

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

In the Matter of the Accusation Against:

**VALLEY VIEW REXALL DRUGS INC.,
DBA VALLEY VIEW REXALL DRUGS,
DAVID MICHAEL JENSEN, PRESIDENT,
Pharmacy Permit No. PHY 9951;**

and

**DAVID MICHAEL JENSEN,
Pharmacist License No. RPH 30338;**

and

**VIVIAN JAO HERRERA,
Pharmacist License No. RPH 44484,**

Respondents.

Agency Case No. 6839

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on February 24, 2022.

It is so ORDERED on January 25, 2022.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Seung W. Oh". The signature is written in a cursive style with a large initial "S" and "O".

Seung W. Oh, Pharm.D.
Board President

1 ROB BONTA
Attorney General of California
2 KIM KASRELIOVICH
Supervising Deputy Attorney General
3 GILLIAN E. FRIEDMAN
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E-mail: Gillian.Friedman@doj.ca.gov
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:
13 **VALLEY VIEW REXALL DRUGS INC.**
14 **DBA VALLEY VIEW REXALL DRUGS,**
15 **DAVID MICHEL JENSEN, PRESIDENT**
12966 Valley View Street
La Mirada, CA 90638

16 Permit No. PHY 9951,

17 **DAVID MICHAEL JENSEN**
8433 Seranata Drive
18 Whittier, CA 90603

19 Pharmacist License No. RPH 30338

20 and

21 **VIVIAN JAO HERRERA**
2785 Russell Place
22 Anaheim, CA 92801

23 Pharmacist License No. RPH 44484
24

25 **Respondents**

Case No. 6839

**STIPULATED SURRENDER OF
LICENSE AND ORDER AS TO:**

**(1) VALLEY VIEW REXALL DRUGS
INC. DBA VALLEY VIEW REXALL
DRUGS AND (2) DAVID MICHAEL
JENSEN**

26
27 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
28 entitled proceedings that the following matters are true:

1 **PARTIES**

2 1. Anne Sodergren (Complainant) is the Executive Officer of the Board of Pharmacy
3 (Board). She brought this action solely in her official capacity and is represented in this matter by
4 Rob Bonta, Attorney General of the State of California, by Gillian E. Friedman, Deputy Attorney
5 General.

6 2. Valley View Rexall Drugs Inc. dba Valley View Rexall Drugs with David Michael
7 Jensen as its president and owner and David Michael Jensen, individually, are represented in this
8 proceeding by attorney Nicole R. Van Dyk, Esq. of Bird, Marella, Boxer, Wolpert, Nessim,
9 Drooks, Lincenberg & Rhow, P.C., whose address is: 1875 Century Park East, 23rd Floor, Los
10 Angeles, California 90067-2561.

11 3. On or about October 15, 1986, the Board of Pharmacy issued Permit Number PHY
12 9951 to Valley View Rexall Drugs Inc. dba Valley View Rexall Drugs with David Michael
13 Jensen as its president and owner (Respondent Pharmacy). The Permit was in full force and
14 effect at all times relevant to the charges brought herein. The Permit expired on October 1, 2020
15 and has not been renewed..

16 4. On or about June 30, 1976, the Board of Pharmacy issued Pharmacist License
17 Number RPH 30338 to David Michael Jensen (Respondent Jensen). The Pharmacist License
18 expired on December 31, 2018, and has not been renewed.

19 **JURISDICTION**

20 5. Accusation No. 6839 was filed before the Board, and is currently pending against
21 Respondents Pharmacy and Jensen. The Accusation and all other statutorily required documents
22 were properly served on Respondents Pharmacy and Jensen on September 16, 2020. Respondents
23 Pharmacy and Jensen timely filed their Notice of Defense contesting the Accusation. A copy of
24 Accusation No. 6839 is attached as Exhibit A and incorporated by reference.

25 **ADVISEMENT AND WAIVERS**

26 6. Respondents Pharmacy and Jensen have carefully read, fully discussed with counsel,
27 and understands the charges and allegations in Accusation No. 6839. Respondents Pharmacy and
28

1 Jensen also have carefully read, fully discussed with counsel, and understand the effects of this
2 Stipulated Surrender of License and Order.

3 7. Respondents Pharmacy and Jensen are fully aware of their legal rights in this matter,
4 including the right to a hearing on the charges and allegations in the Accusation; the right to
5 confront and cross-examine the witnesses against them; the right to present evidence and to
6 testify on its own behalf; the right to the issuance of subpoenas to compel the attendance of
7 witnesses and the production of documents; the right to reconsideration and court review of an
8 adverse decision; and all other rights accorded by the California Administrative Procedure Act
9 and other applicable laws.

10 8. Respondents Pharmacy and Jensen voluntarily, knowingly, and intelligently waive
11 and give up each and every right set forth above.

12 CULPABILITY

13 9. Respondents Pharmacy and Jensen understand that the charges and allegations in
14 Accusation No. 6839, if proven at a hearing, constitute cause for imposing discipline upon their
15 pharmacy permit and pharmacist license, respectively.

16 10. For the purpose of resolving the Accusation without the expense and uncertainty of
17 further proceedings, Respondents Pharmacy and Jensen agree that, at a hearing, Complainant
18 could establish a prima facie case or factual basis for the charges in the Accusation and that those
19 charges constitute cause for discipline. Respondents Pharmacy and Jensen hereby give up their
20 right to contest that cause for discipline exists based on those charges.

