

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

In the Matter of the Accusation Against:

**CVS PHARMACY #6772  
4987 N. Fresno Street  
Fresno, California 93726**

**Original Permit Number No. PHY 50119,**

**and**

**KATHRYN MACY STOLTZ  
247 Delmont Avenue  
Louisville, KY 40206**

**Original Pharmacist License No. RPH 68379**

Respondents.

Case No. 5563

OAH No. 2016041039

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER [CVS  
PHARMACY #6772 ONLY]**

**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 at 5:00 p.m. on October 28, 2016.

It is so ORDERED on September 28, 2016.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
Amy Gutierrez, Pharm.D.  
Board President

1 KAMALA D. HARRIS  
Attorney General of California  
2 KENT D. HARRIS  
Supervising Deputy Attorney General  
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8  
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**BOARD OF PHARMACY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

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14 **Fresno, California 93726**

15 **Original Permit Number No. PHY 50119,**  
16 **and**

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**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER [CVS  
PHARMACY #6772 ONLY]**

21  
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 Phillip L. Arthur, 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. Respondent CVS voluntarily, knowingly, and intelligently waives and gives up each  
4 and every right set forth above.

5 CULPABILITY

6 10. Respondent CVS admits the truth of each and every charge and allegation in  
7 Accusation No. 5563.

8 11. Respondent CVS agrees that its Original Permit Number is subject to discipline and  
9 they agree to be bound by the Board's probationary terms as set forth in the Disciplinary Order  
10 below.

11 CONTINGENCY

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

22 13. The parties understand and agree that Portable Document Format (PDF), electronic,  
23 and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF,  
24 electronic, and facsimile 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 Original Permit Number PHY 50119 issued to Respondent  
8 CVS Pharmacy #6772 is revoked. However, the revocation is stayed and Respondent CVS is  
9 placed on probation for four (4) years on the following terms and conditions.

10 **1. Obey All Laws**

11 Respondent CVS shall obey all state and federal laws and regulations.

12 Respondent CVS shall report any of the following occurrences to the Board, in writing,  
13 within seventy-two (72) hours of such occurrence:

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

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

25 **2. Report to the Board**

26 Respondent CVS shall report to the Board quarterly, on a schedule as directed by the Board  
27 or its designee. The report shall be made either in person or in writing, as directed. Among other  
28 requirements, Respondent CVS shall state in each report under penalty of perjury whether there

1 has been compliance with all the terms and conditions of probation. Failure to submit timely  
2 reports in a form as directed shall be considered a violation of probation. Any period(s) of  
3 delinquency in submission of reports as directed may be added to the total period of probation.  
4 Moreover, if the final probation report is not made as directed, probation shall be automatically  
5 extended until such time as the final report is made and accepted by the Board.

6 **3. Interview with the Board**

7 Upon receipt of reasonable prior notice, Respondent CVS shall appear in person for  
8 interviews with the Board or its designee, at such intervals and locations as are determined by the  
9 Board or its designee. Failure to appear for any scheduled interview without prior notification to  
10 Board staff, or failure to appear for two (2) or more scheduled interviews with the Board or its  
11 designee during the period of probation, shall be considered a violation of probation.

12 **4. Cooperate with Board Staff**

13 Respondent CVS shall cooperate with the Board's inspection program and with the Board's  
14 monitoring and investigation of Respondent CVS's compliance with the terms and conditions of  
15 their probation. Failure to cooperate shall be considered a violation of probation.

16 **5. Reimbursement of Board Costs**

17 As a condition precedent to successful completion of probation, Respondent CVS shall pay  
18 to the Board its costs of investigation and prosecution in the amount of \$2,734.00 Respondent  
19 CVS shall be permitted to pay these costs in a payment plan approved by the Board. There shall  
20 be no deviation from this schedule absent prior written approval by the Board or its designee.  
21 Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

22 The filing of bankruptcy by Respondent CVS shall not relieve Respondent CVS of their  
23 responsibility to reimburse the Board its costs of investigation and prosecution.

24 **6. Probation Monitoring Costs**

25 Respondent CVS shall pay any costs associated with probation monitoring as determined  
26 by the Board each and every year of probation. Such costs shall be payable to the Board on a  
27 schedule as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as  
28 directed shall be considered a violation of probation.

