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

Case No. 5393

In the Matter of the Accusation Against:

**BORREGO COMMUNITY HEALTH
FOUNDATION**

655 Palm Canyon Drive, Suite B
Borrego Springs, CA 92004

Pharmacy Permit No. PHY 48254

Respondent.

**STIPULATION FOR
CONTINUING JURISDICTION**

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned parties that the following is true:

1. The parties to this agreement are **Virginia Herold**, acting in her official capacity as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, and **Bruce Hebets**, Chief Executive Officer on behalf of Borrego Community Health Foundation, 655 Palm Canyon Drive, Suite B, Borrego Springs, California 92004.


2. On or about April 17, 2017, Borrego Community Health Foundation, 590 Palm Canyon Drive, Suites 203-204, Borrego Springs, California 92004 (hereinafter "applicant") submitted an application to the Board for a change of location of Borrego Community Health Foundation, 655 Palm Canyon Drive, Suite B, Borrego Springs, California 92004 (Original Permit No. PHY 48254). The granting of the application would require the cancellation of Original Permit No. PHY 48254 issued to Borrego Community Health Foundation, 655 Palm Canyon Drive, Suite B, Borrego Springs, California 92004, and the issuance of a new original permit number to applicant pursuant to Business and Professions Code section 4201(f).

1 3. The existing permit (Original Permit No. PHY 48254) is currently the subject of a
2 disciplinary order issued effective July 8, 2015, by the Board in the disciplinary matter entitled *In*
3 *The Matter of Accusation Against Borrego Community Health Foundation, et al*, Board of
4 Pharmacy Case No. 5393. A true and correct copy of the decision and order in this matter is
5 attached hereto as **Exhibit A** and incorporated by this reference.

6 4. In exchange for processing and issuance of the new permit pursuant to the change of
7 location, applicant understands and agrees that the Board shall have continuing jurisdiction over
8 the new permit issued to applicant such that the disciplinary order issued by the Board in Case
9 No. 5393, including any terms and conditions and remaining tenure of probation, shall carry
10 forward and be applicable to the new permit issued to applicant. The Board hereby waives any
11 right it may have had to deny issuance of the new permit.

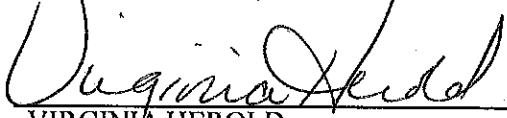
12 5. A portable document format (PDF) or facsimile signature on this document shall be
13 binding as an original signature. Parties agree to use of PDF or facsimile signatures in lieu of
14 original signatures for all purposes relevant to enforcement of this Stipulation.

15
16 Dated: 7/7/2017



Bruce Hebets, Chief Executive Officer
Borrego Community Health Foundation

17
18 Dated: 7/7/17



VIRGINIA HEROLD
Executive Officer
California Board of Pharmacy

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Exhibit A

**Final Decision and Order
Pharmacy Board Disciplinary Case No. 5502**

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

In the Matter of the Accusation Against:

Case No. 5393

**BORREGO COMMUNITY HEALTH
FOUNDATION
655 Palm Canyon Drive, Suite B
Borrego Springs, CA 92004**

Pharmacy Permit No. PHY 48254

and

**ELIZABETH MARIE NEWELL
9777 Caminito Doha
San Diego, CA 92131**

Pharmacist License No. RPH 29746

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 July 8, 2015.

It is so ORDERED on July 1, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

AMARYLIS GUTIERREZ
Board President

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 NICOLE R. TRAMA
Deputy Attorney General
4 State Bar No. 263607
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2143
7 Facsimile: (619) 645-2061
Attorneys for Complainant
8

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

11
12 In the Matter of the Accusation Against:

13 **BORREGO COMMUNITY HEALTH**
FOUNDATION
14 **655 Palm Canyon Drive, Suite B**
Borrego Springs, CA 92004

15 **Pharmacy Permit No. PHY 48254**

16 and

17 **ELIZABETH MARIE NEWELL**
18 **9777 Caminito Doha**
San Diego, CA 92131

19 **Pharmacist License No. RPH 29746**

20 Respondents.
21

Case No. 5393

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

22 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
23 entitled proceedings that the following matters are true:

24 PARTIES

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

1 documents; the right to reconsideration and court review of an adverse decision; and all other
2 rights accorded by the California Administrative Procedure Act and other applicable laws.