21 11. Respondents Pharmacy and Jensen understand that by signing this stipulation they
22 enable the Board to issue an order accepting the surrender of their Permit and Pharmacy License,
23 respectively, without further process.

24 CONTINGENCY

25 12. This stipulation shall be subject to approval by the Board. Respondents Pharmacy
26 and Jensen understand and agree that counsel for Complainant and the staff of the Board may
27 communicate directly with the Board regarding this stipulation and surrender, without notice to or
28 participation by Respondents Pharmacy and Jensen or their counsel. By signing the stipulation,

1 Respondents Pharmacy and Jensen understand and agree that they may not withdraw their
2 agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it.
3 If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and
4 Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible
5 in any legal action between the parties, and the Board shall not be disqualified from further action
6 by having considered this matter.

7 13. The parties understand and agree that Portable Document Format (PDF) and facsimile
8 copies of this Stipulated Surrender of License and Order, including PDF and facsimile signatures
9 thereto, shall have the same force and effect as the originals.

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

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

18 **ORDER**

19 IT IS HEREBY ORDERED that Permit No. PHY 9951 issued to Valley View Rexall Drugs
20 Inc. dba Valley View Rexall Drugs with David Michael Jensen as its president and owner is
21 surrendered and accepted by the Board.

22 IT IS FURTHER ORDERED that Pharmacist License Number RPH 30338 issued to David
23 Michael Jensen is surrendered and accepted by the Board

24 1. The surrender of Respondents Pharmacy Permit and Pharmacist License and the
25 acceptance of the surrendered licenses by the Board shall constitute the imposition of discipline
26 against Respondents Pharmacy and Jensen. This stipulation constitutes a record of the discipline
27 and shall become a part of Respondents Pharmacy and Jensen's license history with the Board.
28

1 knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of
2 Pharmacy.

3 DATED: _____
4 David Michael Jensen as President and owner
5 Valley View Rexall Drugs Inc.
6 dba Valley View Rexall Drugs
7 *Respondent*

8 I have carefully read the above Stipulated Surrender of License and Order and have fully
9 discussed it with my attorney Nicole R. Van Dyk, Esq. of Bird, Marella, Boxer, Wolpert, Nessim,
10 Drooks, Lincenberg & Rhow, P.C.. I understand the stipulation and the effect it will have on my
11 Pharmacist License. I enter into this Stipulated Surrender of License and Order voluntarily,
12 knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of
13 Pharmacy.

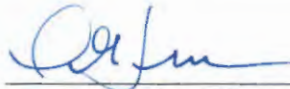
14 DATED: _____
15 David Michael Jensen
16 *Respondent*

17
18
19 I have read and fully discussed with respondents Valley View Rexall Drugs Inc. dba Valley
20 View Rexall Drugs with David Michael Jensen as its president and owner and David Michael
21 Jensen, individually, the terms and conditions and other matters contained in this Stipulated
22 Surrender of License and Order. I approve its form and content.

23
24 DATED: _____
25 Nicole R. Van Dyk, Esq.
26 Bird, Marella, Boxer, Wolpert, Nessim,
27 Drooks, Lincenberg & Rhow, P.C.,
28 *Attorney for Respondent*

1 knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of
2 Pharmacy.

3 DATED: 12/1/2021



4 David Michael Jensen as President and owner
5 Valley View Rexall Drugs Inc.
6 dba Valley View Rexall Drugs
7 Respondent

8 I have carefully read the above Stipulated Surrender of License and Order and have fully
9 discussed it with my attorney Nicole R. Van Dyk, Esq. of Bird, Marella, Boxer, Wolpert, Nessim,
10 Dooks, Lincenberg & Rhow, P.C.. I understand the stipulation and the effect it will have on my
11 Pharmacist License. I enter into this Stipulated Surrender of License and Order voluntarily,
12 knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of
13 Pharmacy.

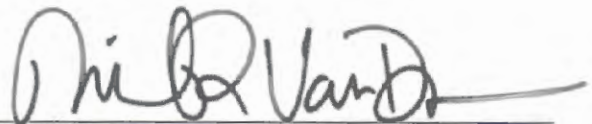
14 DATED: 12/1/2021



15 David Michael Jensen
16 Respondent

17
18
19 I have read and fully discussed with respondents Valley View Rexall Drugs Inc. dba Valley
20 View Rexall Drugs with David Michael Jensen as its president and owner and David Michael
21 Jensen, individually, the terms and conditions and other matters contained in this Stipulated
22 Surrender of License and Order. I approve its form and content.

23
24 DATED: 12/9/21



25 Nicole R. Van Dyk, Esq.
26 Bird, Marella, Boxer, Wolpert, Nessim,
27 Dooks, Lincenberg & Rhow, P.C.,
28 Attorney for Respondent

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ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

DATED: _____

Respectfully submitted,

MATTHEW RODRIQUEZ
Acting Attorney General of California
MARICHELLE TAHIMIC
Supervising Deputy Attorney General

GILLIAN E. FRIEDMAN
Deputy Attorney General
Attorneys for Complainant

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ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

DATED: 12/9/21

Respectfully submitted,

ROB BONTA
Attorney General of California
KIM KASRELIOVICH
Supervising Deputy Attorney General



GILLIAN E. FRIEDMAN
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 6839

1 XAVIER BECERRA
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 GILLIAN E. FRIEDMAN
Deputy Attorney General
4 State Bar No. 169207
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 269-6294
6 Facsimile: (916) 731-2126
Attorneys for Complainant
7

