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

In the Matter of the Petition to Revoke  
Probation Against:

Case No. 5248

**MICHAEL R. JAY**  
**1814 West Tedmar Avenue**  
**Anaheim, CA 92804-2646**

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

**Pharmacist License No. RPH 36457**

Respondent.

**FINDINGS OF FACT**

1. On or about December 9, 2014, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Petition to Revoke Probation No. 5248 against Michael R. Jay (Respondent) before the Board of Pharmacy. (Petition to Revoke Probation attached as Exhibit A.)

2. On or about August 17, 1981, the Board of Pharmacy (Board) issued Pharmacist License No. RPH 36457 to Respondent. The Pharmacist License expired on February 28, 2015, and has not been renewed.

///

1           3.     On or about December 9, 2014, Respondent was served by Certified and First Class  
2 Mail copies of the Petition to Revoke Probation No. 5248, Statement to Respondent, Notice of  
3 Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5,  
4 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and  
5 Professions Code section 4100, is required to be reported and maintained with the Board.  
6 Respondent's address of record was and is 1814 West Tedmar Avenue, Anaheim, CA 92804-  
7 2646.

8           4.     Service of the Petition to Revoke Probation was effective as a matter of law under the  
9 provisions of Government Code section 11505, subdivision (c) and/or Business & Professions  
10 Code section 124.

11           5.     On or about January 26, 2015, the aforementioned Certified documents were returned  
12 by the U.S. Postal Service marked "Unclaimed." The First Class mail documents were not  
13 returned.

14           6.     Government Code section 11506 states, in pertinent part:

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

20           7.     Respondent failed to file a Notice of Defense within 15 days after service upon him  
21 of the Petition to Revoke Probation, and therefore waived his right to a hearing on the merits of  
22 Petition to Revoke Probation No. 5248.

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

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

28           9.     Pursuant to its authority under Government Code section 11520, the Board finds  
Respondent is in default. The Board will take action without further hearing and, based on the  
relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as  
taking official notice of all the investigatory reports, exhibits and statements contained therein on

1 file at the Board's offices regarding the allegations contained in Petition to Revoke Probation No.  
2 5248, finds that the charges and allegations in Petition to Revoke Probation No. 5248, are  
3 separately and severally, found to be true and correct by clear and convincing evidence.

4 10. Taking official notice of its own internal records, pursuant to Business and  
5 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation  
6 and Enforcement in Respondent's original Accusation and Stipulated settlement are \$3,520.00  
7 this amount does not include any Board costs associated with the Petition to Revoke Probation.

#### 8 **DETERMINATION OF ISSUES**

9 1. Based on the foregoing findings of fact, Respondent Michael R. Jay has subjected his  
10 Pharmacist License No. RPH 36457 to discipline.

11 2. The agency has jurisdiction to adjudicate this case by default.

12 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacist License  
13 based upon the following violations alleged in the Petition to Revoke Probation which are  
14 supported by the evidence contained in the Default Decision Evidence Packet in this case:

15 a. Petition to Revoke Probation under Probation Term and Condition Number 15 of  
16 the Decision and Order. That term and condition states: If Respondent violates probation in any  
17 respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke  
18 probation and carry out the disciplinary order that was stayed;

19 b. Petition to Revoke Probation under Probation Term and Condition Number 22,  
20 failure to participate in mandated random drug screening;

21 c. Petition to Revoke Probation under Probation Term and Condition Number 21,  
22 failure to participate in the mandated pharmacist recovery program;

23 d. Petition to Revoke Probation under Probation Term and Condition Number 24,  
24 failure to participate in the mandated prescription monitoring program;

25 e. Petition to Revoke Probation under Probation Term and Condition Number 26,  
26 failure to submit mandated criminal probation/parole reports;

27 f. Petition to Revoke Probation under Probation Term and Condition Number 27,  
28 failure to complete a mandated ethics course;

1 g. Petition to Revoke Probation under Probation Term and Condition Number 28,  
2 failure to participate in mandated community service;

3 h. Petition to Revoke Probation under Probation Term and Condition Number 20,  
4 failure to complete a mandated medical evaluation;

5 i. Petition to Revoke Probation under Probation Term and Condition Number 9,  
6 failure to reimburse the Boards Costs.