3 9. Respondents voluntarily, knowingly, and intelligently waive and give up each and
4 every right set forth above.

5 CULPABILITY

6 10. Respondents admit the truth of each and every charge and allegation in Accusation
7 No. 5393.

8 11. Respondents agree that Pharmacy Permit No. PHY 48254 and Pharmacist License
9 Number PRH 29746 are subject to discipline and they agree to be bound by the Board's
10 probationary terms as set forth in the Disciplinary Order below.

11 CONTINGENCY

12 12. This stipulation shall be subject to approval by the Board of Pharmacy. Respondents
13 understand and agree that counsel for Complainant and the staff of the Board of Pharmacy may
14 communicate directly with the Board regarding this stipulation and settlement, without notice to
15 or participation by Respondents or their counsel. By signing the stipulation, Respondents
16 understand and agree that they may not withdraw their agreement or seek to rescind the
17 stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this
18 stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of
19 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between
20 the parties, and the Board shall not be disqualified from further action by having considered this
21 matter.

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

25 14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
26 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
27 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
28 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary

1 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
2 writing executed by an authorized representative of each of the parties.

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

6 **DISCIPLINARY ORDER**

7 **IT IS HEREBY ORDERED** that Pharmacy Permit No. PHY 48254 issued to Respondent
8 Borrego Community Health Foundation (Respondent Borrego Community Health) and
9 Pharmacist License No. RPH 29746 issued to Respondent Elizabeth Marie Newell (Respondent
10 Newell) are revoked. However, the revocation of Pharmacy Permit No. PHY 48254 and
11 Pharmacist License No. RPH 29746 is stayed and Respondents are placed on probation for three
12 (3) years on the following terms and conditions.

13 1. **Obey All Laws**

14 Respondents shall obey all state and federal laws and regulations.

15 Respondents shall report any of the following occurrences to the Board, in writing, within
16 seventy-two (72) hours of such occurrence;

- 17 an arrest or issuance of a criminal complaint for violation of any provision of the
18 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
19 substances laws
- 20 a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
21 criminal complaint, information or indictment
- 22 a conviction of any crime
- 23 discipline, citation, or other administrative action filed by any state or federal agency
24 which involves Respondent Borrego Community Health's pharmacy permit or
25 Respondent Newell's pharmacist license or which is related to the practice of
26 pharmacy or the manufacturing, obtaining, handling or distributing, billing, or
27 charging for any drug, device or controlled substance.

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

1 **2. Report to the Board**

2 Respondents shall report to the Board quarterly, on a schedule as directed by the Board or
3 its designee. The report shall be made either in person or in writing, as directed. Among other
4 requirements, Respondents shall state in each report under penalty of perjury whether there has
5 been compliance with all the terms and conditions of probation and submit proof acceptable to the
6 Board that Respondents are reporting to Controlled Substance Utilization Review and Evaluation
7 System (CURES) weekly as required by Health and Safety Code section 11165. Failure to
8 submit timely reports in a form as directed shall be considered a violation of probation. Any
9 period(s) of delinquency in submission of reports as directed may be added to the total period of
10 probation. Moreover, if the final probation report is not made as directed, probation shall be
11 automatically extended until such time as the final report is made and accepted by the Board.

12 **3. Interview with the Board**

13 Upon receipt of reasonable prior notice, Respondents shall appear in person for interviews
14 with the Board or its designee, at such intervals and locations as are determined by the Board or
15 its designee. Failure to appear for any scheduled interview without prior notification to Board
16 staff, or failure to appear for two (2) or more scheduled interviews with the Board or its designee
17 during the period of probation, shall be considered a violation of probation.

18 **4. Cooperate with Board Staff**

19 Respondents shall cooperate with the Board's inspection program and with the Board's
20 monitoring and investigation of Respondents' compliance with the terms and conditions of their
21 probation. Failure to cooperate shall be considered a violation of probation.