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

12 In the Matter of the Accusation Against:
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12966 Valley View Street
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16 Permit No. PHY 9951,

17 **DAVID MICHAEL JENSEN**
8433 Seranata Drive
18 Whittier, CA 90603

19 Pharmacist License No. RPH 30338

20 and

21 **VIVIAN JAO HERRERA**
2785 Russell Place
22 Anaheim, CA 92801

23 Pharmacist License No. RPH 44484

24 **Respondents**
25

Case No. 6839

ACCUSATION

1 **PARTIES**

2 1. Anne Sodergren (Complainant) brings this Accusation solely in her official capacity
3 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

4 2. On or about October 15, 1986, the Board of Pharmacy issued Permit Number PHY
5 9951 to Valley View Rexall Drugs Inc. dba Valley View Rexall Drugs with David Michael
6 Jensen as President and 100% owner (Respondent Pharmacy). The Permit was in full force and
7 effect at all times relevant to the charges brought herein and will expire on October 1, 2020,
8 unless renewed.

9 3. On or about August 9, 1991, the Board of Pharmacy issued Pharmacist License
10 Number RPH 44484 to Vivian Jao Herrera (Respondent Herrera). Respondent Herrera was the
11 Pharmacist in Charge of Respondent Valley View Rexall Drugs from July 23, 2012 through April
12 1, 2015. The Pharmacist License expired on October 31, 2018 and has not been renewed.

13 4. On or about June 30, 1976, the Board of Pharmacy issued Pharmacist License
14 Number RPH 30338 to David Michael Jensen (Respondent Jensen). The Pharmacist License
15 expired on December 31, 2018, and has not been renewed.

16 **JURISDICTION**

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

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

24 **STATUTORY PROVISIONS**

25 7. Section 490 provides that a board may suspend or revoke a license on the ground that
26 the licensee has been convicted of a crime substantially related to the qualifications, functions, or
27 duties of the business or profession for which the license was issued.

28 8. Section 650 subdivision (a) states:

1 “(a) Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of
2 the Health and Safety Code, the offer, delivery, receipt, or acceptance by any person licensed
3 under this division or the Chiropractic Initiative Act of any rebate, refund, commission,
4 preference, patronage dividend, discount, or other consideration, whether in the form of money or
5 otherwise, as compensation or inducement for referring patients, clients, or customers to any
6 person, irrespective of any membership, proprietary interest, or coownership in or with any
7 person to whom these patients, clients, or customers are referred is unlawful.

8 9. Section 4059 of the Code states in pertinent part:

9 “(a) A person may not furnish any dangerous drug, except upon the prescription of a
10 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
11 3640.7. A person may not furnish any dangerous device, except upon the prescription of a
12 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
13 3640.7.. . . .

14 10. Section 4059.5 of the Code states in pertinent part:

15 “(e) A dangerous drug or dangerous device shall not be transferred, sold, or delivered to a
16 person outside this state, whether foreign or domestic, unless the transferor, seller, or deliverer
17 does so in compliance with the laws of this state and of the United States and of the state or
18 country to which the dangerous drugs or dangerous devices are to be transferred, sold, or
19 delivered. Compliance with the laws of this state and the United States and of the state or country
20 to which the dangerous drugs or dangerous devices are to be delivered shall include, but not be
21 limited to, determining that the recipient of the dangerous drugs or dangerous devices is
22 authorized by law to receive the dangerous drugs or dangerous devices.”

23

24 11. Section 4076 of the Code states in pertinent part:

25 “(a) A pharmacist shall not dispense any prescription except in a container that meets the
26 requirements of state and federal law and is correctly labeled with all of the following:

27

28

1 (4) The name of the prescriber or, if applicable, the name of the certified nurse-midwife
2 who functions pursuant to a standardized procedure or protocol described in Section 2746.51, the
3 nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1
4 or protocol, the physician assistant who functions pursuant to Section 3502.1, the naturopathic
5 doctor who functions pursuant to a standardized procedure or protocol described in Section
6 3640.5, or the pharmacist who functions pursuant to a policy, procedure, or protocol pursuant to
7 Section 4052.1, 4052.2, or 4052.6.”

8 12. Section 4301 of the Code states in pertinent part:

9 "The board shall take action against any holder of a license who is guilty of unprofessional
10 conduct or whose license has been issued by mistake. Unprofessional conduct shall include, but is
11 not limited to, any of the following:

12 (a) Procurement of a license by fraud or misrepresentation.

13

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

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

19

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

22 ...

23 “(l) The conviction of a crime substantially related to the qualifications, functions, and
24 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
25 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
26 substances or of a violation of the statutes of this state regulating controlled substances or
27 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
28 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

1 The board may inquire into the circumstances surrounding the commission of the crime, in order
2 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
3 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
4 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
5 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
6 of this provision. The board may take action when the time for appeal has elapsed, or the
7 judgment of conviction has been affirmed on appeal or when an order granting probation is made
8 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
9 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
10 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
11 indictment. . . .”

12

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

17

18 (q) Engaging in any conduct that subverts or attempts to subvert an investigation of the
19 board.”

20 13. Section 4306.5 of the Code states in pertinent part:

21 “Unprofessional conduct for a pharmacist may include any of the following:

22 (a) Acts or omissions that involve, in whole or in part, the inappropriate exercise of his or
23 her education, training, or experience as a pharmacist, whether or not the act or omission arises in
24 the course of the practice of pharmacy or the ownership, management, administration, or
25 operation of a pharmacy or other entity licensed by the board.”