7 **ORDER**

8 IT IS SO ORDERED that Pharmacist License No. RPH 36457, heretofore issued to  
9 Respondent Michael R. Jay, is revoked.

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

14 This Decision shall become effective on March 20, 2015.

15 It is so ORDERED February 18, 2015.

16 BOARD OF PHARMACY  
17 DEPARTMENT OF CONSUMER AFFAIRS  
18 STATE OF CALIFORNIA

19 By   
20 STAN C. WEISSER

21 Board President

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SD2014707701

22 Attachment:  
23 Exhibit A: Petition to Revoke Probation  
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# Exhibit A

Petition to Revoke Probation

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1 KAMALA D. HARRIS  
Attorney General of California  
2 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
3 LAURO A. PAREDES  
Deputy Attorney General  
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P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2091  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*  
8

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

12 In the Matter of the Petition to Revoke  
13 Probation Against,

Case No. 5248

**PETITION TO REVOKE PROBATION**

14 **MICHAEL RICHARD JAY**  
15 **1814 West Tedmar Avenue**  
16 **Anaheim, CA 92804-2646**

**Pharmacist License No. RPH 36457**

Respondent.

17  
18  
19 Complainant alleges:

20 **PARTIES**

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

24 2. On August 17, 1981, the Board of Pharmacy issued Pharmacist License Number  
25 RPH 36457 to Michael R. Jay (Respondent). On April 17, 2014, the Pharmacist License was  
26 suspended and will expire on February 28, 2015, unless renewed.

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### PRIOR DISCIPLINE

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3. In a disciplinary action entitled "In the Matter of Accusation Against Michael Richard Jay," Case No. 4559, the Board of Pharmacy, adopted a decision by the Office of Administrative Hearings, effective April 17, 2014, in which Respondent's Pharmacist License was revoked. However, the revocation was stayed and Respondent's Pharmacist License was placed on probation for a period of five (5) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

### JURISDICTION

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4. Section 4300, subdivision (a) of the Business and Professions Code (Code) states "Every license issued may be suspended or revoked."

5. Section 4300.1 of the Code states:

The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

6. This Petition to Revoke Probation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs under Probation Term and Condition Number 15 of the Decision and Order. That term and condition states:

#### **Violation of Probation.**

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

If Respondent violates probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against Respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

1 **FIRST CAUSE TO REVOKE PROBATION**

2 **(Random Drug Screening)**

3 7. Condition 22 of Respondent's probation, states:

4 Respondent, at his or her own expense, shall participate in random testing,  
5 including but not limited to biological fluid testing (urine, blood), breathalyzer,  
6 hair follicle testing, or other drug screening program as directed by the board or  
its designee. . . .

7 8. Respondent's probation is subject to revocation because he failed to comply with  
8 Probation Condition 22, referenced above. The facts and circumstances regarding this violation  
9 are as follows:

10 a. At the initial intake on May 13, 2014, Respondent was directed to sign up  
11 for and maintain a Random Drug Testing (RDT) Account within 5 days, call in daily for RDT  
12 and report for testing when required, attend daily 12-Step meetings, attend support group once  
13 per week and complete a face-to-face clinical assessment in order to develop an individualized  
14 treatment program.

15 b. Respondent failed to set up his RDT account within 5 days of the initial  
16 intake on 'May 13, 2014. Respondent did not successfully set up his RDT account until June 6,  
17 2014. Respondent also failed to report for RDT as required. On June 10, 2014, Respondent did  
18 not report to his scheduled first drug test.

19 **SECOND CAUSE TO REVOKE PROBATION**

20 **(Pharmacist Recovery Program)**

21 9. Condition 21 of Respondent's probation, states:

22 Within thirty (30) days of the effective date of this decision, respondent  
23 shall contact the Pharmacists Recovery Program (PRP) for evaluation, and shall  
24 immediately thereafter enroll, successfully participate in, and complete the  
25 treatment contract and any subsequent addendums as recommended and provided  
by the PRP and as approved by the board or its designee. The costs for PRP  
participation shall be borne by the respondent.  
. . . .