1           **7. Status of License**

2           Respondent CVS shall, at all times while on probation, maintain current licensure with the  
3 Board. If Respondent CVS submits an application to the Board, and the application is approved,  
4 for a change of location, change of permit or change of ownership, the Board shall retain  
5 continuing jurisdiction over the license, and Respondent CVS shall remain on probation as  
6 determined by the Board. Failure to maintain current licensure shall be considered a violation of  
7 probation.

8           If Respondent CVS's license expires or is cancelled by operation of law or otherwise at any  
9 time during the period of probation, including any extensions thereof or otherwise, upon renewal  
10 or reapplication Respondent CVS's license shall be subject to all terms and conditions of this  
11 probation not previously satisfied.

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

13           Following the effective date of this Decision, should Respondent CVS discontinue  
14 business, Respondent CVS may tender the original permit to the Board for surrender. The Board  
15 or its designee shall have the discretion whether to grant the request for surrender or take any  
16 other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the  
17 license, Respondent CVS will no longer be subject to the terms and conditions of probation.

18           Upon acceptance of the surrender, Respondent CVS shall relinquish the original permit  
19 wall and renewal license to the Board within ten (10) days of notification by the Board that the  
20 surrender is accepted. Respondent CVS shall further submit a completed Discontinuance of  
21 Business form according to Board guidelines and shall notify the Board of the records inventory  
22 transfer.

23           Respondent CVS shall also, by the effective date of this Decision, arrange for the  
24 continuation of care for ongoing patients of the pharmacy by, at minimum, providing a written  
25 notice to ongoing patients that specifies the anticipated closing date of the pharmacy and that  
26 identifies one or more area pharmacies capable of taking up the patients' care, and by cooperating  
27 as may be necessary in the transfer of records or prescriptions for ongoing patients. Within five  
28 days of its provision to the pharmacy's ongoing patients, Respondent CVS shall provide a copy of

1 the written notice to the Board. For the purposes of this provision, "ongoing patients" means  
2 those patients for whom the pharmacy has on file a prescription with one or more refills  
3 outstanding, or for whom the pharmacy has filled a prescription within the preceding sixty (60)  
4 days.

5 Respondent CVS may not apply for any new licensure from the Board for three (3) years  
6 from the effective date of the surrender. Respondent CVS shall meet all requirements applicable  
7 to the license sought as of the date the application for that license is submitted to the Board.

8 Respondent CVS further stipulates that it shall reimburse the board for its costs of  
9 investigation and prosecution prior to the acceptance of the surrender.

10 **9. Notice to Employees**

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

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

24 **10. Owners and Officers: Knowledge of the Law**

25 Respondent CVS shall provide, within thirty (30) days after the effective date of this  
26 Decision, signed and dated statement(s) from its authorized agent stating under penalty of perjury  
27 that said individual(s) has read and is familiar with state and federal laws and regulations  
28 governing the practice of pharmacy. The failure to timely provide said statement(s) under penalty



1 of perjury shall be considered a violation of probation.

2 **11. Posted Notice of Probation**

3 Respondent CVS shall prominently post a probation notice provided by the Board in a place  
4 conspicuous and readable to the public. The probation notice shall remain posted during the  
5 entire period of probation.

6 Respondent CVS shall not, directly or indirectly, engage in any conduct or make any  
7 statement which is intended to mislead or is likely to have the effect of misleading any patient,  
8 customer, member of the public, or other person(s) as to the nature of and reason for the probation  
9 of the licensed entity.

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

11 **12. Violation of Probation**

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

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

24 **13. Completion of Probation**

25 Upon written notice by the Board or its designee indicating successful completion of  
26 probation, Respondent CVS's license will be fully restored.

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14. Community Services Program

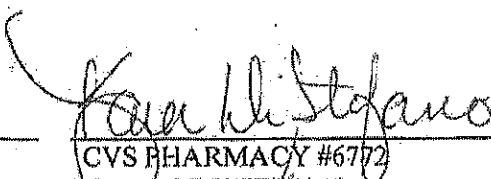
Within sixty (60) days of the effective date of this Decision, Respondent CVS shall submit to the Board or its designee, for prior approval, a community service program in which Respondent CVS shall provide free health-care related services to a community or charitable facility or agency equivalent to \$10,000 in sharp return canisters, drug take back packages, and immunizations.

