriate record,  
23 including the basis for proceeding under this section.

24           (e) The prescriber shall not incur any liability as the result of a refilling of a prescription  
25 pursuant to this section.

26           (f) Notwithstanding Section 4060 or any other law, a person may possess a dangerous drug  
27 or dangerous device furnished without prescription pursuant to this section.

28           14. Section 4076, subdivision (a), of the Code provides, in pertinent part, that a

1 pharmacist shall not dispense any prescription except in a container meeting the requirements of  
2 state and federal law that is correctly labeled with information including the following:

3 (1) Except where ordered otherwise by the prescriber, the manufacturer's trade name of the  
4 drug or the generic name and the name of the manufacturer;

5 (2) The directions for use of the drug;

6 (3) The name of the patient or patients;

7 (4) The name(s) of the prescriber(s);

8 (5) The date of dispensing;

9 (6) The name and address of the pharmacy, and prescription number;

10 (7) The strength of the drug(s) dispensed;

11 (8) The quantity of the drug(s) dispensed;

12 (9) The expiration date of the drug(s) dispensed;

13 (10) If on the prescription, the condition or purpose for which the drug was prescribed;

14 (11) A physical description of the dispensed medication.

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

16 (a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or  
17 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 food-  
20 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 (b) The owner, officer, and partner of a pharmacy, wholesaler, or veterinary food-animal  
26 drug retailer shall be jointly responsible, with the pharmacist-in-charge or designated  
27 representative-in-charge, for maintaining the records and inventory described in this section.  
28

1           16. Section 4105 of the Code requires, in pertinent part, that unless a waiver is granted by  
2 the board, all records and other documentation of the acquisition and disposition of dangerous  
3 drugs and devices by any entity licensed by the board be retained on the licensed premises, in a  
4 readily retrievable form, for three years from the date of making.

5           17. Section 4113(e) of the Code states:

6           The pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state  
7 and federal laws and regulations pertaining to the practice of pharmacy.

8           18. Section 4115(e) of the Code states:

9           No person shall act as a pharmacy technician without first being licensed by the board as a  
10 pharmacy technician.

11           19. Section 4125(a) of the Code states:

12           Every pharmacy shall establish a quality assurance program that shall, at a minimum,  
13 document medication errors attributable, in whole or in part, to the pharmacy or its personnel.  
14 The purpose of the quality assurance program shall be to assess errors that occur in the pharmacy  
15 in dispensing or furnishing prescription medications so that the pharmacy may take appropriate  
16 action to prevent a recurrence.

17           20. Section 4160(a) of the Code states:

18           (a) A person may not act as a wholesaler of any dangerous drug or dangerous device unless  
19 he or she has obtained a license from the board.

20           21. Section 4301 of the Code states, in pertinent part:

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

24

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

28           (g) Knowingly making or signing any certificate or other document that falsely represents

1 the existence or nonexistence of a state of facts.

2

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

5

6 (m) The cash compromise of a charge of violation of Chapter 13 (commencing with Section  
7 801) of Title 21 of the United States Code regulating controlled substances or of Chapter 7  
8 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code  
9 relating to the Medi-Cal program. The record of the compromise is conclusive evidence of  
10 unprofessional conduct.

11

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

16

17 22. Section 4324 of the Code states:

18 (a) Every person who signs the name of another, or of a fictitious person, or falsely makes,  
19 alters, forges, utters, publishes, passes, or attempts to pass, as genuine, any prescription for any  
20 drugs is guilty of forgery and upon conviction thereof shall be punished by imprisonment  
21 pursuant to subdivision (h) of Section 1170 of the Penal Code, or by imprisonment in a county  
22 jail for not more than one year.

23 (b) Every person who has in his or her possession any drugs secured by a forged  
24 prescription shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the  
25 Penal Code, or by imprisonment in the county jail for not more than one year.

26 23. Section 4332 of the Code states:

27 Any person who fails, neglects, or refuses to maintain the records required by Section 4081  
28 or who, when called upon by an authorized officer or a member of the board, fails, neglects, or

1 refuses to produce or provide the records within a reasonable time, or who willfully produces or  
2 furnishes records that are false, is guilty of a misdemeanor.

3 24. Section 4342 of the Code states:

4 (a) The board may institute any action or actions as may be provided by law and that, in its  
5 discretion, are necessary, to prevent the sale of pharmaceutical preparations and drugs that do not  
6 conform to the standard and tests as to quality and strength, provided in the latest edition of the  
7 United States Pharmacopoeia or the National Formulary, or that violate any provision of the  
8 Sherman Food, Drug and Cosmetic Law (Part 5 (commencing with Section 109875) of Division  
9 104 of the Health and Safety Code).

10 (b) Any knowing or willful violation of any regulation adopted pursuant to Section 4006  
11 shall be subject to punishment in the same manner as is provided in Sections 4336 and 4321.

12 Health and Safety Code:

13 25. Health and Safety Code section 11165 provides, in pertinent part, for establishment  
14 and maintenance of a Controlled Substance Utilization Review and Evaluation System (CURES)  
15 for the electronic monitoring of prescribing and dispensing of Schedule II, III, and IV controlled  
16 substances, and requires, in pertinent part, that for each prescription for a Schedule II, III, or IV  
17 controlled substance, the dispensing pharmacy or clinic transmit a report with certain information  
18 on the patient, prescriber, controlled substance, and prescription, to the California Department of  
19 Justice, on a weekly basis in a format prescribed by the California Department of Justice.<sup>1</sup>

20 26. Health and Safety Code section 111340 states:

21 Any drug or device is misbranded unless it bears a label containing all of the following  
22 information:

23 (a) The name and place of business of the manufacturer, packer, or distributor.

24 (b) An accurate statement of the quantity of the contents in terms of weight, measure, or  
25 numerical count.

26  
27 <sup>1</sup> Health and Safety Code section 11165 was first amended to impose CURES reporting  
28 requirements effective January 1, 2005; as of that date, prescriptions for Schedule II and III drugs  
had to be reported. Effective January 1, 2007, Schedule IV prescriptions also had to be reported.

1 Reasonable variations from the requirements of subdivision (b) shall be permitted.  
2 Requirements for placement and prominence of the information and exemptions as to small  
3 packages shall be established in accordance with regulations adopted pursuant to Section 110380.

4 27. Health and Safety Code section 111440 states:

5 It is unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any drug or  
6 device that is misbranded.

7 California Code of Regulations:

8 28. California Code of Regulations, title 16, section 1707.2 states, in pertinent part:

9 (a) A pharmacist shall provide oral consultation to his or her patient or the patient's agent in  
10 all care settings:

11 (1) upon request; or

12 (2) whenever the pharmacist deems it warranted in the exercise of his or her professional  
13 judgment.

14 (b)(1) In addition to the obligation to consult set forth in subsection (a), a pharmacist shall  
15 provide oral consultation to his or her patient or the patient's agent in any care setting in which the  
16 patient or agent is present:

17 (A) whenever the prescription drug has not previously been dispensed to a patient; or

18 (B) whenever a prescription drug not previously dispensed to a patient in the same dosage  
19 form, strength or with the same written directions, is dispensed by the pharmacy.

20 (2) When the patient or agent is not present (including but not limited to a prescription drug  
21 that was shipped by mail) a pharmacy shall ensure that the patient receives written notice:

22 (A) of his or her right to request consultation; and

23 (B) a telephone number from which the patient may obtain oral consultation from a  
24 pharmacist who has ready access to the patient's record.

25 (3) A pharmacist is not required by this subsection to provide oral consultation to an  
26 inpatient of a health care facility licensed pursuant to section 1250 of the Health and Safety Code,  
27 or to an inmate of an adult correctional facility or a juvenile detention facility, except upon the  
28 patient's discharge. A pharmacist is not obligated to consult about discharge medications if a



1 health facility licensed pursuant to subdivision (a) or (b) of Health and Safety Code Section 1250  
2 has implemented a written policy about discharge medications which meets the requirements of  
3 Business and Professions Code Section 4074.

4  
5 29. California Code of Regulations, title 16, section 1707.3 states:

6 Prior to consultation as set forth in section 1707.2, a pharmacist shall review a patient's  
7 drug therapy and medication record before each prescription drug is delivered. The review shall  
8 include screening for severe potential drug therapy problems.

9 30. California Code of Regulations, title 16, section 1711 states:

10 (a) Each pharmacy shall establish or participate in an established quality assurance program  
11 which documents and assesses medication errors to determine cause and an appropriate response  
12 as part of a mission to improve the quality of pharmacy service and prevent errors.

13 (b) For purposes of this section, "medication error" means any variation from a prescription  
14 or drug order not authorized by the prescriber, as described in Section 1716. Medication error, as  
15 defined in the section, does not include any variation that is corrected prior to furnishing the drug  
16 to the patient or patient's agent or any variation allowed by law.

17 (c)(1) Each quality assurance program shall be managed in accordance with written policies  
18 and procedures maintained in the pharmacy in an immediately retrievable form.

19 (2) When a pharmacist determines that a medication error has occurred, a pharmacist shall  
20 as soon as possible:

21 (A) Communicate to the patient or the patient's agent the fact that a medication error has  
22 occurred and the steps required to avoid injury or mitigate the error.

23 (B) Communicate to the prescriber the fact that a medication error has occurred.

24 (3) The communication requirement in paragraph (2) of this subdivision shall only apply to  
25 medication errors if the drug was administered to or by the patient, or if the medication error  
26 resulted in a clinically significant delay in therapy.

27 (4) If a pharmacist is notified of a prescription error by the patient, the patient's agent, or a  
28 prescriber, the pharmacist is not required to communicate with that individual as required in

1 paragraph (2) of this subdivision.

2 (d) Each pharmacy shall use the findings of its quality assurance program to develop  
3 pharmacy systems and workflow processes designed to prevent medication errors. An  
4 investigation of each medication error shall commence as soon as is reasonably possible, but no  
5 later than 2 business days from the date the medication error is discovered. All medication errors  
6 discovered shall be subject to a quality assurance review.

7 (e) The primary purpose of the quality assurance review shall be to advance error  
8 prevention by analyzing, individually and collectively, investigative and other pertinent data  
9 collected in response to a medication error to assess the cause and any contributing factors such  
10 as system or process failures. A record of the quality assurance review shall be immediately  
11 retrievable in the pharmacy. The record shall contain at least the following:

- 12 1. the date, location, and participants in the quality assurance review;
- 13 2. the pertinent data and other information relating to the medication error(s) reviewed and  
14 documentation of any patient contact required by subdivision (c);
- 15 3. the findings and determinations generated by the quality assurance review; and,
- 16 4. recommend changes to pharmacy policy, procedure, systems, or processes, if any.