26 10. Respondent's probation is subject to revocation because he failed to comply with  
27 Probation Condition 21, referenced above. The facts and circumstances regarding this violation  
28 are as follows:



1 a. On April 22, 2014, Respondent was sent a letter from the Board advising  
2 him of his requirement to contact the PRP for evaluation and to immediately enroll, successfully  
3 participate in and complete the treatment program.

4 b. On May 5, 2014, Respondent was again informed of his requirement to  
5 enroll, successfully participate in, and complete the treatment program.

6 c. On May 13, 2014, Respondent was directed to complete a face to face  
7 clinical assessment. The first clinical assessment appointment was scheduled for May 20, 2014.  
8 Respondent cancelled thirty minutes prior to his appointment, and failed to attend, stating he did  
9 not have transportation.

10 d. A second clinical assessment appointment was scheduled for Respondent  
11 on June 9, 2014. On June 7, 2014 at 10:30 pm, Respondent left a message with the PRP  
12 answering service stating that he would not be attending as he "had an appointment with DMV".  
13 Respondent failed to attend the second clinical assessment appointment on June 9, 2014.

14 e. On June 13, 2014, the Board received a letter from the PRP program dated  
15 June 11, 2014, stating that based on Respondent's history of failure to keep two clinical  
16 assessment appointments, failure to attend Support Group and failure to comply with the  
17 Random Drug Testing requirements, his case had been closed as a "Public Risk".

18 f. On June 11, 2014, Respondent was sent a Notice of Suspension notifying  
19 him that due to his termination from the PRP, his license had been automatically suspended.

20 **THIRD CAUSE TO REVOKE PROBATION**

21 **(Prescription Coordination and Monitoring of Prescription Use)**

22 11. Condition 24 of Respondent's probation, states:

23 Within thirty (30) days of the effective date of this decision, respondent  
24 shall submit to the board, for its prior approval, the name and qualifications of a  
25 single physician, nurse practitioner, physician assistant, or psychiatrist of  
26 respondent's choice, who shall be aware of the respondent's history with the use  
27 of alcohol, controlled substances, and/or dangerous drugs, and/or of mental  
28 illness, and/or of gambling addiction and who will coordinate and monitor any  
prescriptions for respondent for dangerous drugs, controlled substances or mood-  
altering drugs. The approved practitioner shall be provided with a copy of the  
board's First Amended Accusation and decision. A record of this notification

1 must be provided to the board upon request. Respondent shall sign a release  
2 authorizing the practitioner to communicate with the board about respondent's  
3 treatment(s). The coordinating physician, nurse practitioner, physician assistant,  
4 or psychiatrist shall report to the board on a quarterly basis for the duration of  
5 probation regarding respondent's compliance with this condition. If any  
6 substances considered addictive have been prescribed, the report shall identify a  
7 program for the time limited use of any such substances. The board may require  
8 that the single coordinating physician, nurse practitioner, physician assistant or  
9 psychiatrist be a specialist in addictive medicine, or consult a specialist in  
10 addictive medicine. Should respondent, for any reason, cease supervision by the  
11 approved practitioner, respondent shall notify the board immediately and, within  
12 thirty (30) days of ceasing treatment, submit the name of a replacement physician,  
13 nurse practitioner, physician assistant, or psychiatrist of respondent's choice to the  
14 board or its designee for its prior approval. Failure to timely submit the selected  
15 practitioner or replacement practitioner to the board for approval, or to ensure the  
16 required reporting thereby on the quarterly reports, shall be considered a violation  
17 of probation.

18 . . . .

19 12. Respondent's probation is subject to revocation because he failed to comply with  
20 Probation Condition 24, referenced above. The facts and circumstances regarding this violation  
21 are as follows:

22 a. On April 30, 2014, Respondent requested that Dr. Glenn Morinishi serve  
23 as his prescription monitor during a telephone conversation with the Board.

24 b. On April 30, 2014, the Board sent Dr. Morinishi a letter informing him  
25 that Respondent had submitted his name for approval to serve as his designated prescription  
26 monitor and coordinator and seeking additional information from Dr. Morinishi in order to grant  
27 approval for him to serve in this capacity. A copy of the letter was forwarded to Respondent.