22 **5. Reimbursement of Board Costs**

23 As a condition precedent to successful completion of probation, Respondents shall pay to
24 the Board its costs of investigation and prosecution in the amount of \$2,423.00. Respondents
25 shall make said payments as follows: Respondents shall pay \$2,423.00 within ninety (90) days of
26 the effective date of the Decision. There shall be no deviation from this schedule absent prior
27 written approval by the Board or its designee. Failure to pay costs by the deadline(s) as directed
28 shall be considered a violation of probation.

1 The filing of bankruptcy by Respondents shall not relieve respondent of their responsibility
2 to reimburse the Board its costs of investigation and prosecution.

3 **6. Probation Monitoring Costs**

4 Respondents shall pay any costs associated with probation monitoring as determined by the
5 Board each and every year of probation. Such costs shall be payable to the Board on a schedule
6 as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as directed
7 shall be considered a violation of probation.

8 **7. Status of License**

9 Respondents shall, at all times while on probation, maintain current licensure with the
10 Board, including any period during which suspension or probation is tolled. Failure to maintain
11 current licensure shall be considered a violation of probation.

12 If Respondent Borrego Community Health submits an application to the Board, and the
13 application is approved, for a change of location, change of permit or change of ownership, the
14 Board shall retain continuing jurisdiction over the license, and Respondent Borrego Community
15 Health shall remain on probation as determined by the Board.

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

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

21 Following the effective date of this Decision, should Respondent Newell cease practice due
22 to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
23 Respondent Newell may tender her license to the Board for surrender. The Board or its designee
24 shall have the discretion whether to grant the request for surrender or take any other action it
25 deems appropriate and reasonable. Upon formal acceptance of the surrender of the license,
26 Respondent Newell will no longer be subject to the terms and conditions of probation. This
27 surrender constitutes a record of discipline and shall become a part of the Respondent Newell's
28 license history with the Board. Upon acceptance of the surrender, Respondent Newell shall

1 relinquish her pocket and wall license to the Board within ten (10) days of notification by the
2 Board that the surrender is accepted. Respondent Newell may not reapply for any license from the
3 Board for three (3) years from the effective date of the surrender. Respondent Newell shall meet
4 all requirements applicable to the license sought as of the date the application for that license is
5 submitted to the Board, including any outstanding costs.

6 Following the effective date of this Decision, should Respondent Borrego Community
7 Health discontinue business, Respondent Borrego Community Health may tender the premises
8 license to the Board for surrender. The Board or its designee shall have the discretion whether to
9 grant the request for surrender or take any other action it deems appropriate and reasonable.
10 Upon formal acceptance of the surrender of the license, Respondent Borrego Community Health
11 will no longer be subject to the terms and conditions of probation. Upon acceptance of the
12 surrender, Respondent Borrego Community Health shall relinquish the premises wall and renewal
13 license to the Board within ten (10) days of notification by the Board that the surrender is
14 accepted. Respondent Borrego Community Health shall further submit a completed
15 Discontinuance of Business form according to Board guidelines and shall notify the Board of the
16 records inventory transfer.

17 Respondent Borrego Community Health shall also, by the effective date of the surrender,
18 arrange for the continuation of care for ongoing patients of the pharmacy by, at minimum,
19 providing a written notice to ongoing patients that specifies the anticipated closing date of the
20 pharmacy and that identifies one or more area pharmacies capable of taking up the patients' care,
21 and by cooperating as may be necessary in the transfer of records or prescriptions for ongoing
22 patients. Within five days of its provision to the pharmacy's ongoing patients, Respondent
23 Borrego Community Health shall provide a copy of the written notice to the Board. For the
24 purposes of this provision, "ongoing patients" means those patients for whom the pharmacy has
25 on file a prescription with one or more refills outstanding, or for whom the pharmacy has filled a
26 prescription within the preceding sixty (60) days.

27 Respondent Borrego Community Health may not apply for any new licensure from the
28 Board for three (3) years from the effective date of the surrender. Respondent Borrego

1 Community Health shall meet all requirements applicable to the license sought as of the date the
2 application for that license is submitted to the Board. Respondent Borrego Community Health
3 further stipulates that it will reimburse the Board for its costs of investigation and prosecution
4 prior to the acceptance of the surrender.