26 14. Section 4307 of the Code states in pertinent part:

27 “(a) Any person who has been denied a license or whose license has been revoked or is
28 under suspension, or who has failed to renew his or her license while it was under suspension, or

1 who has been a manager, administrator, owner, member, officer, director, associate, partner, or
2 any other person with management or control of any partnership, corporation, trust, firm, or
3 association whose application for a license has been denied or revoked, is under suspension or has
4 been placed on probation, and while acting as the manager, administrator, owner, member,
5 officer, director, associate, partner, or any other person with management or control had
6 knowledge of or knowingly participated in any conduct for which the license was denied,
7 revoked, suspended, or placed on probation, shall be prohibited from serving as a manager,
8 administrator, owner, member, officer, director, associate, partner, or in any other position with
9 management or control of a licensee as follows:

10 (1) Where a probationary license is issued or where an existing license is placed on
11 probation, this prohibition shall remain in effect for a period not to exceed five years.

12 (2) Where the license is denied or revoked, the prohibition shall continue until the license is
13 issued or reinstated.

14 (b) Manager, administrator, owner, member, officer, director, associate, partner, or any
15 other person with management or control of a license as used in this section and Section 4308,
16 may refer to a pharmacist or to any other person who serves in such capacity in or for a licensee.”

17 **HEALTH AND SAFETY CODE**

18 15. Section 11154 of the Health and Safety Code states in pertinent part:

19 “(b) No person shall knowingly solicit, direct, induce, aid, or encourage a practitioner
20 authorized to write a prescription to unlawfully prescribe, administer, dispense, or furnish a
21 controlled substance.”

22 16. Section 11158 of the Health and Safety Code states:

23 “(a) Except as provided in Section 11159 or in subdivision (b) of this section, no controlled
24 substance classified in Schedule II shall be dispensed without a prescription meeting the
25 requirements of this chapter. Except as provided in Section 11159 or when dispensed directly to
26 an ultimate user by a practitioner, other than a pharmacist or pharmacy, no controlled substance
27 classified in Schedule III, IV, or V may be dispensed without a prescription meeting the
28 requirements of this chapter.

1 (b) A practitioner specified in Section 11150 may dispense directly to an ultimate user a
2 controlled substance classified in Schedule II in an amount not to exceed a 72-hour supply for the
3 patient in accordance with directions for use given by the dispensing practitioner only where the
4 patient is not expected to require any additional amount of the controlled substance beyond the 72
5 hours. Practitioners dispensing drugs pursuant to this subdivision shall meet the requirements of
6 subdivision (f) of Section 11164.

7 (c) Except as otherwise prohibited or limited by law, a practitioner specified in Section
8 11150, may administer controlled substances in the regular practice of his or her profession.”

9 17. Section 11164 of the Health and Safety Code states in pertinent part:

10 “Except as provided in Section 11167, no person shall prescribe a controlled substance, nor
11 shall any person fill, compound, or dispense a prescription for a controlled substance, unless it
12 complies with the requirements of this section.

13 (a) Each prescription for a controlled substance classified in Schedule II, III, IV, or V,
14 except as authorized by subdivision (b), shall be made on a controlled substance prescription form
15 as specified in Section 11162.1 and shall meet the following requirements:

16 (1) The prescription shall be signed and dated by the prescriber in ink and shall contain the
17 prescriber's address and telephone number; the name of the ultimate user or research subject, or
18 contact information as determined by the Secretary of the United States Department of Health and
19 Human Services; refill information, such as the number of refills ordered and whether the
20 prescription is a first-time request or a refill; and the name, quantity, strength, and directions for
21 use of the controlled substance prescribed.

22

23 (b) (1) Notwithstanding paragraph (1) of subdivision (a) of Section 11162.1, any controlled
24 substance classified in Schedule III, IV, or V may be dispensed upon an oral or electronically
25 transmitted prescription, which shall be produced in hard copy form and signed and dated by the
26 pharmacist filling the prescription or by any other person expressly authorized by provisions of
27 the Business and Professions Code. Any person who transmits, maintains, or receives any
28

1 electronically transmitted prescription shall ensure the security, integrity, authority, and
2 confidentiality of the prescription.

3 (2) The date of issue of the prescription and all the information required for a written
4 prescription by subdivision (a) shall be included in the written record of the prescription; the
5 pharmacist need not include the address, telephone number, license classification, or federal
6 registry number of the prescriber or the address of the patient on the hard copy, if that information
7 is readily retrievable in the pharmacy.”

8 **REGULATIONS**

9 18. 16 California Code of Regulations Section 1704 states:

10 “Each person holding a certificate, license, permit, registration or exemption to practice or
11 engage in any activity in the State of California under any and all laws administered by the Board
12 shall file a proper and current residence address with the Board at its office in Sacramento and
13 shall within 30 days notify the Board at its said office of any and all changes of residence address,
14 giving both the old and new address.”

15 19. 16 California Code of Regulations Section 1714 states in pertinent part:

16 “(d) Each pharmacist while on duty shall be responsible for the security of the prescription
17 department, including provisions for effective control against theft or diversion of dangerous
18 drugs and devices, and records for such drugs and devices. Possession of a key to the pharmacy
19 where dangerous drugs and controlled substances are stored shall be restricted to a pharmacist.”

20 20. 16 California Code of Regulations Section 1716 states:

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

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

26 21. 16 California Code of Regulations Section 1717.3 states in pertinent part:

27 “(a) No person shall dispense a controlled substance pursuant to a preprinted multiple
28 check-off prescription blank.