Within thirty (30) days of Board approval thereof, Respondent CVS shall submit documentation to the Board demonstrating commencement of the community service program. Respondent CVS shall report on progress with the community service program in the quarterly reports.

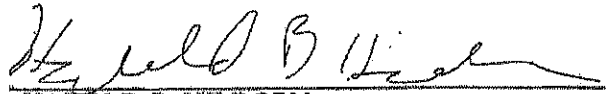
Failure to timely submit, commence, or comply with the program shall be considered a violation of probation.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Harold B. Hilborn. I understand the stipulation and the effect it will have on my Original Permit Number. 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: 8/19/16  
  
CVS PHARMACY #6772  
KAREN DISTEFANO  
DIRECTOR OF REGULATORY AFFAIRS  
Respondent

I have read and fully discussed with Respondent CVS Pharmacy #6772 the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 8/19/16  
  
HAROLD B. HILBORN  
Attorney for Respondent CVS

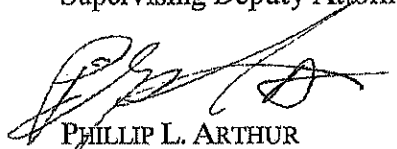
ENDORSEMENT

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

Dated: 8/19/16

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
KENT D. HARRIS  
Supervising Deputy Attorney General



PHILLIP L. ARTHUR  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**Accusation No. 5563**

1 KAMALA D. HARRIS  
Attorney General of California  
2 KENT D. HARRIS  
Supervising Deputy Attorney General  
3 PHILLIP L. ARTHUR  
Deputy Attorney General  
4 State Bar No. 238339  
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7 E-mail: Phillip.Arthur@doj.ca.gov  
*Attorneys for Complainant*

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10 **DEPARTMENT OF CONSUMER AFFAIRS**  
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11 In the Matter of the Accusation Against:

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12 **CVS PHARMACY #6772**  
13 **4987 N. Fresno Street**  
14 **Fresno, California 93726**

**ACCUSATION**

15 **Original Permit Number No. PHY 50119,**

16 **and**

17 **KATHRYN MACY STOLTZ**  
18 **2917 English Ave.**  
**Louisville, KY 40206**

19 **Original Pharmacist License No. RPH 68379**

20 **Respondents.**

21  
22 **Complainant alleges:**

23 **PARTIES**

- 24 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
25 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 26 2. On or about September 24, 2009, the Board of Pharmacy issued Original Permit  
27 Number PHY 50119 to CVS Pharmacy #6772 (Respondent CVS). The Original Permit Number  
28

1 was in full force and effect at all times relevant to the charges brought herein and will expire on  
2 June 1, 2016, unless renewed.

3 3. On or about October 22, 2012, the Board of Pharmacy issued Original Pharmacist  
4 License Number RPH 68379 to Kathryn Macy Stoltz (Respondent Stoltz). The Original  
5 Pharmacist License was in full force and effect at all times relevant to the charges brought herein  
6 and will expire on April 30, 2016, unless renewed.

7 **JURISDICTION**

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

11 5. Section 4300 of the Code states, in pertinent part:

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

13 6. Section 4300.1 of the Code states:

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

19 **BUSINESS AND PROFESSIONS CODE**

20 7. Section 4022 of the Code states:

21 "Dangerous drug" or "dangerous device" means any drug or device unsafe for self use in  
22 humans or animals, and includes the following:

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

25 "(b) Any device that bears the statement: "Caution: federal law restricts this device to sale  
26 by or on the order of a \_\_\_\_\_," "Rx only," or words of similar import, the blank to be filled  
27 in with the designation of the practitioner licensed to use or order use of the device.

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1 COST RECOVERY

2 10. Section 125.3 of the Code states, 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 CONTROLLED SUBSTANCE

7 11. "Hydrocodone w/APAP" (hydrocodone with acetaminophen tablets) is a  
8 semisynthetic narcotic analgesic, a dangerous drug as defined in Code section 4022, a Schedule II  
9 controlled substance and narcotic as defined by section 11055(b)(1)(I) of the Health and Safety  
10 Code, and a Schedule II controlled substance as defined by section 1308.12(b)(1)(vii) of Title 21  
11 of the Code of Federal Regulations.

12 BACKGROUND

13 **Controlled Substance Losses**

14 12. From May 1 through September 19, 2013, Respondent CVS reported a loss of 15,360  
15 tablets of hydrocodone/apap 10/325mg. This audit was conducted on September 19, 2013.