17 The pharmacy shall inform pharmacy personnel of changes to pharmacy policy, procedure,  
18 systems, or processes made as a result of recommendations generated in the quality assurance  
19 program.

20 (f) The record of the quality assurance review, as provided in subdivision (e) shall be  
21 immediately retrievable in the pharmacy for at least one year from the date the record was  
22 created.

23 (g) The pharmacy's compliance with this section will be considered by the board as a  
24 mitigating factor in the investigation and evaluation of a medication error.

25 (h) Nothing in this section shall be construed to prevent a pharmacy from contracting or  
26 otherwise arranging for the provision of personnel or other resources, by a third party or  
27 administrative offices, with such skill or expertise as the pharmacy believes to be necessary to  
28 satisfy the requirements of this section.

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31. California Code of Regulations, title 16, section 1714 states, in pertinent part:

...

(b) Each pharmacy licensed by the board shall maintain its facilities, space, fixtures, and equipment so that drugs are safely and properly prepared, maintained, secured and distributed. The pharmacy shall be of sufficient size and unobstructed area to accommodate the safe practice of pharmacy.

...

(e) The pharmacy owner, the building owner or manager, or a family member of a pharmacist owner (but not more than one of the aforementioned) may possess a key to the pharmacy that is maintained in a tamper evident container for the purpose of 1) delivering the key to a pharmacist or 2) providing access in case of emergency. An emergency would include fire, flood or earthquake. The signature of the pharmacist-in-charge shall be present in such a way that the pharmacist may readily determine whether the key has been removed from the container.

...

32. California Code of Regulations, title 16, section 1716 states:

Pharmacists shall not deviate from the requirements of a prescription except upon the prior consent of the prescriber or to select the drug product in accordance with Section 4073 of the Business and Professions Code.

Nothing in this regulation is intended to prohibit a pharmacist from exercising commonly-accepted pharmaceutical practice in the compounding or dispensing of a prescription.

33. California Code of Regulations, title 16, section 1717 states, in pertinent part:

(a) No medication shall be dispensed on prescription except in a new container which conforms with standards established in the official compendia.

Notwithstanding the above, a pharmacist may dispense and refill a prescription for non-liquid oral products in a clean multiple-drug patient medication package (patient med pak), provided:

- (1) a patient med pak is reused only for the same patient;
- (2) no more than a one-month supply is dispensed at one time; and

1 (3) each patient med pak bears an auxiliary label which reads, "store in a cool, dry place."

2 (b) In addition to the requirements of Business and Professions Code section 4040, the  
3 following information shall be maintained for each prescription on file and shall be readily  
4 retrievable:

5 (1) The date dispensed, and the name or initials of the dispensing pharmacist. All  
6 prescriptions filled or refilled by an intern pharmacist must also be initialed by the supervising  
7 pharmacist before they are dispensed.

8 (2) The brand name of the drug or device; or if a generic drug or device is dispensed, the  
9 distributor's name which appears on the commercial package label; and

10 (3) If a prescription for a drug or device is refilled, a record of each refill, quantity  
11 dispensed, if different, and the initials or name of the dispensing pharmacist.

12 (4) A new prescription must be created if there is a change in the drug, strength, prescriber  
13 or directions for use, unless a complete record of all such changes is otherwise maintained.

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

21 34. California Code of Regulations, title 16, section 1718, states:

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

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

27 35. California Code of Regulations, title 16, section 1793.7 states, in pertinent part:  
28

1 (b) Pharmacy technicians must work under the direct supervision of a pharmacist and in  
2 such a relationship that the supervising pharmacist is fully aware of all activities involved in the  
3 preparation and dispensing of medications, including the maintenance of appropriate records.

4  
5 (e) A pharmacist shall be responsible for all activities of pharmacy technicians to ensure  
6 that all such activities are performed completely, safely and without risk of harm to patients.

7  
8 Code of Federal Regulations:

9 36. Title 21, Code of Federal Regulations, section 1304.04(f) requires, in pertinent part,  
10 that inventories and records of Schedule I and II controlled substances shall be kept separate from  
11 all other records, and that inventories and records of Schedule III-V controlled substances shall be  
12 either kept separate from other records, or be immediately retrievable from the business records.

13 Controlled Substances/Dangerous Drugs:

14 37. Section 4021 of the Code provides that a "controlled substance" means any substance  
15 listed in Schedules I through V contained in Health and Safety Code section 11053 et seq.

16 38. Section 4022 of the Code states, in pertinent part:

17 "Dangerous drug; or "dangerous device" means any drug or device unsafe for self use,  
18 except veterinary drugs that are labeled as such, and includes the following:

19 (a) Any drug that bears the legend; "Caution: federal law prohibits dispensing without  
20 prescription," "Rx only," or words of similar import. . . .

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

23 39. **Klonopin** is a brand name for **clonazepam**, a Schedule IV controlled substance as  
24 designated by Health and Safety Code section 11057(d) and a dangerous drug as designated by  
25 Business and Professions Code section 4022. It is used to treat mental health symptoms.

26 40. **Celexa** is a brand name for **citalopram**, a dangerous drug as designated by Business  
27 and Professions Code section 4022. It is used to treat mental health symptoms.

28 41. **Zyprexa** is a brand name for **olanzapine**, a dangerous drug as designated by Business

1 and Professions Code section 4022. It is used to treat mental health symptoms.

2 COST RECOVERY

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

7 2011 INSPECTIONS AND INVESTIGATION

8 43. Between in or about January and April 2011, Respondents were the subject(s) of  
9 investigation(s) by the Board of Pharmacy. The investigation(s) revealed record-keeping,  
10 dispensing, and furnishing practices that failed to comply with the law.

11 44. During January 12 and January 27, 2011 inspections by Board Inspector(s), each of  
12 the following deviations from pharmacy requirements was/were noted by the Inspector(s):

13 a. Included in the active drug inventory for the pharmacy were: (i) a prescription  
14 bottle for patient SM, labeled by a Safeway Pharmacy, prescription number 6448294 dispensed  
15 on January 4, 2009, that expired in October 2010, with some of the labeled drug quantity missing;  
16 (ii) several boxes of prescription bottles containing professional drug samples; and (iii) one or  
17 more bubble packs or strip packs containing drugs returned from board and care homes. There  
18 were no records of acquisition maintained by Respondents with regard to any of these items.

19 b. Respondents used a prescription dispensing software and system to create pre-  
20 filled bubble packs or strip packs for board and care homes, subdivided by patient and dose. The  
21 software and system did not make note of the identity of the dispensing pharmacist, nor was this  
22 information recorded anywhere on the label or in Respondents' records. Respondent Nasrah said  
23 that he had no record of and/or it was not possible to identify the dispensing pharmacist for any of  
24 the thousands of prescriptions dispensed using this system during the previous nine (9) years.

25 c. The software and system used to generate the bubble/strip packs for board and  
26 care homes also did not include required information on the label(s) generated during this nine (9)  
27 year period, including: dispense date; drug manufacturer; and/or address of the pharmacy.

28 d. In various places in the pharmacy, including in the active inventory, were

1 prescription bottles containing quantities of dangerous drugs, with either no labels or incomplete  
2 labels affixed. Respondent asserted that these were returned from assisted living facilities.

3 e. Since at least October 21, 2009, Respondents had not successfully transmitted  
4 data regarding controlled substances dispensed by the pharmacy to the Controlled Substances  
5 Utilization Review (CURES) database maintained by the California Department of Justice.

6 f. Controlled substance invoices for at least the two months prior to the inspection  
7 were grouped and filed together, and there was no separation of Schedule II invoices.

8 g. On at least one occasion, including on or about July 17, 2010, a non-pharmacist  
9 (store clerk) signed a wholesaler's proof of delivery form to accept delivery of dangerous drugs.

10 45. Between on or about July 10, 2009 and on or about January 10, 2011, Respondents  
11 dispensed dangerous drugs and/or controlled substances to patient DC pursuant to unauthorized  
12 prescriptions and/or refills, including:

13 a. On at least ten (10) occasions between on or about December 14, 2009 and on  
14 or about January 10, 2011, Respondents filled new prescriptions for DC for controlled substances  
15 and/or dangerous drugs without prescriber authorization, including: two (2) prescriptions for  
16 controlled substance/dangerous drug **clonazepam 0.5mg (Klonopin)**; six (6) prescriptions for the  
17 dangerous drug **Celexa 40mg**; and two (2) prescriptions for the dangerous drug **Zyprexa 20mg**.

18 b. On at least twenty-nine (29) occasions between on or about August 2, 2009 and  
19 on or about September 1, 2010, Respondents furnished refill prescriptions to DC for controlled  
20 substances and/or dangerous drugs without prescriber authorization, including: five (5) refills for  
21 controlled substance/dangerous drug **clonazepam 0.5mg (Klonopin)**; fourteen (14) refills for the  
22 dangerous drug **Zyprexa 20mg**; and ten (10) refills for the dangerous drug **Celexa 40mg**.

23 c. On at least seven (7) occasions between on or about July 10, 2009 and on or  
24 about January 19, 2010, Respondents created and/or signed prescription documents for DC that  
25 falsely stated authorization by the prescriber, including: one (1) prescription for controlled  
26 substance/dangerous drug **clonazepam 0.5mg (Klonopin)**; five (5) prescriptions for the  
27 dangerous drug **Celexa 40mg**; and one (1) prescription for the dangerous drug **Zyprexa 20mg**.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Incomplete Inventory and/or Records of Acquisition and/or Disposition)

3 46. Respondents are each and severally subject to discipline under section 4301(j) and/or  
4 (o) and/or section 4113(c) of the Code, by reference to section(s) 4081, 4105, 4332 and/or 4342  
5 of the Code, and/or California Code of Regulations, title 16, section 1718, for violating statutes  
6 regulating controlled substances or dangerous drugs, and/or directly or indirectly violating,  
7 attempting to violate, or assisting in or abetting a violation of laws or regulations governing the  
8 practice of pharmacy, in that, as described in paragraphs 43-44 above, Respondents failed to  
9 maintain an accurate, complete, and readily retrievable inventory and/or records of acquisition  
10 and disposition of all dangerous drugs in the pharmacy inventory.

11 SECOND CAUSE FOR DISCIPLINE

12 (Possessing and/or Dispensing/Furnishing Drug Samples)

13 47. Respondents are each and severally subject to discipline under section 4301(j) and/or  
14 (o) and/or section 4113(c) of the Code, by reference to section 4061 of the Code, for violating  
15 statutes regulating controlled substances or dangerous drugs, and/or directly or indirectly  
16 violating, attempting to violate, or assisting in or abetting a violation of laws or regulations  
17 governing the practice of pharmacy, in that, as described in paragraphs 43-44 above, Respondents  
18 had in their inventory, and/or had previously dispensed or furnished, manufacturer drug samples.