5 **9. Notice to Employees**

6 Respondent Borrego Community Health shall, upon or before the effective date of this
7 Decision, ensure that all employees involved in permit operations are made aware of all the terms
8 and conditions of probation, either by posting a notice of the terms and conditions, circulating
9 such notice, or both. If the notice required by this provision is posted, it shall be posted in a
10 prominent place and shall remain posted throughout the probation period. Respondent Borrego
11 Community Health shall ensure that any employees hired or used after the effective date of this
12 Decision are made aware of the terms and conditions of probation by posting a notice, circulating
13 a notice, or both. Additionally, Respondent Borrego Community Health shall submit written
14 notification to the Board, within fifteen (15) days of the effective date of this Decision, that this
15 term has been satisfied. Failure to submit such notification to the Board shall be considered a
16 violation of probation.

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

20 **10. Notice to Employers**

21 During the period of probation, Respondent Newell shall notify all present and prospective
22 employers of the Decision in case number 5393 and the terms, conditions and restrictions
23 imposed on Respondent Newell by the Decision, as follows:

24 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
25 Respondent Newell undertaking any new employment, Respondent Newell shall cause her direct
26 supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during
27 respondent's tenure of employment) and owner to report to the Board in writing acknowledging
28 that the listed individual(s) has/have read the Decision in case number 5393, and terms and

1 conditions imposed thereby. It shall be Respondent Newell's responsibility to ensure that her
2 employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

3 If Respondent Newell works for or is employed by or through a pharmacy employment
4 service, Respondent Newell must notify her direct supervisor, pharmacist-in-charge, and owner at
5 every entity licensed by the Board of the terms and conditions of the Decision in case number
6 5393 in advance of the Respondent Newell commencing work at each licensed entity. A record
7 of this notification must be provided to the Board upon request.

8 Furthermore, within thirty (30) days of the effective date of this Decision, and within fifteen
9 (15) days of Respondent Newell undertaking any new employment by or through a pharmacy
10 employment service, Respondent Newell shall cause her direct supervisor with the pharmacy
11 employment service to report to the Board in writing acknowledging that she has read the
12 Decision in case number 5393 and the terms and conditions imposed thereby. It shall be
13 Respondent Newell's responsibility to ensure that her employer(s) and/or supervisor(s) submit
14 timely acknowledgment(s) to the Board.

15 Failure to timely notify present or prospective employer(s) or to cause that/those
16 employer(s) to submit timely acknowledgments to the Board shall be considered a violation of
17 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 **11. Owners and Officers: Knowledge of the Law**

23 Respondent Borrego Community Health shall provide, within thirty (30) days after the
24 effective date of this Decision, signed and dated statements from its owners, including any owner
25 or holder of ten percent (10%) or more of the interest in Respondent Borrego Community Health
26 or Respondent's stock, and any officer, stating under penalty of perjury that said individuals have
27 read and are familiar with state and federal laws and regulations governing the practice of
28 pharmacy. The failure to timely provide said statements under penalty of perjury shall be

1 considered a violation of probation.

2 **12. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as**
3 **Designated Representative-in-Charge, or Serving as a Consultant**

4 During the period of probation, Respondent Newell shall not supervise any intern
5 pharmacist, be the pharmacist-in-charge or designated representative-in-charge of any entity
6 licensed by the Board nor serve as a consultant unless otherwise specified in this order.
7 Assumption of any such unauthorized supervision responsibilities shall be considered a violation
8 of probation.

9 **13. Posted Notice of Probation**

10 Respondent Borrego Community Health shall prominently post a probation notice provided
11 by the Board in a place conspicuous and readable to the public. The probation notice shall remain
12 posted during the entire period of probation.

13 Respondent Borrego Community Health shall not, directly or indirectly, engage in any
14 conduct or make any statement which is intended to mislead or is likely to have the effect of
15 misleading any patient, customer, member of the public, or other person(s) as to the nature of and
16 reason for the probation of the licensed entity.

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

18 **14. Continuing Education**

19 Respondent Newell shall provide evidence of efforts to maintain skill and knowledge as a
20 pharmacist as directed by the Board or its designee.