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2 (c) "Preprinted multiple checkoff prescription blank," as used in this section means any
3 form listing more than one dangerous drug where the intent is that a mark next to the name of a
4 drug i.e., a "checkoff," indicates a prescription order for that drug.”

5 22. 16 California Code of Regulations Section 1735.4 states in pertinent part:

6 “(a) Each compounded drug preparation shall be affixed with a container label prior to
7 dispensing that contains at least:

8 (1) Name of the compounding pharmacy and dispensing pharmacy (if different);

9 (2) Name (brand or generic) and strength, volume, or weight of each active ingredient. For
10 admixed IV solutions, the intravenous solution utilized shall be included;

11 (3) Instructions for storage, handling, and administration. For admixed IV solutions, the
12 rate of infusion shall be included;

13 (4) The beyond use date for the drug preparation;

14 (5) The date compounded; and

15 (6) The lot number or pharmacy reference number.”

16 23. 16 California Code of Regulations Section 1735.5 states in pertinent part:

17 “(a) Any pharmacy engaged in compounding shall maintain written policies and
18 procedures for compounding that establishes procurement procedures, methodologies for the
19 formulation and compounding of drugs, facilities and equipment cleaning, maintenance,
20 operation, and other standard operating procedures related to compounding. Any material failure
21 to follow the pharmacy's written policies and procedures shall constitute a basis for disciplinary
22 action.

23 (b) The policies and procedures shall be reviewed and such review shall be documented on
24 an annual basis by the pharmacist-in-charge. The policies and procedures shall be updated
25 whenever changes in policies and procedures are implemented.

26 (c) The policies and procedures shall include at least the following:

27 (1) Procedures for notifying staff assigned to compounding duties of any changes in
28 policies or procedures.”

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24. 16 California Code of Regulations Section 1735.6 subdivision (c) states:

“(c) Any equipment that weighs, measures, or transfers ingredients used to compound drug preparations for which calibration or adjustment is appropriate shall be calibrated prior to use, on a schedule and by a method determined by the manufacturer's specifications, to ensure accuracy. Documentation of each such calibration shall be recorded in a form which is not alterable and these records of calibration shall be maintained and retained in the pharmacy.”

25. 16 California Code of Regulations Section 1735.7 subdivision (b) states:

“(b) The pharmacy shall develop and maintain an on-going competency evaluation process for pharmacy personnel involved in compounding, and shall maintain documentation of any and all training related to compounding undertaken by pharmacy personnel.”

26. 16 California Code of Regulations Section 1735.8 subdivision (c) states:

“(c) The quality assurance plan shall include written standards for qualitative and quantitative analysis of compounded drug preparations to ensure integrity, potency, quality, and labeled strength, including the frequency of testing. All qualitative and quantitative analysis reports for compounded drug preparations shall be retained by the pharmacy and maintained along with the compounding log and master formula document. The quality assurance plan shall include a schedule for routine testing and analysis of specified compounded drug preparations to ensure integrity, potency, quality, and labeled strength, on at least an annual basis.”

27. 16 California Code of Regulations Section 1770 states:

“For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.”

28. 16 California Code of Regulations Section 1793.1 states in pertinent part:

1 Only a pharmacist, or an intern pharmacist acting under the supervision of a pharmacist,
2 may:

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4 (e) Consult with any prescriber, nurse or other health care professional or authorized agent
5 thereof.

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7 **COST RECOVERY**

8 29. Section 125.3 of the Code states, in pertinent part, that the Board may request the
9 administrative law judge to direct a licentiate found to have committed a violation or violations of
10 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
11 enforcement of the case.

12 **DEFINITIONS**

13 30. Ultram (generic - Tramadol) is a dangerous drug pursuant to Business and
14 Professions Code section 4022 and became a controlled substances per CFR 1308.14(b)(3) on
15 July 2, 2014.

16 31. Ketelar (generic - Ketamine) is a dangerous drug pursuant to Business and Professions
17 Code section 4022 and a controlled substances per HSC 11056(g).

18 32. Voltaren (generic - Diclofenac) is a dangerous drug pursuant to Business and
19 Professions Code section 4022.

20 33. Neurontin (generic - Gabapentin) is a dangerous drug pursuant to Business and
21 Professions Code section 4022.

22 34. Xylocaine (generic - Lidocaine) is a dangerous drug above 5% pursuant to Business
23 and Professions Code section 4022.

24 35. Nexcede (generic - Ketoprofen) is a dangerous drug pursuant to Business and
25 Professions Code section 4022.

26 36. Gablofen (generic - Baclofen) is a dangerous drug pursuant to Business and
27 Professions Code section 4022.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 (Security of Prescription Department/Possession of Pharmacy Key)

3 37. Respondents Valley View Rexall Drugs and RPH Jensen are subject to disciplinary
4 action under California Code of Regulations 1714 subdivision (d) in that Respondents failed to
5 secure records of dangerous drugs and devices. The circumstances are as follows:

6 38. During an inspection by Board inspectors on July 1, 2015, while employed at
7 Respondent pharmacy, pharmacy technicians Jimenez and Amaya were found to be in possession
8 of keys to the front of the pharmacy, which allowed them to have access to patient records and
9 records of dangerous drugs with no pharmacist present.