19 THIRD CAUSE FOR DISCIPLINE

20 (Failure to Identify Dispensing Pharmacist)

21 48. Respondents are each and severally subject to discipline under section 4301(j) and/or  
22 (o) and/or section 4113(c) of the Code, by reference to California Code of Regulations, title 16,  
23 section 1717, for violating statutes regulating controlled substances or dangerous drugs, and/or  
24 directly or indirectly violating, attempting to violate, or assisting in or abetting a violation of laws  
25 or regulations governing the practice of pharmacy, in that, as described in paragraphs 43-44  
26 above, Respondents dispensed medications without a means of identifying the dispensing  
27 pharmacist.

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**FOURTH CAUSE FOR DISCIPLINE**

(Inadequately Labeled Prescription Containers)

49. Respondents are each and severally subject to discipline under section 4301(j) and/or (o) and/or section 4113(c) of the Code, by reference to section 4076 of the Code, for violating statutes regulating controlled substances or dangerous drugs, and/or directly or indirectly violating, attempting to violate, or assisting in or abetting a violation of laws or regulations governing the practice of pharmacy, in that, as described in paragraphs 43-44 above, Respondents dispensed medications in prescription containers which failed to include required information.

**FIFTH CAUSE FOR DISCIPLINE**

(Possession of Misbranded Drug Containers)

50. Respondents are each and severally subject to discipline under section 4301(j) and/or (o) and/or section 4113(c) of the Code, by reference to Health and Safety Code section 111340 and/or 111440, for violating statutes regulating controlled substances or dangerous drugs, and/or directly or indirectly violating, attempting to violate, or assisting in or abetting a violation of laws or regulations governing the practice of pharmacy, in that, as described in paragraphs 43-44 above, Respondents possessed drug containers that were misbranded inasmuch as they had affixed to them no or incomplete labels describing the contents, the manufacturer, and other required data.

**SIXTH CAUSE FOR DISCIPLINE**

(Failure to Report Controlled Substance Prescriptions to CURES)

51. Respondents are each and severally subject to discipline under section 4301(j) and/or (o) and/or section 4113(c) of the Code, by reference to Health and Safety Code section 11165, for violating statutes regulating controlled substances or dangerous drugs, and/or directly or indirectly violating, attempting to violate, or assisting in or abetting a violation of laws or regulations governing the practice of pharmacy, in that, as described in paragraphs 43-44 above, in the period prior to January 12, 2011, the pharmacy had not successfully transmitted any dispensing data to CURES for controlled substances that were dispensed since at least October 21, 2009.

1 **SEVENTH CAUSE FOR DISCIPLINE**

2 (Failure to Segregate Schedule II Records)

3 52. Respondents are each and severally subject to discipline under section 4301(j) and/or  
4 (o) and/or section 4113(c) of the Code, by reference to Title 21, Code of Federal Regulations,  
5 section 1304.04(f), for violating statutes regulating controlled substances or dangerous drugs,  
6 and/or for directly or indirectly violating, attempting to violate, or assisting in or abetting a  
7 violation of laws or regulations governing the practice of pharmacy, in that, as described in  
8 paragraphs 43-44 above, on or about January 12, 2011, Schedule II records were not segregated.

9 **EIGHTH CAUSE FOR DISCIPLINE**

10 (Receipt and Acknowledgment of Delivery by Non-Pharmacist)

11 53. Respondents are each and severally subject to discipline under section 4301(j) and/or  
12 (o) and/or section 4113(c) of the Code, by reference to section(s) 4059 and/or 4059.5 of the Code,  
13 for violating statutes regulating controlled substances or dangerous drugs, and/or for directly or  
14 indirectly violating, attempting to violate, or assisting in or abetting a violation of laws or  
15 regulations governing the practice of pharmacy, in that, as described in paragraphs 43-44 above, a  
16 non-pharmacist received and/or signed for a delivery of a dangerous drug or device.

17 **NINTH CAUSE FOR DISCIPLINE**

18 (Furnishing/Dispensing Prescriptions Without Prescriber Authorization)

19 54. Respondents are each and severally subject to discipline under section 4301(j) and/or  
20 (o) and/or section 4113(c) of the Code, by reference to section 4059 of the Code, for violating  
21 statutes regulating controlled substances or dangerous drugs, and/or for directly or indirectly  
22 violating, attempting to violate, or assisting in or abetting a violation of laws or regulations  
23 governing the practice of pharmacy, in that, as described in paragraph 45 above, Respondents  
24 furnished ten (10) new prescriptions to patient DC that were not authorized by a prescriber.

25 **TENTH CAUSE FOR DISCIPLINE**

26 (Furnishing/Dispensing Refills Without Prescriber Authorization)

27 55. Respondents are each and severally subject to discipline under section 4301(j) and/or  
28 (o) and/or section 4113(c) of the Code, by reference to section 4063 of the Code, for violating

1 statutes regulating controlled substances or dangerous drugs, and/or for directly or indirectly  
2 violating, attempting to violate, or assisting in or abetting a violation of laws or regulations  
3 governing the practice of pharmacy, in that, as described in paragraph 45 above, Respondents  
4 furnished twenty nine (29) refills to patient DC that were not authorized by a prescriber.

5 **ELEVENTH CAUSE FOR DISCIPLINE**

6 (Dishonesty/Creation of False Prescription Document(s))

7 56. Respondents are each and severally subject to discipline under section 4301(f) and/or  
8 (g) and/or section 4113(c) and/or section 4324 of the Code, for acts involving moral turpitude,  
9 dishonesty, fraud, deceit, corruption and forgery, and/or for knowingly making or signing any  
10 certificate or other document that falsely represents the existence or nonexistence of a state of  
11 facts in that, as described in paragraph 45 above, Respondents created seven (7) false  
12 prescriptions for patient DC.

13 **TWELFTH CAUSE FOR DISCIPLINE**

14 (Failure to Maintain Records of Acquisition of Drugs)

15 57. Respondents are each and severally subject to discipline under section 4301(j) and/or  
16 (o) and/or section 4113(c) of the Code, by reference to Code section 4081, for violating statutes  
17 regulating controlled substances or dangerous drugs, and/or for directly or indirectly violating,  
18 attempting to violate, or assisting in or abetting a violation of laws or regulations governing the  
19 practice of pharmacy, in that on or about January 12, 2011, Respondents' facility contained a  
20 prescription bottle containing 180 Premarin 1.25 tablets, Safeway prescription number 6448294,  
21 issue to patient SM on January 4, 2009. Respondents had no record of the acquisition of this  
22 item.

23 **THIRTEENTH CAUSE FOR DISCIPLINE**

24 (Unprofessional Conduct)

25 58. are each and severally subject to discipline under section 4301 of the Code in that  
26 Respondents, as described in paragraphs 43-45 above, engaged in unprofessional conduct.

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1 CASH COMPROMISE OF MEDI-CAL CHARGES

2 59. On or about June, 2010, the California Department of Health Care Services  
3 (hereinafter "Department") audited Respondents' premises and records pertaining to the period of  
4 March 1, 2009 through March 31, 2010.

5 60. Based on this audit, on or about July 16, 2010, the Department took formal action  
6 against Respondents by withholding all Medi-Cal payments to Respondents and by suspending  
7 and deactivating Respondents' Medi-Cal provider number and National Provider Identifier  
8 number. The Department charged Respondents with having violated California Welfare and  
9 Institutions Code section 14107(b) (false and fraudulent claims) and California Code of  
10 Regulations, Title 22, sections 51470(a) (false billing) and 51485 (submission of false  
11 information), based on to the following misconduct:

- 12 a) Overbilling for medications;  
13 b) Billing for prescriptions that had not actually been provided to beneficiaries;  
14 c) Falsification of a telephone prescription; and  
15 d) Failure to purchase sufficient quantities of drugs to fill claims made for orders filled.

16 61. On or about October 13, 2010, Respondents entered into a cash compromise of the  
17 above-described charges by signing a document entitled "Stipulation And Settlement Agreement  
18 Between The California Department of Health Care Services And Daniel's Pharmacy." The  
19 agreement provided for settlement of the charges in exchange for Respondents' agreement to pay  
20 approximately \$1,000,000.00 to the Department.

21 FOURTEENTH CAUSE FOR DISCIPLINE

22 (Cash Compromise of Medi-Cal Charges)

23 62. Respondents are each and severally subject to discipline under section 4301(m)  
24 and/or section 4113(c) of the Code, in that they engaged in a cash compromise of a charge of  
25 violation of Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare  
26 and Institutions Code relating to the Medi-Cal program, as described above in paragraphs 59-61.

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1 2013 INSPECTION

2 63. On or about August 1, 2013, Pharmacy Board inspectors inspected Respondents'  
3 pharmacy in order to ascertain whether Respondents continued to be in violation of law. The  
4 Inspectors observed numerous violations, as set forth below in the following Causes for  
5 Discipline.

6 FIFTEENTH CAUSE FOR DISCIPLINE

7 (Failure to Consult with On-Premises Patient)

8 64. Respondents are each and severally subject to discipline under section 4301(j) and/or  
9 (o) and/or section 4113(c) of the Code, by reference to California Code of Regulations, Title 16,  
10 section 1707.2(b)(1)(A), for violating statutes regulating controlled substances or dangerous  
11 drugs, and/or for directly or indirectly violating, attempting to violate, or assisting in or abetting a  
12 violation of laws or regulations governing the practice of pharmacy, in that on August 1, 2013,  
13 Respondents dispensed a prescription to patient DV, which had not previously been dispensed to  
14 patient DV, without providing a consultation by a pharmacist. Respondents failed to have a  
15 policy or procedure identifying medications for which a consultation should be provided.

16 SIXTEENTH CAUSE FOR DISCIPLINE

17 (Failure to Consult with Off-Premises Patient)

18 65. Respondents are each and severally subject to discipline under section 4301(j) and/or  
19 (o) and/or section 4113(c) of the Code, by reference to California Code of Regulations, Title 16,  
20 section 1707.2(b)(2), for violating statutes regulating controlled substances or dangerous drugs,  
21 and/or for directly or indirectly violating, attempting to violate, or assisting in or abetting a  
22 violation of laws or regulations governing the practice of pharmacy, in that on August 1, 2013,  
23 Respondents prepared prescription medication for delivery to a patient, which medication had not  
24 previously been dispensed to said patient, without providing any notification to the patient  
25 regarding the patient's right to request a consultation.