21 **15. Notification of a Change in Name, Residence Address, Mailing Address or**
22 **Employment**

23 Respondent Newell shall notify the Board in writing within ten (10) days of any change of
24 employment. Said notification shall include the reasons for leaving, the address of the new
25 employer, the name of the supervisor and owner, and the work schedule if known. Respondent
26 Newell shall further notify the Board in writing within ten (10) days of a change in name,
27 residence address, mailing address, or phone number.

28

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

3 **16. Tolling of Probation**

4 Except during periods of suspension, Respondent Newell shall, at all times while on
5 probation, be employed as a pharmacist in California for a minimum of forty (40) hours per
6 calendar month. Any month during which this minimum is not met shall toll the period of
7 probation, i.e., the period of probation shall be extended by one month for each month during
8 which this minimum is not met. During any such period of tolling of probation, Respondent
9 Newell must nonetheless comply with all terms and conditions of probation.

10 Should Respondent Newell, regardless of residency, for any reason (including vacation)
11 cease practicing as a pharmacist for a minimum of forty (40) hours per calendar month in
12 California, Respondent Newell must notify the Board in writing within ten (10) days of the
13 cessation of practice, and must further notify the Board in writing within ten (10) days of the
14 resumption of practice. Any failure to provide such notification(s) shall be considered a violation
15 of probation.

16 It is a violation of probation for Respondent Newell's probation to remain tolled pursuant to
17 the provisions of this condition for a total period, counting consecutive and non-consecutive
18 months, exceeding thirty-six (36) months.

19 "Cessation of practice" means any calendar month during which respondent is
20 not practicing as a pharmacist for at least forty (40) hours, as defined by Business and
21 Professions Code section 4000 et seq. "Resumption of practice" means any calendar
22 month during which respondent is practicing as a pharmacist for at least forty (40)
23 hours as a pharmacist as defined by Business and Professions Code section 4000 et
24 seq.

25 **17. Remedial Education**

26 Within sixty days of the effective date of this Decision, Respondent Newell shall submit to
27 the Board or its designee, for prior approval, an appropriate program of remedial education
28 related to pharmacy management and recordkeeping of controlled substances. The program of

1 remedial education shall consist of at least ten (10) hours, which shall be completed within six (6)
2 months of the effective date of the Decision at Respondent Newell's own expense. All remedial
3 education shall be in addition to, and shall not be credited toward, continuing education (CE)
4 courses used for license renewal purposes.

5 Failure to timely submit or complete the approved remedial education shall be considered a
6 violation of probation. The period of probation will be automatically extended until such
7 remedial education is successfully completed and written proof, in a form acceptable to the
8 Board, is provided to the Board or its designee.

9 Following the completion of each course, the Board or its designee may require the
10 respondent, at her own expense, to take an approved examination to test the Respondent Newell's
11 knowledge of the course. If the Respondent Newell does not achieve a passing score on the
12 examination, this failure shall be considered a violation of probation. Any such examination
13 failure shall require respondent to take another course approved by the Board in the same subject
14 area.

15 **18. Violation of Probation**

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

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

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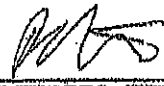
19. Completion of Probation

Upon written notice by the Board or its designee indicating successful completion of probation, Respondents' license will be fully restored.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Robert Frank, Esq. I understand the stipulation and the effect it will have on Pharmacy Permit No. PHY 48254. 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: 05/21/15



BRUCE HEBETS, CHIEF EXECUTIVE OFFICER on behalf of BORREGO COMMUNITY HEALTH FOUNDATION Respondent

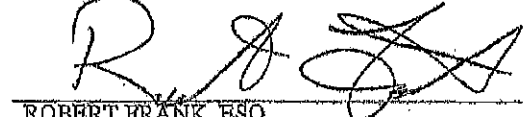
I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Robert Frank, Esq. I understand the stipulation and the effect it will have on Pharmacist License No. RPH 29746. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 5/21/15


ELIZABETH MARIE NEWELL Respondent

I have read and fully discussed with Respondent Borrego Community Health Foundation and Respondent Elizabeth Marie Newell the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 6-1-15