16 13. From May 1 through October 17, 2013, Respondent CVS reported a loss of 16,675  
17 tablets of hydrocodone/apap 10/325mg, resulting in an increase in loss of 1,315 tablets between  
18 September 19 and October 17, 2013. There was no explanation provided for the loss. This audit  
19 was conducted on October 17, 2013.

20 14. On or about October 25, 2013, the Board received notification from Respondent CVS  
21 of a loss of 11,945 tablets of hydrocodone/apap 10/325mg. The notification indicated the loss  
22 occurred on September 26, 2013.

23 **Pharmacists-in-Charge**

24 15. On or about October 23, 2014, Inspectors J. F. and K. R-P. inspected Respondent  
25 CVS. The Inspectors discovered that CVS had no active pharmacist-in-charge. Former  
26 Pharmacist-in-Charge Inouye dissociated on June 27, 2014. Later that day, Inspector K. R-P.  
27 received a change of pharmacist-in-charge form, indicating that an individual named Dodd would  
28 replace Inouye as pharmacist-in-charge at CVS.



1 16. The Board's records for Respondent CVS reflect that Inouye dissociated as  
2 pharmacist-in-charge on June 27, 2014, and Dodd became pharmacist-in-charge on October 23,  
3 2014.

4 17. The Board's records for Respondent CVS also reflect that Respondent Stoltz was the  
5 pharmacist-in-charge from April 14 through August 23, 2013.

6 **RESPONDENT CVS**

7 **FIRST CAUSE FOR DISCIPLINE**

8 **(Failure to Safely Secure Facilities, Space, Fixtures, and Equipment)**

9 18. Respondent CVS is subject to disciplinary action under California Code of  
10 Regulations, title 16, section 1714(b), in that from on or about May 1 through October 25, 2013,  
11 CVS' facilities, space, fixtures, and equipment were not maintained so that drugs were safely and  
12 properly maintained, secured, and distributed. The circumstances are described with more  
13 particularity in paragraphs 12-14, above.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Failure to Notify the Board of Change in Pharmacist-in-Charge)**

16 19. Respondent CVS is subject to disciplinary action under section 4113(a) and (d) of the  
17 Code in that from June 27 through October 23, 2014, CVS operated without a designated  
18 pharmacist-in-charge. The circumstances are described with more particularity in paragraphs 15-  
19 17, above.

20 **RESPONDENT STOLTZ**

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Failure to Ensure Security of the Prescription Department)**

23 20. Respondent Stoltz is subject to disciplinary action under California Code of  
24 Regulations, title 16, section 1714(d), in that while serving as the pharmacist-in-charge for  
25 Respondent CVS, from April 14 through August 23, 2013, Stoltz failed to provide for effective  
26 control against theft or diversion of dangerous drugs and devices. The circumstances are  
27 described with more particularity in paragraphs 15-17, above.

28 ///

1 DISCIPLINE CONSIDERATIONS

2 21. To determine the degree of discipline, if any, to be imposed on Respondent CVS,  
3 Complainant alleges that on or about May 13, 2014, in a prior action, the Board of Pharmacy  
4 issued Citation Number CI 2013 58716 based upon CVS' violation of California Code of  
5 Regulations, title 16, section 1716 (variation from prescription), when CVS dispensed prednisone  
6 50mg tablets in a bottle labeled and prescribed as primidone 50mg without prior consent of the  
7 prescriber. That Citation is now final and is incorporated by reference as if fully set forth.

8 PRAYER

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

- 11 1. Revoking or suspending Original Permit Number PHY 50119, issued to CVS  
12 Pharmacy #6772;
- 13 2. Revoking or suspending Original Pharmacist License Number RPH 68379, issued to  
14 Kathryn Macy Stoltz;
- 15 3. Ordering CVS Pharmacy #6722 and Kathryn Macy Stoltz to pay the Board of  
16 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to  
17 Business and Professions Code section 125.3; and
- 18 4. Taking such other and further action as deemed necessary and proper.
- 19  
20  
21

22 DATED: \_\_\_\_\_

3/18/16

*Virginia Herold*

23 VIRGINIA HEROLD  
24 Executive Officer  
25 Board of Pharmacy  
26 Department of Consumer Affairs  
27 State of California  
28 Complainant

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