26 SEVENTEENTH CAUSE FOR DISCIPLINE

27 (Possession of Misbranded Drug Containers)

28 66. Respondents are each and severally subject to discipline under section 4301(j) and/or

1 (o) and/or section 4113(e) of the Code, by reference to Health and Safety Code section 111340  
2 and/or 111440, for violating statutes regulating controlled substances or dangerous drugs, and/or  
3 directly or indirectly violating, attempting to violate, or assisting in or abetting a violation of laws  
4 or regulations governing the practice of pharmacy, in that on or about August 1, 2013,  
5 Respondents possessed numerous misbranded/unlabeled prescription vials with dangerous drugs  
6 and outdated products in current inventory. Respondents also had in its possession previously-  
7 dispensed bubble packs of medications which had been returned by board-and-care homes.

8 **EIGHTEENTH CAUSE FOR DISCIPLINE**

9 (Failure to Initiate Quality Assurance Review)

10 67. Respondents are each and severally subject to discipline under section 4301(j) and/or  
11 (o) and/or section 4113(e) of the Code, by reference to Code section 4125(a) and California Code  
12 of Regulations, Title 16, section 1711, for violating statutes regulating controlled substances or  
13 dangerous drugs, and/or for directly or indirectly violating, attempting to violate, or assisting in or  
14 abetting a violation of laws or regulations governing the practice of pharmacy, in that on August  
15 1, 2013, Respondents admitted to Board Inspectors that they had failed to complete quality  
16 assurance reviews, procedures and related forms in the aftermath of dispensing errors.

17 **NINETEENTH CAUSE FOR DISCIPLINE**

18 (Variation from Prescription)

19 68. Respondents are each and severally subject to discipline under section 4301(j) and/or  
20 (o) and/or section 4113(e) of the Code, by reference to California Code of Regulations, Title 16,  
21 section 1716, for violating statutes regulating controlled substances or dangerous drugs, and/or  
22 for directly or indirectly violating, attempting to violate, or assisting in or abetting a violation of  
23 laws or regulations governing the practice of pharmacy, in that on August 1, 2013, Board  
24 Inspectors identified two prescriptions, RX numbers N9878911 and N9879201, which contained  
25 erroneous directions for use and/or identified the wrong prescriber.

26 **TWENTIETH CAUSE FOR DISCIPLINE**

27 (Improper Supervision of Pharmacy Technician)

28 69. Respondents are each and severally subject to discipline under section 4301(j) and/or

1 (o) and/or section 4113(c) of the Code, by reference to California Code of Regulations, Title 16,  
2 section 1793.7, for violating statutes regulating controlled substances or dangerous drugs, and/or  
3 for directly or indirectly violating, attempting to violate, or assisting in or abetting a violation of  
4 laws or regulations governing the practice of pharmacy, in that on August 1, 2013, Respondents'  
5 pharmacy technician worked unsupervised in the basement of the facility, and had the ability to  
6 override the automated dispensing unit SynMed's scan features when replenishing the dispensing  
7 unit.

8 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

9 (Failure to Maintain Operational Standards -- Drugs)

10 70. Respondents are each and severally subject to discipline under section 4301(j) and/or  
11 (o) and/or section 4113(c) of the Code, by reference to California Code of Regulations, Title 16,  
12 section 1714, for violating statutes regulating controlled substances or dangerous drugs, and/or  
13 for directly or indirectly violating, attempting to violate, or assisting in or abetting a violation of  
14 laws or regulations governing the practice of pharmacy, in that on August 1, 2013, Respondents'  
15 pharmacy premises contained dangerous drugs on stock shelves in unlabeled containers without  
16 drug name, strength, lot numbers and expiration dates. The premises also contained automated  
17 dispensing units without accurate lot numbers and expiration dates. Loose pills were sitting in on  
18 various counters in various locations.

19 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

20 (Failure to Maintain Records of Acquisition of Drugs)

21 71. Respondents are each and severally subject to discipline under section 4301(j) and/or  
22 (o) and/or section 4113(c) of the Code, by reference to Code section 4081, for violating statutes  
23 regulating controlled substances or dangerous drugs, and/or for directly or indirectly violating,  
24 attempting to violate, or assisting in or abetting a violation of laws or regulations governing the  
25 practice of pharmacy, in that on or about August 1, 2013, Respondents' facility contained  
26 numerous full bubble packs which had been acquired from board-and-care homes, the  
27 receipt/acquisition of which had not been memorialized in any record. Similarly, Respondents  
28 were in possession of a Walgreens prescription bottle containing amlodipine-benzapril capsules

1 which had evidently previously been issued to patient PL. Respondents had no record of the  
2 acquisition of this item.

3 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

4 (Unlicensed Wholesale Activity)

5 72. Respondents are each and severally subject to discipline under section 4301(f) and/or  
6 (j) and/or (o) and/or section 4113(c) of the Code, by reference to Code section 4060, for violating  
7 statutes regulating controlled substances or dangerous drugs, and/or for directly or indirectly  
8 violating, attempting to violate, or assisting in or abetting a violation of laws or regulations  
9 governing the practice of pharmacy, in that on or about August 13, 2013, Respondents were  
10 found to be in possession of medications which had been returned to them by board-and-care  
11 homes, thus constituting wholesaling activity, when Respondents were not licensed as  
12 wholesalers. Respondents evidently intended to reuse the medications.

13 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

14 (False Statements on Certificates or Documents)

15 73. Respondents are each and severally subject to discipline under section 4301(g) and/or  
16 (j) and/or (o) and/or section 4113(c) of the Code, for making a false statement on a certificate or  
17 document and for violating statutes regulating controlled substances or dangerous drugs, and/or  
18 for directly or indirectly violating, attempting to violate, or assisting in or abetting a violation of  
19 laws or regulations governing the practice of pharmacy, in that on or about August 1, 2013, Board  
20 Inspectors located documents showing that Respondents had filled a prescription for divalproex  
21 by Wockhardt by utilizing Mylan divalproex, but billed insurance as if they had provided  
22 divalproex by Wockhardt.

23 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

24 (Failure to Maintain Operational Standards -- Key)

25 74. Respondents are each and severally subject to discipline under section 4301(j) and/or  
26 (o) and/or section 4113(c) of the Code, by reference to California Code of Regulations, Title 16,  
27 section 1714, for violating statutes regulating controlled substances or dangerous drugs, and/or  
28 for directly or indirectly violating, attempting to violate, or assisting in or abetting a violation of



1 laws or regulations governing the practice of pharmacy, in that on or about August 2, 2013,  
2 Respondents admitted that the key to the pharmacy was in the possession of a family member,  
3 and was not in a tamper-proof container.

4 **2014 INSPECTION**

5 75. On or about August 5, 2014, Pharmacy Board inspectors inspected Respondents'  
6 pharmacy. At that time, the inspectors observed an individual, Lydia Dean, acting as a pharmacy  
7 technician, and filling prescriptions, when that individual was not licensed as a pharmacy  
8 technician.

9 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

10 (Employment of Unlicensed Pharmacy Technician)

11 76. Respondents are each and severally subject to discipline under Code section 4301,  
12 subsections (j) and/or (o), and under Code sections 4113, subsection (c), and 4115, subsection (e),  
13 in that Respondents employed an unlicensed individual, Lydia Dean, to act as a pharmacy  
14 technician, as set forth above in paragraph 75.

15 **DISCIPLINE CONSIDERATIONS**

16 77. To determine the level of discipline, if any, to be imposed on Respondent Daniels  
17 and/or Respondent Nasrah (collectively, Respondents), Complainant further alleges that:

18 a. On or about October 21, 2009, Citation No. CI 2008 38553, with a fine of \$4,000.00,  
19 was issued to Respondent Daniels for failure(s) to comply with its obligation(s) under Health and  
20 Safety Code section 11165 to report all Schedule II, III, and IV controlled substance prescriptions  
21 dispensed by the pharmacy to the Controlled Substance Utilization Review and Evaluation  
22 System (CURES), in and/or between December 2004 and December 2008. That citation is now  
23 final and is incorporated by reference as if fully set forth herein.

24 b. On or about October 21, 2009, Citation No. CI 2008 41785, with a fine of \$4,000.00,  
25 was issued to Respondent Nasrah, as PIC, for Daniels Pharmacy's failure(s) to comply with its  
26 obligation(s) under Health and Safety Code section 11165 to report all Schedule II, III, and IV  
27 controlled substance prescriptions dispensed to the Controlled Substance Utilization Review and  
28 Evaluation System (CURES), in and/or between December 2004 and December 2008. That

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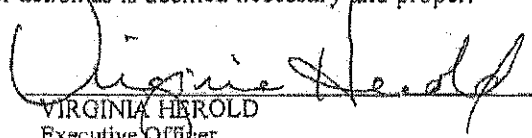
citation is now final and is incorporated by reference as if fully set forth herein.

**PRAYER**

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

1. Revoking or suspending Pharmacy License No. PHY 36740, issued to Daniels Pharmacy (Respondent Daniels);
2. Revoking or suspending Pharmacist License No. RPH 40241, issued to Iyad Nasrah (Respondent Nasrah);
3. Ordering Respondent Daniels and Respondent Nasrah to jointly and severally be responsible 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;
4. Taking such other and further action as is deemed necessary and proper.

DATED: 1/23/15

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

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*Attorneys for Complainant*

7  
8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 4125

11 **DANIELS PHARMACY**  
12 **943 Geneva Avenue**  
**San Francisco, CA 94112**

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

13 **Pharmacy License No. PHY 36740**

14 **and**

15 **IYAD I. NASRAH**  
16 **488 Gellert Drive**  
**San Francisco, CA 94132**

17 **Pharmacist License No. RPH 40241**

18 Respondents.  
19

20 Complainant alleges:

21 **PARTIES**

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

24 2. On or about October 24, 1990, the Board of Pharmacy issued Pharmacy License No.  
25 PHY 36740 to Daniels Pharmacy (Respondent Daniels). The License was in full force and effect  
26 at all times relevant to the charges herein, and will expire on October 1, 2014, unless renewed.

27 3. On or about August 20, 1986, the Board of Pharmacy issued Pharmacist License No.  
28 RPH 40241 to Iyad I. Nasrah (Respondent Nasrah). The License was in full force and effect at all

1 times relevant to the charges herein and will expire on October 31, 2014, unless renewed. Since  
2 on or about October 24, 1990, Respondent Nasrah has served and/or has been reflected in Board  
3 records as the Pharmacist in Charge (PIC) for Respondent Daniels.

#### 4 JURISDICTION

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

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

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

13 7. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or  
14 suspension of a Board-issued license, the placement of a license on a retired status, or the  
15 voluntary surrender of a license by a licensee, shall not deprive the Board of jurisdiction to  
16 commence or proceed with any investigation of, or action or disciplinary proceeding against, the  
17 licensee or to render a decision suspending or revoking the license.