ROBERT FRANK, ESQ.
Attorney 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: 6/2/2015

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General

Nicole R Trama
NICOLE R. TRAMA
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 5393

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Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 NICOLE R. TRAMA
Deputy Attorney General
4 State Bar No. 263607
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7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:
12 **BORREGO COMMUNITY HEALTH**
FOUNDATION
13 **655 Palm Canyon Drive, Suite B**
Borrego Springs, CA 92004
14 **Pharmacy Permit No. PHY 48254**
15 **and**
16 **ELIZABETH MARIE NEWELL**
17 **9777 Cmto Doha**
San Diego, CA 92131
18 **Pharmacist License No. RPH 29746**
19
20 Respondents.

Case No. 5393

ACCUSATION

21 Complainant alleges:

22 **PARTIES**

- 23 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
24 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs;
- 25 2. On or about November 13, 2006, the Board of Pharmacy issued Pharmacy Permit
26 Number PHY 48254 to Borrego Community Health Foundation (Respondent). The Pharmacy
27 Permit was in full force and effect at all times relevant to the charges brought herein and will
28 expire on November 1, 2015, unless renewed.

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

....

10. Health and Safety Code section 11165 states in pertinent part:¹

(a) To assist law enforcement and regulatory agencies in their efforts to control the diversion and resultant abuse of Schedule II, Schedule III, and Schedule IV controlled substances, and for statistical analysis, education, and research, the Department of Justice shall, contingent upon the availability of adequate funds from the Contingent Fund of the Medical Board of California, the Pharmacy Board Contingent Fund, the State Dentistry Fund, the Board of Registered Nursing Fund, and the Osteopathic Medical Board of California Contingent Fund, maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of, and Internet access to information regarding, the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances by all practitioners authorized to prescribe or dispense these controlled substances.

....

(d) For each prescription for a Schedule II, Schedule III, or Schedule IV controlled substance, as defined in the controlled substances schedules in federal law and regulations, specifically Sections 1308.12, 1308.13, and 1308.14, respectively, of Title 21 of the Code of Federal Regulations, the dispensing pharmacy or clinic shall provide the following information to the Department of Justice on a weekly basis and in a format specified by the Department of Justice:

(1) Full name, address, and the telephone number of the ultimate user or research subject, or contact information as determined by the Secretary of the United States Department of Health and Human Services, and the gender, and date of birth of the ultimate user.

¹ This version of Health and Safety Code section 11165 was in operation until December 31, 2013 and required the dispenser to report to the Department of Justice controlled substances dispensed to the patient on "a weekly basis." Effective January 1, 2014, Health and Safety Code section 11165 was amended to require the dispenser to report to the Department of Justice "as soon as reasonably possible, but not more than seven days after the date a controlled substance is dispensed," among other changes. Since the transactions at issue in this matter cover the period of October 2013 to October 2014, both versions of the Health and Safety Code appear in the instant Accusation.

1 (2) The prescriber's category of licensure and license number; federal
2 controlled substance registration number; and the state medical license number of
3 any prescriber using the federal controlled substance registration number of a
4 government-exempt facility.

5 (3) Pharmacy prescription number, license number, and federal controlled
6 substance registration number.

7 (4) NDC (National Drug Code) number of the controlled substance
8 dispensed.

9 (5) Quantity of the controlled substance dispensed.

10 (6) ICD-9 (diagnosis code), if available.

11 (7) Number of refills ordered.

12 (8) Whether the drug was dispensed as a refill of a prescription or as a first-
13 time request.

14 (9) Date of origin of the prescription.

15 (10) Date of dispensing of the prescription.

16

17 11. Health and Safety Code section 11165 states in pertinent part:²

18 (a) To assist health care practitioners in their efforts to ensure appropriate
19 prescribing, ordering, administering, furnishing, and dispensing of controlled
20 substances, law enforcement and regulatory agencies in their efforts to control the
21 diversion and resultant abuse of Schedule II, Schedule III, and Schedule IV
22 controlled substances, and for statistical analysis, education, and research, the
23 Department of Justice shall, contingent upon the availability of adequate funds in
24 the CURES Fund, maintain the Controlled Substance Utilization Review and
25 Evaluation System (CURES) for the electronic monitoring of, and Internet access
26 to information regarding, the prescribing and dispensing of Schedule II, Schedule
27 III, and Schedule IV controlled substances by all practitioners authorized to
28 prescribe, order, administer, furnish, or dispense these controlled substances.