10 **SECOND CAUSE FOR DISCIPLINE**

11 (Conduct Limited to a Pharmacist)

12 39. Respondents Valley View Rexall Drugs and PIC Jensen are subject to disciplinary
13 action under California Code of Regulations section 1793.1 subdivision (e) in that while
14 employed at Respondent pharmacy, pharmacy technicians were engaging in conduct that could
15 only be performed by a licensed pharmacist. The circumstances are as follows:

16 40. During an inspection by Board inspectors on July 1, 2015, pharmacy technicians
17 Jimenez and Amaya admitted calling prescribers to verify prescriptions. They would then
18 document this information in the "Rx Routing Program" used by the pharmacy. After the
19 prescription was received, verified, and billed, the pharmacy technicians would print out a
20 prescription label to provide to the compounding technicians.

21 **THIRD CAUSE FOR DISCIPLINE**

22 (Shipping without License)

23 41. Respondents Valley View Rexall Drugs, PIC Herrera and RPH Jensen are subject to
24 disciplinary action under Code section 4059.5 subdivision (e) in that, between February 5, 2013
25 and September 30, 2014, Respondent shipped prescriptions for dangerous drugs or dangerous
26 devices to consumers outside of California without being licensed to do so without a license to do
27 so. The circumstances are as follows:

1 a. Prescription Number 861879, dated February 5, 2013 was shipped to Patient RN¹ in
2 Maryland.

3 b. Prescription Number C876639, dated August 5, 2013, and Prescription Number
4 C882744 dated October 12, 2013 was shipped to Patient AR in Maryland

5 c. Prescription Number 878395, dated August 23, 2013 was shipped to Patient GB in
6 Maryland.

7 d. Prescription Number C917747, dated September 30, 2014 was shipped to a patient in
8 Pennsylvania.

9 e. Prescription Number 897809, dated May 2, 2014 was shipped to a patient in Georgia.

10 f. Prescription Number 915187, dated September 12, 2014 was shipped to a patient in
11 Pennsylvania.

12 g. Additionally, Respondent Jensen also admitted to shipping medications to North
13 Carolina, New Hampshire, New Jersey, South Carolina, Texas, Utah, Virginia and Washington
14 DC without having a license in those states.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 (Incorrect Labeling of Compounded Drug Products)

17 42. Respondents Valley View Rexall Drugs, PIC Herrera and RPH Jensen are subject to
18 disciplinary action under California Code of Regulations section 1735.4 subdivision (a) and
19 Code section 4076, subdivision (a)(1) in that Respondents incorrectly labeled compounded
20 medications as follows:

21 43. On or about February 18, 2014, Respondents labeled compounded prescription
22 number 891684 for Patient OB, a Federal Employee, who resides in Illinois, with abbreviated
23 letters. It did not include all the names of the ingredients on the label as required. The product
24 was a compounded pain cream.

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28 ¹ Initials are used for patients and health care providers for privacy reasons.

1 **FIFTH CAUSE FOR DISCIPLINE**

2 (Failure to Follow Requirements of Prescription Labeling)

3 44. Respondents Valley View Rexall Drugs, PIC Herrera and RPH Jensen are subject to
4 disciplinary action under Code section 4076, subdivision (a)(4) in that Respondents incorrectly
5 labeled medications as follows:

6 45. On or about March 30, 2014, Respondents dispensed prescription number 944345
7 with an incorrect label stating that it was prescribed by Dr. W when it was prescribed by PA-C C.

8 **SIXTH CAUSE FOR DISCIPLINE**

9 (Variation from Prescription)

10 46. Respondents Valley View Rexall Drugs, PIC Herrera and RPH Jensen are subject to
11 disciplinary action under California Code of Regulations section 1716 in that the prescription
12 compounded and/or dispensed unlawfully varied from the prescription authorized by the
13 prescriber. The circumstances are as follows:

14 47. In or prior to March 2015, Respondents compounded and/or dispensed prescription
15 number 878396 with sodium hyaluronate in the compounded prescription, but the prescriber had
16 not authorized this ingredient.

17 **SEVENTH CAUSE FOR DISCIPLINE**

18 (Unlawful Dispensing of Controlled Substances:

19 Preprinted Multiple Check-Off Prescription Blank)

20 48. Respondents Valley View Rexall Drugs, PIC Herrera and RPH Jensen are subject to
21 disciplinary action under 16 California Code of Regulations section 1717.3 subdivision (a) and
22 (c) in that it unlawfully dispensed controlled substances pursuant to a preprinted multiple
23 checkoff prescription blank. The circumstances are as follows:

24 49. Beginning on or before September 14, 2012 and continuing through at least January
25 28, 2015, Respondents solicited and filled compounded prescriptions containing ketamine and
26 tramadol, controlled substances, pursuant to preprinted, multiple checkoff prescription blanks.
27 Sample prescriptions included prescription numbers 851139N (dated 9/14/12), C899802 (dated
28

1 5/23/2014), C909135 (dated 8/11/2014), C917747 (dated 9/30/2014), C918043 (dated 10/1/2014)
2 and C914634 (dated 1/28/2015).

3 **EIGHTH CAUSE FOR DISCIPLINE**

4 (Knowing Solicitation of Unlawful Prescription)

5 50. Respondents Valley View Rexall Drugs and RPH Jensen are subject to disciplinary
6 action under Health and Safety Code 11154 subdivision (b) in that Respondents solicited and
7 filled compounded prescriptions containing ketamine and/or tramadol, controlled substances,
8 pursuant to preprinted, multiple checkoff prescription blanks. The circumstances are as follows:

9 51. Between September 2012 and October 2014, Respondents solicited and filled
10 compounded prescriptions containing ketamine and tramadol, controlled substances, pursuant to
11 preprinted, multiple checkoff prescription blanks. Sample prescriptions included prescription
12 numbers 851139N (dated 9/14/12), C899802 (dated 5/23/2014), C909135 (dated 8/11/2014),
13 C917747 (dated 9/30/2014), C918043 (dated 10/1/2014) and C914634 (dated 1/28/2015).