#### 18 STATUTORY AND REGULATORY PROVISIONS

##### 19 Business and Professions Code:

20 8. Section 4043(a) of the Code states:

21 "Wholesaler" means and includes a person who acts as a wholesale merchant, broker,  
22 jobber, customs broker, reverse distributor, agent, or a nonresident wholesaler, who sells for  
23 resale, or negotiates for distribution, or takes possession of, any drug or device included in  
24 Section 4022. Unless otherwise authorized by law, a wholesaler may not store, warehouse, or  
25 authorize the storage or warehousing of drugs with any person or at any location not licensed by  
26 the board.

27 9. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous  
28 drug or dangerous device except upon the prescription of an authorized prescriber.

1        10. Section 4059.5 of the Code, in pertinent part, permits ordering/delivery of dangerous  
2 drugs or devices only by and to entities licensed by the board and authorized prescribers, and  
3 requires that all deliveries to a licensed premises shall be signed for and received by a pharmacist.

4        11. Section 4061 of the Code provides, in pertinent part, that manufacturers' sales  
5 representatives may distribute complimentary samples of drugs only to and pursuant to a written  
6 request from an authorized prescriber that specifies the name and quantity of drug desired.

7        12. Section 4063 of the Code states:

8        No prescription for any dangerous drug or dangerous device may be refilled except upon  
9 authorization of the prescriber. The authorization may be given orally or at the time of giving the  
10 original prescription. No prescription for any dangerous drug that is a controlled substance may  
11 be designated refillable as needed.

12       13. Section 4064 of the Code states:

13       (a) A prescription for a dangerous drug or dangerous device may be refilled without the  
14 prescriber's authorization if the prescriber is unavailable to authorize the refill and if, in the  
15 pharmacist's professional judgment, failure to refill the prescription might interrupt the patient's  
16 ongoing care and have a significant adverse effect on the patient's well-being.

17       (b) The pharmacist shall inform the patient that the prescription was refilled pursuant to this  
18 section.

19       (c) The pharmacist shall inform the prescriber within a reasonable period of time of any  
20 refills dispensed pursuant to this section.

21       (d) Prior to refilling a prescription pursuant to this section, the pharmacist shall make every  
22 reasonable effort to contact the prescriber. The pharmacist shall make an appropriate record,  
23 including the basis for proceeding under this section.

24       (e) The prescriber shall not incur any liability as the result of a refilling of a prescription  
25 pursuant to this section.

26       (f) Notwithstanding Section 4060 or any other law, a person may possess a dangerous drug  
27 or dangerous device furnished without prescription pursuant to this section.

28       14. Section 4076, subdivision (a), of the Code provides, in pertinent part, that a

1 pharmacist shall not dispense any prescription except in a container meeting the requirements of  
2 state and federal law that is correctly labeled with information including the following:

3 (1) Except where ordered otherwise by the prescriber, the manufacturer's trade name of the  
4 drug or the generic name and the name of the manufacturer;

5 (2) The directions for use of the drug;

6 (3) The name of the patient or patients;

7 (4) The name(s) of the prescriber(s);

8 (5) The date of dispensing;

9 (6) The name and address of the pharmacy, and prescription number;

10 (7) The strength of the drug(s) dispensed;

11 (8) The quantity of the drug(s) dispensed;

12 (9) The expiration date of the drug(s) dispensed;

13 (10) If on the prescription, the condition or purpose for which the drug was prescribed;

14 (11) A physical description of the dispensed medication.

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

16 (a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or  
17 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 food-  
20 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 (b) The owner, officer, and partner of a pharmacy, wholesaler, or veterinary food-animal  
26 drug retailer shall be jointly responsible, with the pharmacist-in-charge or designated  
27 representative-in-charge, for maintaining the records and inventory described in this section.  
28

1           16. Section 4105 of the Code requires, in pertinent part, that unless a waiver is granted by  
2 the board, all records and other documentation of the acquisition and disposition of dangerous  
3 drugs and devices by any entity licensed by the board be retained on the licensed premises, in a  
4 readily retrievable form, for three years from the date of making.

5           17. Section 4113(c) of the Code states:

6           The pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state  
7 and federal laws and regulations pertaining to the practice of pharmacy.

8           18. Section 4125(a) of the Code states:

9           Every pharmacy shall establish a quality assurance program that shall, at a minimum,  
10 document medication errors attributable, in whole or in part, to the pharmacy or its personnel.  
11 The purpose of the quality assurance program shall be to assess errors that occur in the pharmacy  
12 in dispensing or furnishing prescription medications so that the pharmacy may take appropriate  
13 action to prevent a recurrence.

14           19. Section 4160(a) of the Code states:

15           (a) A person may not act as a wholesaler of any dangerous drug or dangerous device unless  
16 he or she has obtained a license from the board.

17           20. Section 4301 of the Code states, in pertinent part:

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

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

25           (g) Knowingly making or signing any certificate or other document that falsely represents  
26 the existence or nonexistence of a state of facts.

27           ...  
28           (j) The violation of any of the statutes of this state, of any other state, or of the United

1 States regulating controlled substances and dangerous drugs.

2  
3 (m) The cash compromise of a charge of violation of Chapter 13 (commencing with Section  
4 801) of Title 21 of the United States Code regulating controlled substances or of Chapter 7  
5 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code  
6 relating to the Medi-Cal program. The record of the compromise is conclusive evidence of  
7 unprofessional conduct.

8  
9 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
10 violation of or conspiring to violate any provision or term of this chapter or of the applicable  
11 federal and state laws and regulations governing pharmacy, including regulations established by  
12 the board or by any other state or federal regulatory agency.

13  
14 21. Section 4324 of the Code states:

15 (a) Every person who signs the name of another, or of a fictitious person, or falsely makes,  
16 alters, forges, utters, publishes, passes, or attempts to pass, as genuine, any prescription for any  
17 drugs is guilty of forgery and upon conviction thereof shall be punished by imprisonment  
18 pursuant to subdivision (h) of Section 1170 of the Penal Code, or by imprisonment in a county  
19 jail for not more than one year.

20 (b) Every person who has in his or her possession any drugs secured by a forged  
21 prescription shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the  
22 Penal Code, or by imprisonment in the county jail for not more than one year.

23 22. Section 4332 of the Code states:

24 Any person who fails, neglects, or refuses to maintain the records required by Section 4081  
25 or who, when called upon by an authorized officer or a member of the board, fails, neglects, or  
26 refuses to produce or provide the records within a reasonable time, or who willfully produces or  
27 furnishes records that are false, is guilty of a misdemeanor.

28 ///



1           23. Section 4342 of the Code states:

2           (a) The board may institute any action or actions as may be provided by law and that, in its  
3 discretion, are necessary, to prevent the sale of pharmaceutical preparations and drugs that do not  
4 conform to the standard and tests as to quality and strength, provided in the latest edition of the  
5 United States Pharmacopoeia or the National Formulary, or that violate any provision of the  
6 Sherman Food, Drug and Cosmetic Law (Part 5 (commencing with Section 109875) of Division  
7 104 of the Health and Safety Code).

8           (b) Any knowing or willful violation of any regulation adopted pursuant to Section 4006  
9 shall be subject to punishment in the same manner as is provided in Sections 4336 and 4321.

10           **Health and Safety Code:**

11           24. Health and Safety Code section 11165 provides, in pertinent part, for establishment  
12 and maintenance of a Controlled Substance Utilization Review and Evaluation System (CURES)  
13 for the electronic monitoring of prescribing and dispensing of Schedule II, III, and IV controlled  
14 substances, and requires, in pertinent part, that for each prescription for a Schedule II, III, or IV  
15 controlled substance, the dispensing pharmacy or clinic transmit a report with certain information  
16 on the patient, prescriber, controlled substance, and prescription, to the California Department of  
17 Justice, on a weekly basis in a format prescribed by the California Department of Justice.<sup>1</sup>

18           25. Health and Safety Code section 111340 states:

19           Any drug or device is misbranded unless it bears a label containing all of the following  
20 information:

21           (a) The name and place of business of the manufacturer, packer, or distributor.

22           (b) An accurate statement of the quantity of the contents in terms of weight, measure, or  
23 numerical count.

24           Reasonable variations from the requirements of subdivision (b) shall be permitted.

25           Requirements for placement and prominence of the information and exemptions as to small

26

27           <sup>1</sup> Health and Safety Code section 11165 was first amended to impose CURES reporting  
28 requirements effective January 1, 2005; as of that date, prescriptions for Schedule II and III drugs  
had to be reported. Effective January 1, 2007, Schedule IV prescriptions also had to be reported.

1 packages shall be established in accordance with regulations adopted pursuant to Section 110380.

2 26. Health and Safety Code section 111440 states:

3 It is unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any drug or  
4 device that is misbranded.

5 **California Code of Regulations:**

6 27. California Code of Regulations, title 16, section 1707.2 states, in pertinent part:

7 (a) A pharmacist shall provide oral consultation to his or her patient or the patient's agent in  
8 all care settings:

9 (1) upon request; or

10 (2) whenever the pharmacist deems it warranted in the exercise of his or her professional  
11 judgment.

12 (b)(1) In addition to the obligation to consult set forth in subsection (a), a pharmacist shall  
13 provide oral consultation to his or her patient or the patient's agent in any care setting in which the  
14 patient or agent is present:

15 (A) whenever the prescription drug has not previously been dispensed to a patient; or

16 (B) whenever a prescription drug not previously dispensed to a patient in the same dosage  
17 form, strength or with the same written directions, is dispensed by the pharmacy.

18 (2) When the patient or agent is not present (including but not limited to a prescription drug  
19 that was shipped by mail) a pharmacy shall ensure that the patient receives written notice:

20 (A) of his or her right to request consultation; and

21 (B) a telephone number from which the patient may obtain oral consultation from a  
22 pharmacist who has ready access to the patient's record.

23 (3) A pharmacist is not required by this subsection to provide oral consultation to an  
24 inpatient of a health care facility licensed pursuant to section 1250 of the Health and Safety Code,  
25 or to an inmate of an adult correctional facility or a juvenile detention facility, except upon the  
26 patient's discharge. A pharmacist is not obligated to consult about discharge medications if a  
27 health facility licensed pursuant to subdivision (a) or (b) of Health and Safety Code Section 1250  
28 has implemented a written policy about discharge medications which meets the requirements of

1 Business and Professions Code Section 4074.

2  
3 28. California Code of Regulations, title 16, section 1707.3 states:

4 Prior to consultation as set forth in section 1707.2, a pharmacist shall review a patient's  
5 drug therapy and medication record before each prescription drug is delivered. The review shall  
6 include screening for severe potential drug therapy problems.

7 29. California Code of Regulations, title 16, section 1711 states:

8 (a) Each pharmacy shall establish or participate in an established quality assurance program  
9 which documents and assesses medication errors to determine cause and an appropriate response  
10 as part of a mission to improve the quality of pharmacy service and prevent errors.