28 c. On May 20, 2014, the Board sent Respondent an email indicating that Dr.  
Morinishi had not responded to the letter sent to him on April 30, 2014.

d. On May 22, 2014, the Board sent Respondent a letter notifying him that  
Dr. Morinishi had not responded to a request for information in regards to seeking approval for  
him to act as Respondent's prescription monitor and coordinator.

e. On June 17, 2014, the Board sent Respondent a letter stating that no  
information had been received from Dr. Morinishi in order to grant approval for him to serve as  
Respondent's prescription monitor and coordinator.

1 f. To date, the information required in order to approve Dr. Morinishi as  
2 Respondent's prescription monitor and coordinator has not been received.

3 **FOURTH CAUSE TO REVOKE PROBATION**

4 **(Criminal Probation/Parole Reports)**

5 13. Condition 26 of Respondent's probation, states:

6 Respondent shall provide a copy of the conditions of any criminal  
7 probation/parole to the board, in writing, within ten (10) days of the issuance or  
8 modification of those conditions. Respondent shall provide the name of his or her  
9 probation/parole officer to the board, in writing, within ten (10) days after that  
10 officer is designated or a replacement for that officer is designated.

11 Respondent shall provide a copy of all criminal probation/parole reports to  
12 the board within ten (10) days after respondent receives a copy of such a report.  
13 Failure to timely make any of the submissions required hereby shall be considered  
14 a violation of probation.

15 14. Respondent's probation is subject to revocation because he failed to comply with  
16 Probation Condition 26, referenced above. The facts and circumstances regarding this violation  
17 are as follows:

18 a. On May 5, 2014, Respondent was informed of his requirement to provide  
19 a copy of the conditions of any criminal probation/parole to the Board, in writing, within ten (10)  
20 days of the issuance or modification of those conditions.

21 b. Respondent was directed at the Office Conference on May 5, 2014 to  
22 submit the criminal probation conditions to the Board by May 7, 2014.

23 c. On June 17, 2014, the Board sent Respondent a letter stating that the  
24 conditions of criminal probation had not yet been received by the Board as directed in the Office  
25 Conference on May 5, 2014.

26 d. To date, the Board has not received a copy of the conditions of criminal  
27 probation from Respondent.

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1 **FIFTH CAUSE TO REVOKE PROBATION**

2 **(Ethics Course)**

3 15. Condition 27 of Respondent's probation, states:

4 Within sixty (60) calendar days of the effective date of this decision,  
5 respondent shall enroll in a course in ethics, at respondent's expense, approved in  
6 advance by the board or its designee. Failure to initiate the course during the first  
7 year of probation, and complete it within the second year of probation, is a  
8 violation of probation. Respondent shall submit a certificate of completion to the  
9 board or its designee within five days after completing the course

10 16. Respondent's probation is subject to revocation because he failed to comply with  
11 Probation Condition 27, referenced above. The facts and circumstances regarding this violation  
12 are as follows:

13 a. On April 22, May 5, and June 17, 2014, the Board sent Respondent  
14 a letter informing him of his requirement to enroll in an ethics course approved by the  
15 Board and providing Respondent with contact information for two Board approved ethics  
16 courses.

17 b. To date, the Board has received no proof of enrollment in an  
18 approved course of ethics from Respondent.

19 **SIXTH CAUSE TO REVOKE PROBATION**

20 **(Community Services Program)**

21 17. Condition 28 of Respondent's probation, states:

22 Within sixty (60) days of the effective date of this decision, respondent  
23 shall submit to the board or its designee, for prior approval, a community service  
24 program in which respondent shall provide free health-care related services on a  
25 regular basis to a community or charitable facility or agency for at least 75 hours  
26 per year for the first three years of probation. Within thirty (30) days of board  
27 approval thereof, respondent shall submit documentation to the board  
28 demonstrating commencement of the community service program. A record of  
this notification must be provided to the board upon request. Respondent shall  
report on progress with the community service program in the quarterly reports.  
Failure to timely submit, commence, or comply with the program shall be  
considered a violation of probation.

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1           18. Respondent's probation is subject to revocation because he failed to comply with  
2 Probation Condition 28, referenced above. The facts and circumstances regarding this violation  
3 are as follows:

4           a. On May 5, and June 17, 2014, Respondent was informed of his  
5 requirement to submit to the Board for prior approval a community service program in which  
6 Respondent shall provide free health-care related services on a regular basis to a community or  
7 charitable facility or agency for at least 75 hours per year for the first three years of probation  
8 within sixty (60) days of the effective date of the decision.