14 **NINTH CAUSE FOR DISCIPLINE**

15 (Rebates or Discount for Referral Prohibited/Federal Anti-Kickback Statute)

16 52. Respondents Valley View Rexall Drugs and RPH Jensen violated Code section 650
17 subdivision (a) in providing compensation or inducement for referring patients. The
18 circumstances were that beginning in 2011, Respondents paid illegal monetary kickbacks in
19 return for prescriptions for compounded medications. These prescriptions were paid for by
20 insurances including federally funded programs such as TRICARE (the military's managed health
21 care program) and used marketers known as "cappers" to recruit patients or obtain their identity to
22 bill government medical funding.

23 **TENTH CAUSE FOR DISCIPLINE**

24 (Unprofessional Conduct- Violation of State Law)

25 53. Respondents Valley View Rexall Drugs and RPH Jensen violated Code 4301
26 subdivisions (j) and (o) by violating state and/or federal law by paying kickbacks for
27 prescriptions received, filled controlled substance prescriptions via illegal preprinted checkoff
28 blanks, solicited illegal prescriptions, allowed pharmacy technicians to have keys allowing access

1 to dangerous drug records without a pharmacist present among other violations as set forth more
2 fully in paragraphs 37-40 and 48-52 above and incorporated herein by reference.

3 **ELEVENTH CAUSE FOR DISCIPLINE**

4 (Unprofessional Conduct-Gross Immorality, Moral Turpitude, Dishonesty, Fraud, Deceit,
5 Corruption; Subverting an Investigation)

6 54. Respondents Valley View Rexall Drugs and RPH Jensen violated Code 4301
7 subdivisions (a) and (f) by engaging in conduct involving moral turpitude, dishonesty, fraud,
8 deceit, corruption where Respondents paid kickbacks for illegal prescriptions received, filled
9 controlled substance prescriptions via illegal preprinted checkoff blanks, solicited illegal
10 prescriptions, allowed pharmacy technicians to have keys allowing access to dangerous drug
11 records without a pharmacist as set forth more fully in paragraphs 37-40 and 48-52 above and
12 incorporated herein by reference.

13 **TWELFTH CAUSE FOR DISCIPLINE**

14 (Furnishing Dangerous Drugs and Controlled Substances Prohibited without a Prescription)

15 55. Respondents Valley View Rexall Drugs and RPH Jensen violated Code section 4059
16 subdivision (a) and Health and Safety Code sections 11158 and 11164 in that Respondents
17 dispensed dangerous drugs and controlled substances without a valid prescription and included
18 prescriptions where there was no medical need or good faith examination by the prescriber. The
19 circumstances are as follows:

20 56. Prescription Numbers C876639 (dated 8/5/13) and C882744 (dated 10/12/2013) for
21 Patient AR was filled without a valid prescription. The prescription label indicated the patient
22 was in Maryland, (Respondent Valley View Rexall Drugs was not licensed in Maryland) and did
23 not include an actual prescription. Despite multiple requests to do so, the purported prescriber
24 would not confirm the prescription.

25 57. Prescription Number 878395 (dated 8/23/13) for Patient GB was filled without a valid
26 prescription. The prescription label indicated the patient was in Maryland, (Respondent Valley
27 View Rexall Drugs was not licensed in Maryland) and did not include an actual prescription.
28 Moreover, the patient profile listed prescriptions being provided on 10/2/2013, 1/23/2014,

1 2/26/2014, 4/3/2014. Moreover, although the prescriber verification label appeared to be signed
2 by the provider, it had included a mark out for the ingredient sodium hyaluronate on the
3 ingredient list, indicating the prescription had not been filled as prescribed.

4 58. Prescription Number C914634 (dated 1/28/2015) for Patient DC was filled without a
5 valid prescription. The prescription lacked any verbal verification, and was on a preprinted
6 controlled substance multiple checkoff box prescription form.

7 59. Prescription Number C909135 (dated 8/11/2014) for Patient CM was filled without a
8 valid prescription. The prescription lacked any verbal verification, and was on a preprinted
9 controlled substance multiple checkoff box prescription form.

10 60. Prescription Number C917747 (dated 9/30/14), a controlled substance, was filled
11 without a valid prescription where the prescription was not dated by the prescriber.

12 **THIRTEENTH CAUSE FOR DISCIPLINE**

13 (Change of Address)

14 61. Respondent RPH Jensen violated California Code of Regulations 1704 in that on or
15 about October 16, 2014, Respondent Jensen filed an address change changing his address of
16 record to the address of his pharmacy, 13966 Valley View Ave, La Mirada, CA 90638, but failed
17 to provide his residence address.