11 (b) For purposes of this section, "medication error" means any variation from a prescription  
12 or drug order not authorized by the prescriber, as described in Section 1716. Medication error, as  
13 defined in the section, does not include any variation that is corrected prior to furnishing the drug  
14 to the patient or patient's agent or any variation allowed by law.

15 (c)(1) Each quality assurance program shall be managed in accordance with written policies  
16 and procedures maintained in the pharmacy in an immediately retrievable form.

17 (2) When a pharmacist determines that a medication error has occurred, a pharmacist shall  
18 as soon as possible:

19 (A) Communicate to the patient or the patient's agent the fact that a medication error has  
20 occurred and the steps required to avoid injury or mitigate the error.

21 (B) Communicate to the prescriber the fact that a medication error has occurred.

22 (3) The communication requirement in paragraph (2) of this subdivision shall only apply to  
23 medication errors if the drug was administered to or by the patient, or if the medication error  
24 resulted in a clinically significant delay in therapy.

25 (4) If a pharmacist is notified of a prescription error by the patient, the patient's agent, or a  
26 prescriber, the pharmacist is not required to communicate with that individual as required in  
27 paragraph (2) of this subdivision.

28 (d) Each pharmacy shall use the findings of its quality assurance program to develop

1 pharmacy systems and workflow processes designed to prevent medication errors. An  
2 investigation of each medication error shall commence as soon as is reasonably possible, but no  
3 later than 2 business days from the date the medication error is discovered. All medication errors  
4 discovered shall be subject to a quality assurance review.

5 (e) The primary purpose of the quality assurance review shall be to advance error  
6 prevention by analyzing, individually and collectively, investigative and other pertinent data  
7 collected in response to a medication error to assess the cause and any contributing factors such  
8 as system or process failures. A record of the quality assurance review shall be immediately  
9 retrievable in the pharmacy. The record shall contain at least the following:

- 10 1. the date, location, and participants in the quality assurance review;
- 11 2. the pertinent data and other information relating to the medication error(s) reviewed and  
12 documentation of any patient contact required by subdivision (c);
- 13 3. the findings and determinations generated by the quality assurance review; and,
- 14 4. recommend changes to pharmacy policy, procedure, systems, or processes, if any.

15 The pharmacy shall inform pharmacy personnel of changes to pharmacy policy, procedure,  
16 systems, or processes made as a result of recommendations generated in the quality assurance  
17 program.

18 (f) The record of the quality assurance review, as provided in subdivision (e) shall be  
19 immediately retrievable in the pharmacy for at least one year from the date the record was  
20 created.

21 (g) The pharmacy's compliance with this section will be considered by the board as a  
22 mitigating factor in the investigation and evaluation of a medication error.

23 (h) Nothing in this section shall be construed to prevent a pharmacy from contracting or  
24 otherwise arranging for the provision of personnel or other resources, by a third party or  
25 administrative offices, with such skill or expertise as the pharmacy believes to be necessary to  
26 satisfy the requirements of this section.

27 30. California Code of Regulations, title 16, section 1714 states, in pertinent part:  
28

1 (b) Each pharmacy licensed by the board shall maintain its facilities, space, fixtures, and  
2 equipment so that drugs are safely and properly prepared, maintained, secured and distributed.  
3 The pharmacy shall be of sufficient size and unobstructed area to accommodate the safe practice  
4 of pharmacy.

5 ...

6 (e) The pharmacy owner, the building owner or manager, or a family member of a  
7 pharmacist owner (but not more than one of the aforementioned) may possess a key to the  
8 pharmacy that is maintained in a tamper evident container for the purpose of 1) delivering the key  
9 to a pharmacist or 2) providing access in case of emergency. An emergency would include fire,  
10 flood or earthquake. The signature of the pharmacist-in-charge shall be present in such a way that  
11 the pharmacist may readily determine whether the key has been removed from the container.

12 ...

13 31. California Code of Regulations, title 16, section 1716 states:

14 Pharmacists shall not deviate from the requirements of a prescription except upon the prior  
15 consent of the prescriber or to select the drug product in accordance with Section 4073 of the  
16 Business and Professions Code.

17 Nothing in this regulation is intended to prohibit a pharmacist from exercising commonly-  
18 accepted pharmaceutical practice in the compounding or dispensing of a prescription.

19 32. California Code of Regulations, title 16, section 1717 states, in pertinent part:

20 (a) No medication shall be dispensed on prescription except in a new container which  
21 conforms with standards established in the official compendia.

22 Notwithstanding the above, a pharmacist may dispense and refill a prescription for non-  
23 liquid oral products in a clean multiple-drug patient medication package (patient med pak),  
24 provided:

- 25 (1) a patient med pak is reused only for the same patient;  
26 (2) no more than a one-month supply is dispensed at one time; and  
27 (3) each patient med pak bears an auxiliary label which reads, "store in a cool, dry place."

28 (b) In addition to the requirements of Business and Professions Code section 4040, the

1 following information shall be maintained for each prescription on file and shall be readily  
2 retrievable:

3 (1) The date dispensed, and the name or initials of the dispensing pharmacist. All  
4 prescriptions filled or refilled by an intern pharmacist must also be initialed by the supervising  
5 pharmacist before they are dispensed.

6 (2) The brand name of the drug or device; or if a generic drug or device is dispensed, the  
7 distributor's name which appears on the commercial package label; and

8 (3) If a prescription for a drug or device is refilled, a record of each refill, quantity  
9 dispensed, if different, and the initials or name of the dispensing pharmacist.

10 (4) A new prescription must be created if there is a change in the drug, strength, prescriber  
11 or directions for use, unless a complete record of all such changes is otherwise maintained.

12 ...  
13 (f) The pharmacy must have written procedures that identify each individual pharmacist  
14 responsible for the filling of a prescription and a corresponding entry of information into an  
15 automated data processing system, or a manual record system, and the pharmacist shall create in  
16 his/her handwriting or through hand-initializing a record of such filling, not later than the  
17 beginning of the pharmacy's next operating day. Such record shall be maintained for at least three  
18 years.

19 33. California Code of Regulations, title 16, section 1718, states:

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

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

25 34. California Code of Regulations, title 16, section 1793.7 states, in pertinent part:

26 ...  
27 (b) Pharmacy technicians must work under the direct supervision of a pharmacist and in  
28 such a relationship that the supervising pharmacist is fully aware of all activities involved in the

1 preparation and dispensing of medications, including the maintenance of appropriate records.

2  
3 (e) A pharmacist shall be responsible for all activities of pharmacy technicians to ensure  
4 that all such activities are performed completely, safely and without risk of harm to patients.

5  
6 **Code of Federal Regulations:**

7 35. Title 21, Code of Federal Regulations, section 1304.04(f) requires, in pertinent part,  
8 that inventories and records of Schedule I and II controlled substances shall be kept separate from  
9 all other records, and that inventories and records of Schedule III-V controlled substances shall be  
10 either kept separate from other records, or be immediately retrievable from the business records.

11 **Controlled Substances/Dangerous Drugs:**

12 36. Section 4021 of the Code provides that a "controlled substance" means any substance  
13 listed in Schedules I through V contained in Health and Safety Code section 11053 et seq.

14 37. Section 4022 of the Code states, in pertinent part:

15 "Dangerous drug; or "dangerous device" means any drug or device unsafe for self use,  
16 except veterinary drugs that are labeled as such, and includes the following:

17 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without  
18 prescription," "Rx only," or words of similar import. . . .

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

21 38. **Klonopin** is a brand name for **clonazepam**, a Schedule IV controlled substance as  
22 designated by Health and Safety Code section 11057(d) and a dangerous drug as designated by  
23 Business and Professions Code section 4022. It is used to treat mental health symptoms.

24 39. **Celexa** is a brand name for **citalopram**, a dangerous drug as designated by Business  
25 and Professions Code section 4022. It is used to treat mental health symptoms.

26 40. **Zyprexa** is a brand name for **olanzapine**, a dangerous drug as designated by Business  
27 and Professions Code section 4022. It is used to treat mental health symptoms.

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1 COST RECOVERY

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

6 2011 INSPECTIONS AND INVESTIGATION

7 42. Between in or about January and April 2011, Respondents were the subject(s) of  
8 investigation(s) by the Board of Pharmacy. The investigation(s) revealed record-keeping,  
9 dispensing, and furnishing practices that failed to comply with the law.

10 43. During January 12 and January 27, 2011 inspections by Board Inspector(s), each of  
11 the following deviations from pharmacy requirements was/were noted by the Inspector(s):

12 a. Included in the active drug inventory for the pharmacy were: (i) a prescription  
13 bottle for patient SM, labeled by a Safeway Pharmacy, prescription number 6448294 dispensed  
14 on January 4, 2009, that expired in October 2010, with some of the labeled drug quantity missing;  
15 (ii) several boxes of prescription bottles containing professional drug samples; and (iii) one or  
16 more bubble packs or strip packs containing drugs returned from board and care homes. There  
17 were no records of acquisition maintained by Respondents with regard to any of these items.

18 b. Respondents used a prescription dispensing software and system to create pre-  
19 filled bubble packs or strip packs for board and care homes, subdivided by patient and dose. The  
20 software and system did not make note of the identity of the dispensing pharmacist, nor was this  
21 information recorded anywhere on the label or in Respondents' records. Respondent Nasrah said  
22 that he had no record of and/or it was not possible to identify the dispensing pharmacist for any of  
23 the thousands of prescriptions dispensed using this system during the previous nine (9) years.

24 c. The software and system used to generate the bubble/strip packs for board and  
25 care homes also did not include required information on the label(s) generated during this nine (9)  
26 year period, including: dispense date; drug manufacturer; and/or address of the pharmacy.

27 d. In various places in the pharmacy, including in the active inventory, were  
28 prescription bottles containing quantities of dangerous drugs, with either no labels or incomplete



1 labels affixed. Respondent asserted that these were returned from assisted living facilities.

2 e. Since at least October 21, 2009, Respondents had not successfully transmitted  
3 data regarding controlled substances dispensed by the pharmacy to the Controlled Substances  
4 Utilization Review (CURES) database maintained by the California Department of Justice.

5 f. Controlled substance invoices for at least the two months prior to the inspection  
6 were grouped and filed together, and there was no separation of Schedule II invoices.

7 g. On at least one occasion, including on or about July 17, 2010, a non-pharmacist  
8 (store clerk) signed a wholesaler's proof of delivery form to accept delivery of dangerous drugs.

9 44. Between on or about July 10, 2009 and on or about January 10, 2011, Respondents  
10 dispensed dangerous drugs and/or controlled substances to patient DC pursuant to unauthorized  
11 prescriptions and/or refills, including:

12 a. On at least ten (10) occasions between on or about December 14, 2009 and on  
13 or about January 10, 2011, Respondents filled new prescriptions for DC for controlled substances  
14 and/or dangerous drugs without prescriber authorization, including: two (2) prescriptions for  
15 controlled substance/dangerous drug **clonazepam 0.5mg (Klonopin)**; six (6) prescriptions for the  
16 dangerous drug **Celexa 40mg**; and two (2) prescriptions for the dangerous drug **Zyprexa 20mg**.