.....

24 (d) For each prescription for a Schedule II, Schedule III, or Schedule IV
25 controlled substance, as defined in the controlled substances schedules in federal
26 law and regulations, specifically Sections 1308.12, 1308.13, and 1308.14,
27 respectively, of Title 21 of the Code of Federal Regulations, the dispensing
28 pharmacy, clinic, or other dispenser shall report the following information to the

² As referenced in footnote 1, this version of Health and Safety Code section 11165 became effective January 1, 2014.

1 Department of Justice as soon as reasonably possible, but not more than seven
2 days after the date a controlled substance is dispensed, in a format specified by the
Department of Justice:

3 (1) Full name, address, and, if available, telephone number of the ultimate
4 user or research subject, or contact information as determined by the Secretary of
the United States Department of Health and Human Services, and the gender, and
5 date of birth of the ultimate user.

6 (2) The prescriber's category of licensure, license number, national provider
7 identifier (NPI) number, if applicable, the federal controlled substance registration
number, and the state medical license number of any prescriber using the federal
8 controlled substance registration number of a government-exempt facility.

9 (3) Pharmacy prescription number, license number, NPI number, and federal
controlled substance registration number.

10 (4) National Drug Code (NDC) number of the controlled substance
11 dispensed.

12 (5) Quantity of the controlled substance dispensed.

13 (6) International Statistical Classification of Diseases, 9th revision (ICD-9)
14 or 10th revision (ICD-10) Code, if available.

15 (7) Number of refills ordered.

16 (8) Whether the drug was dispensed as a refill of a prescription or as a first-
time request.

17 (9) Date of origin of the prescription.

18 (10) Date of dispensing of the prescription.

19

20 COST RECOVERY

21 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
22 administrative law judge to direct a licentiate found to have committed a violation or violations of
23 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
24 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
25 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
26 included in a stipulated settlement.

1 **FACTUAL ALLEGATIONS**

2 13. At all times mentioned herein and since August 22, 2011, Elizabeth Newell
3 (Respondent Newell), has been the Pharmacist-in-Charge (PIC) of Borrego Community Health
4 Foundation (Respondent Pharmacy) located in Borrego Springs, California.

5 14. From October 2013 to October 2014, Respondents did not report the controlled
6 substances they dispensed to customers to the Department of Justice (DOJ) CURES system. On
7 October 28, 2014, Respondent Newell admitted to a Board inspector that Respondents did not
8 report dispensed controlled substances to the DOJ CURES system on a weekly basis. Respondent
9 Newell was instructed by the inspector to report all CURES data from October 2013.
10 Respondents' CURES data for October 2013 to October 2014 was transmitted to the DOJ in
11 November 2014.

12 **CAUSE FOR DISCIPLINE**

13 **(Failure to Report to CURES)**

14 15. Respondents are subject to disciplinary action under Code sections 4301, subdivisions
15 (j) and (o), for violating Health and Safety Code section 11165 for failing to transmit CURES
16 data from October 2013 to October 2014, as set forth in paragraphs 13 and 14, which are
17 incorporated herein by reference.

18 **PRAYER**

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

21 1. Revoking or suspending Pharmacy Permit Number PHY 48254, issued to Borrego
22 Community Health Foundation;

23 2. Revoking or suspending Pharmacist License Number PRH 29746, issued to Elizabeth
24 Marie Newell;

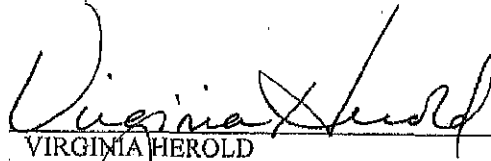
25 3. Ordering Respondents to pay the Board of Pharmacy the reasonable costs of the
26 investigation and enforcement of this case, pursuant to Business and Professions Code section
27 125.3;

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

DATED:

3/16/15



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

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