9           b. To date, Respondent has not submitted any information regarding a  
10 community service program for approval.

11                                   **SEVENTH CAUSE TO REVOKE PROBATION**

12                                   **(Medical Evaluation)**

13           19. Condition 20 of Respondent's probation, states:

14                               Within thirty (30) days of the effective date of this decision, and on a  
15 periodic basis thereafter as may be required by the board or its designee,  
16 respondent shall undergo a medical evaluation, at respondent's own expense, by a  
17 board-appointed or board-approved physician who shall furnish a medical report  
18 to the board. The approved physician shall be provided with a copy of the board's  
19 First Amended Accusation, this stipulation and decision. A record of this  
20 notification must be provided to the board upon request. Respondent shall sign a  
21 release authorizing the physician to furnish the board with a current diagnosis and  
22 a written report regarding the respondent's ability to function independently as a  
23 pharmacist with safety to the public. Respondent shall comply with all the  
24 recommendations of the physician if directed by the board or its designee.

21                               .....

22           20. Respondent's probation is subject to revocation because he failed to comply with  
23 Probation Condition 20, referenced above. The facts and circumstances regarding this violation  
24 are as follows:

25           a. Respondent was informed at a meeting with Board staff on May 5, 2014,  
26 of the requirements to undergo a medical evaluation by a board-appointed or board approved  
27 physician who will furnish a report to the Board within thirty (30) days of the effective date of  
28 the decision and of his requirement to submit to the Board for prior approval the name and

1 qualifications of a single physician, nurse practitioner, physician assistant or psychiatrist who  
2 shall report to the Board on a quarterly basis for the duration of probation regarding respondent's  
3 compliance.

4 b. To date, the information required in order to approve Dr. Morinishi to  
5 conduct Respondent's medical examination has not been received.

6 c. To date, the Board has not been informed that Respondent has undergone  
7 a medical evaluation, nor has the Board received a report in regards to such evaluation.

8 **EIGHTH CAUSE TO REVOKE PROBATION**

9 **(Reimbursement of Board Costs)**

10 21. Condition Nine of Respondent's probation, states:

11 As a condition precedent to successful completion of probation,  
12 respondent shall pay to the board its costs of investigation and prosecution in the  
13 amount of \$3,520.00. Respondent shall make monthly payments as directed by  
14 the Board or it designee in the amount of \$97.78 until paid in full. There shall be  
15 no deviation from this schedule absent prior written approval by the board or its  
16 designee. Failure to pay costs by the deadline(s) as directed shall be considered a  
17 violation of probation.

18 . . . .

19 22. Respondent's probation is subject to revocation because he failed to comply with  
20 Probation Condition Nine, referenced above. The facts and circumstances regarding this  
21 violation are as follows:

22 a. On May 5, 2014, Respondent was informed of his requirement to  
23 reimburse the board for the cost of investigation and prosecution in the amount of \$3,520.00 in a  
24 monthly payment plan of \$97.78 per month in accordance with Term 9 of the terms and  
25 conditions of probation.

26 b. On June 17, 2014, the Board sent Respondent a letter advising him that  
27 he was delinquent in his payments as scheduled and that he was required to commence  
28 payment of costs of investigation and prosecution by July 1, 2014.

29 c. To date, no payments towards reimbursement of the cost of investigation  
and prosecution have been received.

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**PRAYER**

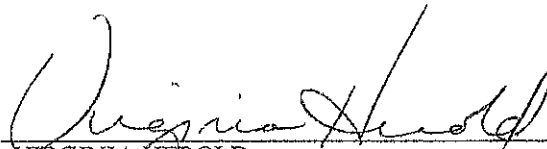
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking the probation that was granted by the Board of Pharmacy in Case No. 4559 and imposing the disciplinary order that was stayed thereby revoking Pharmacist License No. RPH 36457 issued to Michael R. Jay;

2. Revoking or suspending Pharmacist License No. RPH 36457, issued to Michael R. Jay;

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

DATED: 11/19/14



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

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