17 b. On at least twenty-nine (29) occasions between on or about August 2, 2009 and  
18 on or about September 1, 2010, Respondents furnished refill prescriptions to DC for controlled  
19 substances and/or dangerous drugs without prescriber authorization, including: five (5) refills for  
20 controlled substance/dangerous drug **clonazepam 0.5mg (Klonopin)**; fourteen (14) refills for the  
21 dangerous drug **Zyprexa 20mg**; and ten (10) refills for the dangerous drug **Celexa 40mg**.

22 c. On at least seven (7) occasions between on or about July 10, 2009 and on or  
23 about January 19, 2010, Respondents created and/or signed prescription documents for DC that  
24 falsely stated authorization by the prescriber, including: one (1) prescription for controlled  
25 substance/dangerous drug **clonazepam 0.5mg (Klonopin)**; five (5) prescriptions for the  
26 dangerous drug **Celexa 40mg**; and one (1) prescription for the dangerous drug **Zyprexa 20mg**.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 (Incomplete Inventory and/or Records of Acquisition and/or Disposition)

3 45. Respondents are each and severally subject to discipline under section 4301(j) and/or  
4 (o) and/or section 4113(c) of the Code, by reference to section(s) 4081, 4105, 4332 and/or 4342  
5 of the Code, and/or California Code of Regulations, title 16, section 1718, for violating statutes  
6 regulating controlled substances or dangerous drugs, and/or directly or indirectly violating,  
7 attempting to violate, or assisting in or abetting a violation of laws or regulations governing the  
8 practice of pharmacy, in that, as described in paragraph 43 above, Respondents failed to maintain  
9 an accurate, complete, and readily retrievable inventory and/or records of acquisition and  
10 disposition of all dangerous drugs in the pharmacy inventory.

11 **SECOND CAUSE FOR DISCIPLINE**

12 (Possessing and/or Dispensing/Furnishing Drug Samples)

13 46. Respondents are each and severally subject to discipline under section 4301(j) and/or  
14 (o) and/or section 4113(c) of the Code, by reference to section 4061 of the Code, for violating  
15 statutes regulating controlled substances or dangerous drugs, and/or directly or indirectly  
16 violating, attempting to violate, or assisting in or abetting a violation of laws or regulations  
17 governing the practice of pharmacy, in that, as described in paragraph 43 above, Respondents had  
18 in their inventory, and/or had previously dispensed or furnished, manufacturer drug samples.

19 **THIRD CAUSE FOR DISCIPLINE**

20 (Failure to Identify Dispensing Pharmacist)

21 47. Respondents are each and severally subject to discipline under section 4301(j) and/or  
22 (o) and/or section 4113(c) of the Code, by reference to California Code of Regulations, title 16,  
23 section 1717, for violating statutes regulating controlled substances or dangerous drugs, and/or  
24 directly or indirectly violating, attempting to violate, or assisting in or abetting a violation of laws  
25 or regulations governing the practice of pharmacy, in that, as described in paragraph 43 above,  
26 Respondents dispensed medications without a means of identifying the dispensing pharmacist.

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**FOURTH CAUSE FOR DISCIPLINE**

(Inadequately Labeled Prescription Containers)

48. Respondents are each and severally subject to discipline under section 4301(j) and/or (o) and/or section 4113(c) of the Code, by reference to section 4076 of the Code, for violating statutes regulating controlled substances or dangerous drugs, and/or directly or indirectly violating, attempting to violate, or assisting in or abetting a violation of laws or regulations governing the practice of pharmacy, in that, as described in paragraph 43 above, Respondents dispensed medications in prescription containers which failed to include required information.

**FIFTH CAUSE FOR DISCIPLINE**

(Possession of Misbranded Drug Containers)

49. Respondents are each and severally subject to discipline under section 4301(j) and/or (o) and/or section 4113(c) of the Code, by reference to Health and Safety Code section 111340 and/or 111440, for violating statutes regulating controlled substances or dangerous drugs, and/or directly or indirectly violating, attempting to violate, or assisting in or abetting a violation of laws or regulations governing the practice of pharmacy, in that, as described in paragraph 43 above, Respondents possessed drug containers that were misbranded inasmuch as they had affixed to them no or incomplete labels describing the contents, the manufacturer, and other required data.

**SIXTH CAUSE FOR DISCIPLINE**

(Failure to Report Controlled Substance Prescriptions to CURES)

50. Respondents are each and severally subject to discipline under section 4301(j) and/or (o) and/or section 4113(c) of the Code, by reference to Health and Safety Code section 11165, for violating statutes regulating controlled substances or dangerous drugs, and/or directly or indirectly violating, attempting to violate, or assisting in or abetting a violation of laws or regulations governing the practice of pharmacy, in that, as described in paragraph 43 above, in the period prior to January 12, 2011, the pharmacy had not successfully transmitted any dispensing data to CURES for controlled substances that were dispensed since at least October 21, 2009.

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**SEVENTH CAUSE FOR DISCIPLINE**

(Failure to Segregate Schedule II Records)

51. Respondents are each and severally subject to discipline under section 4301(j) and/or (o) and/or section 4113(c) of the Code, by reference to Title 21, Code of Federal Regulations, section 1304.04(f), for violating statutes regulating controlled substances or dangerous drugs, and/or for directly or indirectly violating, attempting to violate, or assisting in or abetting a violation of laws or regulations governing the practice of pharmacy, in that, as described in paragraph 43 above, on or about January 12, 2011, Schedule II records were not segregated.

**EIGHTH CAUSE FOR DISCIPLINE**

(Receipt and Acknowledgment of Delivery by Non-Pharmacist)

52. Respondents are each and severally subject to discipline under section 4301(j) and/or (o) and/or section 4113(c) of the Code, by reference to section(s) 4059 and/or 4059.5 of the Code, for violating statutes regulating controlled substances or dangerous drugs, and/or for directly or indirectly violating, attempting to violate, or assisting in or abetting a violation of laws or regulations governing the practice of pharmacy, in that, as described in paragraph 43 above, a non-pharmacist received and/or signed for a delivery of a dangerous drug or device.

**NINTH CAUSE FOR DISCIPLINE**

(Furnishing/Dispensing Prescriptions Without Prescriber Authorization)

53. Respondents are each and severally subject to discipline under section 4301(j) and/or (o) and/or section 4113(c) of the Code, by reference to section 4059 of the Code, for violating statutes regulating controlled substances or dangerous drugs, and/or for directly or indirectly violating, attempting to violate, or assisting in or abetting a violation of laws or regulations governing the practice of pharmacy, in that, as described in paragraph 44 above, Respondents furnished ten (10) new prescriptions to patient DC that were not authorized by a prescriber.

**TENTH CAUSE FOR DISCIPLINE**

(Furnishing/Dispensing Refills Without Prescriber Authorization)

54. Respondents are each and severally subject to discipline under section 4301(j) and/or (o) and/or section 4113(c) of the Code, by reference to section 4063 of the Code, for violating

1 statutes regulating controlled substances or dangerous drugs, and/or for directly or indirectly  
2 violating, attempting to violate, or assisting in or abetting a violation of laws or regulations  
3 governing the practice of pharmacy, in that, as described in paragraph 44 above, Respondents  
4 furnished twenty nine (29) refills to patient DC that were not authorized by a prescriber.

5 **ELEVENTH CAUSE FOR DISCIPLINE**

6 (Dishonesty/Creation of False Prescription Document(s))

7 55. Respondents are each and severally subject to discipline under section 4301(f) and/or  
8 (g) and/or section 4113(c) and/or section 4324 of the Code, for acts involving moral turpitude,  
9 dishonesty, fraud, deceit, corruption and forgery, and/or for knowingly making or signing any  
10 certificate or other document that falsely represents the existence or nonexistence of a state of  
11 facts in that, as described in paragraph 44 above, Respondents created seven (7) false  
12 prescriptions for patient DC.

13 **TWELFTH CAUSE FOR DISCIPLINE**

14 (Failure to Maintain Records of Acquisition of Drugs)

15 56. Respondents are each and severally subject to discipline under section 4301(j) and/or  
16 (o) and/or section 4113(c) of the Code, by reference to Code section 4081, for violating statutes  
17 regulating controlled substances or dangerous drugs, and/or for directly or indirectly violating,  
18 attempting to violate, or assisting in or abetting a violation of laws or regulations governing the  
19 practice of pharmacy, in that on or about January 12, 2011, Respondents' facility contained a  
20 prescription bottle containing 180 Premarin 1.25 tablets, Safeway prescription number 6448294,  
21 issue to patient SM on January 4, 2009. Respondents had no record of the acquisition of this  
22 item.

23 **THIRTEENTH CAUSE FOR DISCIPLINE**

24 (Unprofessional Conduct)

25 57. Respondent is subject to discipline under section 4301 of the Code in that  
26 Respondents, as described in paragraphs 42-44 above, engaged in unprofessional conduct.

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1 CASH COMPROMISE OF MEDI-CAL CHARGES

2 58. On or about June, 2010, the California Department of Health Care Services  
3 (hereinafter "Department") audited Respondents' premises and records pertaining to the period of  
4 March 1, 2009 through March 31, 2010.

5 59. Based on this audit, on or about July 16, 2010, the Department took formal action  
6 against Respondents by withholding all Medi-Cal payments to Respondents and by suspending  
7 and deactivating Respondents' Medi-Cal provider number and National Provider Identifier  
8 number. The Department charged Respondents with having violated California Welfare and  
9 Institutions Code section 14107(b) (false and fraudulent claims) and California Code of  
10 Regulations, Title 22, sections 51470(a) (false billing) and 51485 (submission of false  
11 information), based on to the following misconduct:

- 12 a) Overbilling for medications;  
13 b) Billing for prescriptions that had not actually been provided to beneficiaries;  
14 c) Falsification of a telephone prescription; and  
15 d) Failure to purchase sufficient quantities of drugs to fill claims made for orders filled.

16 60. On or about October 13, 2010, Respondents entered into a cash compromise of the  
17 above-described charges by signing a document entitled "Stipulation And Settlement Agreement  
18 Between The California Department of Health Care Services And Daniel's Pharmacy." The  
19 agreement provided for settlement of the charges in exchange for Respondents' agreement to pay  
20 approximately \$1,000,000.00 to the Department.