18 **FOURTEENTH CAUSE FOR DISCIPLINE**

19 (Compounding Facilities and Equipment)

20 62. Respondents Valley View Rexall Drugs, and RPH Jensen violated California Code of
21 Regulations 1735.6(c) and 1735.5(a) in that on or about February 16, 2020, during an inspection
22 by Pharmacy Board inspectors, it was determined that Respondent Valley View Rexall Drugs
23 failed to certify compounding equipment and to follow Valley View Rexall Drugs' written policy
24 and procedures. The circumstances are that Respondents failed to certify compounding
25 equipment and follow pharmacy policy and procedures where Respondents did not certify the
26 Powdersafe 700 powder containment hoods used in compounding since 2016, despite their policy
27 and procedures stating certification would occur annually.

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1 **FIFTEENTH CAUSE FOR DISCIPLINE**

2 (Compounding Training)

3 63. Respondents Valley View Rexall Drugs and RPH Jensen violated California Code of
4 Regulations 1735.7(b) and 1735.5(a) in that on or about February 16, 2020, during an inspection
5 by Pharmacy Board inspectors, it was determined that Respondent Valley View Rexall Drugs
6 failed to train compounding personnel and follow pharmacy policy and procedures. The
7 circumstances are that Pharmacy Technician AL had not received compounding training or
8 testing since 2016. However, Valley View Rexall Drugs' policy required that non-sterile
9 compounding personnel would undergo training at least annually.

10 **SIXTEENTH CAUSE FOR DISCIPLINE**

11 (Compounding Quality Assurance)

12 64. Respondents Valley View Rexall Drugs and RPH Jensen violated California Code of
13 Regulations 1735.8(c) and 1735.5(a) in that on or about February 16, 2020, during an inspection
14 by Pharmacy Board inspectors, it was determined that Respondents failed to submit compounded
15 end-product for testing and failed to follow Respondent Valley View Rexall Drugs' policies and
16 procedures. The circumstances are that Respondents had not submitted a compounded product
17 for laboratory analysis to ensure integrity, potency, quality, and labeled strength since 2016.
18 Respondent Valley View Rexall Drugs' policy and procedures required that the pharmacy would
19 test annually.

20 **DISCIPLINE CONSIDERATIONS**

21 65. To determine the degree of discipline, if any, to be imposed on Respondent Valley
22 View Rexall Drugs, Complainant alleges as follows:

23 a. On or about February 23, 2012, in a prior Citation, Case # CI 2011 49878,
24 Respondent Valley View Rexall Drugs was cited for a violation of section 4126.5 and fined the
25 sum of \$16,625.00. That decision is now final.

26 b. On or about November 15, 2013, in a prior Citation, Case # CI 2012 56475,
27 Respondent Valley View Rexall Drugs was cited for a violation of section 353 and fined the sum
28 of \$500.00. That decision is now final.

1 c. On or about November 18, 2016, in a prior Citation, Case # CI 2014 62219
2 Respondent Valley View Rexall Drugs was cited for a violation of sections 1735.3(a), 4076(a),
3 4077(a) and fined the sum of \$500.00. That decision is now final.

4 66. To determine the degree of discipline, if any, to be imposed on Respondent Vivian
5 Herrera, Complainant alleges that on or about November 15, 2013, in a prior Citation, Case # CI
6 2013 58711, Respondent Herrera violated Code section 353 and was issued a fine in the sum of
7 \$500. That decision is now final.

8 67. To determine the degree of discipline, if any, to be imposed on Respondent David
9 Michael Jensen, Complainant alleges that as follows:

10 a. On or about February 23, 2012, in a prior Citation, Case # CI 2011 51388 Respondent
11 Jensen was cited for a violation of section 4126.5 and fined the sum of \$5,000. That decision is
12 now final.

13 b. On or about November 18, 2016, in a prior Citation, Case # CI 2016 72829
14 Respondent Jensen was cited for a violation of sections 1735.3(a), 4076(a) and 4077(a) and fined
15 the sum of \$500.00. That decision is now final.

16 **OTHER MATTERS**

17 68. Pursuant to Code section 4307, if discipline is imposed on Permit Number PHY 9951,
18 issued to Valley View Rexall Drugs Inc. dba Valley View Rexall Drugs while David Michael
19 Jensen had been an officer and owner and had knowledge of or knowingly participated in any
20 conduct for which the licensee was disciplined, David Michael Jensen shall be prohibited from
21 serving as a manager, administrator, owner, member, officer, director, associate, or partner of a
22 licensee for five years if Pharmacy Permit Number PHY 9951 is placed on probation or until
23 Pharmacy Permit Number PHY 9951 is reinstated if it is revoked.

24 **PRAYER**

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

27 1. Revoking or suspending Permit Number PHY 9951, issued to Valley View Rexall
28 Drugs Inc. dba Valley View Rexall Drugs;

- 1 2. Revoking or suspending Pharmacist License Number RPH 30338, issued to David
- 2 Michael Jensen;
- 3 3. Revoking or suspending Pharmacist License Number RPH 44484, issued to Vivian
- 4 Jao Herrera;
- 5 4. Prohibiting David Michael Jensen from serving as a manager, administrator, owner,
- 6 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit
- 7 Number PHY 9951 is placed on probation or until Pharmacy Permit Number PHY 9951 is
- 8 reissued or reinstated if Pharmacy Permit Number PHY 9951 issued to Valley View Rexall Drugs
- 9 Inc. dba Valley View Rexall Drugs is revoked;
- 10 5. Ordering Valley View Rexall Drugs, David Michael Jensen, and Vivian Jao Herrera
- 11 to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this
- 12 case, pursuant to Business and Professions Code section 125.3; and,
- 13 6. Taking such other and further action as deemed necessary and proper.

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DATED: 9/8/2020

Anne Sodergren

ANNE SODERGREN
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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