21 FOURTEENTH CAUSE FOR DISCIPLINE

22 (Cash Compromise of Medi-Cal Charges)

23 61. Respondents are each and severally subject to discipline under section 4301(m)  
24 and/or section 4113(c) of the Code, in that they engaged in a cash compromise of a charge of  
25 violation of Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare  
26 and Institutions Code relating to the Medi-Cal program, as described above in paragraphs 55-57.

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1 **2013 INSPECTION**

2 62. On or about August 1, 2013, Pharmacy Board inspectors inspected Respondents'  
3 pharmacy in order to ascertain whether Respondents continued to be in violation of law. The  
4 Inspectors observed numerous violations, as set forth below in the following Causes for  
5 Discipline.

6 **FIFTEENTH CAUSE FOR DISCIPLINE**

7 (Failure to Consult with On-Premises Patient)

8 63. Respondents are each and severally subject to discipline under section 4301(j) and/or  
9 (o) and/or section 4113(c) of the Code, by reference to California Code of Regulations, Title 16,  
10 section 1707.2(b)(1)(A), for violating statutes regulating controlled substances or dangerous  
11 drugs, and/or for directly or indirectly violating, attempting to violate, or assisting in or abetting a  
12 violation of laws or regulations governing the practice of pharmacy, in that on August 1, 2013,  
13 Respondents dispensed a prescription to patient DV, which had not previously been dispensed to  
14 patient DV, without providing a consultation by a pharmacist. Respondents failed to have a  
15 policy or procedure identifying medications for which a consultation should be provided.

16 **SIXTEENTH CAUSE FOR DISCIPLINE**

17 (Failure to Consult with Off-Premises Patient)

18 64. Respondents are each and severally subject to discipline under section 4301(j) and/or  
19 (o) and/or section 4113(c) of the Code, by reference to California Code of Regulations, Title 16,  
20 section 1707.2(b)(2), for violating statutes regulating controlled substances or dangerous drugs,  
21 and/or for directly or indirectly violating, attempting to violate, or assisting in or abetting a  
22 violation of laws or regulations governing the practice of pharmacy, in that on August 1, 2013,  
23 Respondents prepared prescription medication for delivery to a patient, which medication had not  
24 previously been dispensed to said patient, without providing any notification to the patient  
25 regarding the patient's right to request a consultation.

26 **SEVENTEENTH CAUSE FOR DISCIPLINE**

27 (Possession of Misbranded Drug Containers)

28 65. Respondents are each and severally subject to discipline under section 4301(j) and/or

1 (o) and/or section 4113(c) of the Code, by reference to Health and Safety Code section 111340  
2 and/or 111440, for violating statutes regulating controlled substances or dangerous drugs, and/or  
3 directly or indirectly violating, attempting to violate, or assisting in or abetting a violation of laws  
4 or regulations governing the practice of pharmacy, in that on or about August 1, 2013,  
5 Respondents possessed numerous misbranded/unlabeled prescription vials with dangerous drugs  
6 and outdated products in current inventory. Respondents also had in its possession previously-  
7 dispensed bubble packs of medications which had been returned by board-and-care homes.

8 **EIGHTEENTH CAUSE FOR DISCIPLINE**

9 (Failure to Initiate Quality Assurance Review)

10 66. Respondents are each and severally subject to discipline under section 4301(j) and/or  
11 (o) and/or section 4113(c) of the Code, by reference to Code section 4125(a) and California Code  
12 of Regulations, Title 16, section 1711, for violating statutes regulating controlled substances or  
13 dangerous drugs, and/or for directly or indirectly violating, attempting to violate, or assisting in or  
14 abetting a violation of laws or regulations governing the practice of pharmacy, in that on August  
15 1, 2013, Respondents admitted to Board Inspectors that they had failed to complete quality  
16 assurance reviews, procedures and related forms in the aftermath of dispensing errors.

17 **NINETEENTH CAUSE FOR DISCIPLINE**

18 (Variation from Prescription)

19 67. Respondents are each and severally subject to discipline under section 4301(j) and/or  
20 (o) and/or section 4113(c) of the Code, by reference to California Code of Regulations, Title 16,  
21 section 1716, for violating statutes regulating controlled substances or dangerous drugs, and/or  
22 for directly or indirectly violating, attempting to violate, or assisting in or abetting a violation of  
23 laws or regulations governing the practice of pharmacy, in that on August 1, 2013, Board  
24 Inspectors identified two prescriptions, RX numbers N9878911 and N9879201, which contained  
25 erroneous directions for use and/or identified the wrong prescriber.

26 **TWENTIETH CAUSE FOR DISCIPLINE**

27 (Improper Supervision of Pharmacy Technician)

28 68. Respondents are each and severally subject to discipline under section 4301(j) and/or



1 (o) and/or section 4113(c) of the Code, by reference to California Code of Regulations, Title 16,  
2 section 1793.7, for violating statutes regulating controlled substances or dangerous drugs, and/or  
3 for directly or indirectly violating, attempting to violate, or assisting in or abetting a violation of  
4 laws or regulations governing the practice of pharmacy, in that on August 1, 2013, Respondents'  
5 pharmacy technician worked unsupervised in the basement of the facility, and had the ability to  
6 override the automated dispensing unit SynMed's scan features when replenishing the dispensing  
7 unit.

8 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

9 (Failure to Maintain Operational Standards -- Drugs)

10 69. Respondents are each and severally subject to discipline under section 4301(j) and/or  
11 (o) and/or section 4113(c) of the Code, by reference to California Code of Regulations, Title 16,  
12 section 1714, for violating statutes regulating controlled substances or dangerous drugs, and/or  
13 for directly or indirectly violating, attempting to violate, or assisting in or abetting a violation of  
14 laws or regulations governing the practice of pharmacy, in that on August 1, 2013, Respondents'  
15 pharmacy premises contained dangerous drugs on stock shelves in unlabeled containers without  
16 drug name, strength, lot numbers and expiration dates. The premises also contained automated  
17 dispensing units without accurate lot numbers and expiration dates. Loose pills were sitting in on  
18 various counters in various locations.

19 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

20 (Failure to Maintain Records of Acquisition of Drugs)

21 70. Respondents are each and severally subject to discipline under section 4301(j) and/or  
22 (o) and/or section 4113(c) of the Code, by reference to Code section 4081, for violating statutes  
23 regulating controlled substances or dangerous drugs, and/or for directly or indirectly violating,  
24 attempting to violate, or assisting in or abetting a violation of laws or regulations governing the  
25 practice of pharmacy, in that on or about August 1, 2013, Respondents' facility contained  
26 numerous full bubble packs which had been acquired from board-and-care homes, the  
27 receipt/acquisition of which had not been memorialized in any record. Similarly, Respondents  
28 were in possession of a Walgreens prescription bottle containing amlodipine-benzapril capsules

1 which had evidently previously been issued to patient PL. Respondents had no record of the  
2 acquisition of this item.

3 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

4 (Unlicensed Wholesale Activity)

5 71. Respondents are each and severally subject to discipline under section 4301(f) and/or  
6 (j) and/or (o) and/or section 4113(c) of the Code, by reference to Code section 4060, for violating  
7 statutes regulating controlled substances or dangerous drugs, and/or for directly or indirectly  
8 violating, attempting to violate, or assisting in or abetting a violation of laws or regulations  
9 governing the practice of pharmacy, in that on or about August 13, 2013, Respondents were  
10 found to be in possession of medications which had been returned to them by board-and-care  
11 homes, thus constituting wholesaling activity, when Respondents were not licensed as  
12 wholesalers. Respondents evidently intended to reuse the medications.

13 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

14 (False Statements on Certificates or Documents)

15 72. Respondents are each and severally subject to discipline under section 4301(g) and/or  
16 (j) and/or (o) and/or section 4113(c) of the Code, for making a false statement on a certificate or  
17 document and for violating statutes regulating controlled substances or dangerous drugs, and/or  
18 for directly or indirectly violating, attempting to violate, or assisting in or abetting a violation of  
19 laws or regulations governing the practice of pharmacy, in that on or about August 1, 2013, Board  
20 Inspectors located documents showing that Respondents had filled a prescription for divalproex  
21 by Wockhardt by utilizing Mylan divalproex, but billed insurance as if they had provided  
22 divalproex by Wockhardt.

23 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

24 (Failure to Maintain Operational Standards -- Key)

25 73. Respondents are each and severally subject to discipline under section 4301(j) and/or  
26 (o) and/or section 4113(c) of the Code, by reference to California Code of Regulations, Title 16,  
27 section 1714, for violating statutes regulating controlled substances or dangerous drugs, and/or  
28 for directly or indirectly violating, attempting to violate, or assisting in or abetting a violation of

1 laws or regulations governing the practice of pharmacy, in that on or about August 2, 2013,  
2 Respondents admitted that the key to the pharmacy was in the possession of a family member,  
3 and was not in a tamper-proof container.

4 **DISCIPLINE CONSIDERATIONS**

5 74. To determine the level of discipline, if any, to be imposed on Respondent Daniels  
6 and/or Respondent Nasrah (collectively, Respondents), Complainant further alleges that:

7 a. On or about October 21, 2009, Citation No. CI 2008 38553, with a fine of \$4,000.00,  
8 was issued to Respondent Daniels for failure(s) to comply with its obligation(s) under Health and  
9 Safety Code section 11165 to report all Schedule II, III, and IV controlled substance prescriptions  
10 dispensed by the pharmacy to the Controlled Substance Utilization Review and Evaluation  
11 System (CURES), in and/or between December 2004 and December 2008. That citation is now  
12 final and is incorporated by reference as if fully set forth herein.

13 b. On or about October 21, 2009, Citation No. CI 2008 41785, with a fine of \$4,000.00,  
14 was issued to Respondent Nasrah, as PIC, for Daniels Pharmacy's failure(s) to comply with its  
15 obligation(s) under Health and Safety Code section 11165 to report all Schedule II, III, and IV  
16 controlled substance prescriptions dispensed to the Controlled Substance Utilization Review and  
17 Evaluation System (CURES), in and/or between December 2004 and December 2008. That  
18 citation is now final and is incorporated by reference as if fully set forth herein.

19 **PRAAYER**

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

22 1. Revoking or suspending Pharmacy License No. PHY 36740, issued to Daniels  
23 Pharmacy (Respondent Daniels);

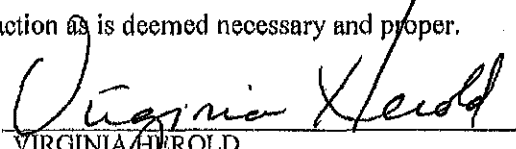
24 2. Revoking or suspending Pharmacist License No. RPH 40241, issued to Iyad Nasrah  
25 (Respondent Nasrah);

26 3. Ordering Respondent Daniels and Respondent Nasrah to jointly and severally be  
27 responsible to pay the Board of Pharmacy the reasonable costs of the investigation and  
28 enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 5/8/14

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