Section 1:
Since your last renewal or recent licensure have you: (Please fill in completely)

Been diagnosed or treated for any mental illness, including alcohol or substance abuse, or Physical condition that would impair your ability to perform the essential functions of your license?
○ Yes  ○ No

1. Been charged, arrested or convicted of a felony or misdemeanor in any state?

O Yes  ○ No
Upload Supporting Doc.

2. Been the subject of a board citation or an administrative action whether completed or pending in any state?

The California Board of Pharmacy has filed an Accusation in response to a sterile compounding error that occurred in March of 2015 at a California Hospital in which

O Yes  ○ No
CA Board 5614 Application.pdf
(Includes/Uploads/96db9adbb9bf41a0981f5065a9015bf.pdf)

3. Had your license subjected to any discipline for violation of pharmacy or drug laws in any state?

https://nvbop.com/RenewalApplication.aspx
If you marked YES to any of the numbered questions (1-3) above, include the following information. If you are unsure of an answer please type unknown. Please be as complete as possible.

**Board Administrative Action:**
State:
- California
Date:
- 10/10/2016
Case#:
- 5810

**Criminal Action:**
State:
Date:
Case#:
County:
Court:

**Section 2:**
1. Are you the subject of a court order for the support of a child?
   - Yes  No

2. If you marked YES to the question above, are you in compliance with the court order?
   - Yes  No
Section 3:
Continuing Education Certification:
Calculation=1.25 hours per month   Date Range= 11/01/2015 – 10/31/2017

1. Pharmacists are exempt from completing CE for the first 2 years after graduation. Did you graduate within the last 2 years?
   ○ Yes ○ No

2. If you answered No to CE question 1 above, have you completed all YOUR required number of Continuing Education hours, including 1 hour in an approved NV law program if living or practicing in Nevada? (If you are a pharmacist practicing out-of-state and are currently in compliance with that state’s continuing education requirements please select Yes.)
   ○ Yes ○ No

Section 4:
Though it is NOT required to have, SB21 required the Board to ask if you have a Nevada State Business license and if you do, please provide the number

NON-DISCIPLINARY STATE-MANDATED QUESTIONS:

1. Though it is NOT required to have, SB21 requires the Board to ask if you have a Nevada State Business license and if you do, please provide the

   Leave blank if non-applicable.

2. Have you ever served in the military, either active, reserve or retired?
   ○ Yes ○ No

State:

https://nvbop.com/RenewalApplication.aspx  12/18/2017
Military Branch:

Dates of Service:

From Date

To Date

Section 5:

It is a violation of Nevada law to falsify this application and sanctions will be imposed for misrepresentation. I hereby certify that I have read this application. I certify that all statements made are true and correct. I attest to knowledge of and compliance with the guidelines of the Centers for Disease Control and Prevention concerning the prevention of transmission of infectious agents through safe and appropriate injection practices. I understand that Nevada law requires a licensed pharmacist who, in their professional or occupational capacity, comes to know or has reasonable cause to believe, a child has been abused/neglected, to report the abuse/neglect to an agency which provides child welfare services or to a local law enforcement agency.

☑ Yes, I Agree

Type your First Name and Last Name to Agree

Mimi Clayton

Save Changes  Generate License
December 5, 2017

Nevada State Board of Pharmacy
431 W. Plumb Lane
Reno Nevada 89509

Re: Mimi N. Clayton
Pharmacy License No.: 19086

Dear Board of Pharmacy:

I am writing to notify you that, on November 29, 2017, the Board of Pharmacy, Department of Consumer Affairs of the State of California approved a Stipulated Settlement and Disciplinary Order ("Order") with respect to my California license (No. RHP 46784). A copy of the Order is included with this correspondence.

Pursuant to the Order, my California license is in probationary status for five (5) years. This is the result of a medication error made by an employee under my supervision. A copy of the Accusation is included with this correspondence. Among other things, it was my responsibility to immediately retrieve or provide to the California Board Inspector the employer's quality assurance policy and procedure, and quality assurance reports for all affected patients; to ensure all patients who received the wrong dose of the medication were identified within two (2) business days from the date the medication error was discovered; and to conduct an investigation in compliance with the Board's standards.

I take pride in my work and have a full appreciation for the impact it has on patients and others. This has been a very difficult situation for me, from which I have grown both personally and professionally. I view this as an opportunity to advance my knowledge, skills and service and am fully committed to fulfilling the terms of probation with respect to my California license.

In fact, one of the terms of my probation requires me to enroll in a course in ethics pharmacy law and compounding within 60 days of November 29. I enrolled and completed the course, which is endorsed by the California Board of Pharmacy, on only the third day of my probation (December 2). And, because I am committed to adhering to the highest quality of standards, I am voluntarily exploring advanced ethics courses.

Another term of probation requires me to provide at least 20 hours of community service per year during each year of probation. I am to submit to the California Board of Pharmacy, for its approval, a community service program within 60 days of November 29. Within less than seven (7) days, I have identified a program and had preliminary discussions with the organization regarding my providing community service; I have also provided preliminary notice to the California Board of Pharmacy. I have a follow-up meeting with the organization on December
15 and, will then – within approximately 15 days of November 29 – submit the community service plan to the California Board of Pharmacy for approval.

I share these examples as a demonstration of my commitment to not only fulfilling the terms of probation, but to illustrate my commitment to the profession and its standards.

I pride myself as being an honest, professional, and hard-working pharmacist who takes initiative. I have earned trust and respect from colleagues over the years. For the Board’s reference, I have included several letters from current and past colleagues, which speak to my professional character.

I hope this communication with the Board is received as it was intended – as a demonstration of my transparency, genuine intent to meet the expectations of my license(s), and my ongoing efforts to grow professionally.

Please feel free to contact me with any questions.

Sincerely,

Mimi N. Clayton
License No.: 19086

Enclosures:  Stipulated Settlement and Disciplinary Order
             Accusation
             Letters of Reference (professional)
BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MIMI N. CLAYTON
18300 Avenue 296
Exeter, CA 93221

Pharmacist License No. RPH 46784

Respondent.

Case No. 5810
OAH No. 2017010178

DECISION AND ORDER

The attached Stipulated Settlement 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 November 29, 2017.

It is so ORDERED on October 30, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

Amy Gutierrez, Pharm.D.
Board President
BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:
MIMI N. CLAYTON
18300 Avenue 296
Exeter, CA 93221
Pharmacist License No. RPH 46784

Respondent.

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

PARTIES

1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy (Board). She brought this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by David E. Brice, Deputy Attorney General.

2. Mimi N. Clayton (Respondent) is represented in this proceeding by attorney Rachele Berglund, whose address is: Herr Pedersen & Berglund, 100 Willow Plaza, Suite 300, Visalia, California, 93291.
3. On or about October 15, 1993, the Board issued Pharmacist License No. RPH 46784 to Respondent. The Pharmacist License was in full force and effect at all times relevant to the charges brought in Accusation No. 5810, and will expire on April 30, 2019, unless renewed.

JURISDICTION

4. Accusation No. 5810 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on October 27, 2016. Respondent timely filed her Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 5810 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 5810. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Accusation No. 5810.

10. Respondent agrees that her Pharmacist License is subject to discipline and she agrees to be bound by the Board’s probationary terms as set forth in the Disciplinary Order below.
11. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

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

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

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

**DISCIPLINARY ORDER**

IT IS HEREBY ORDERED that Pharmacist License No. RPH 46784 issued to Respondent Mimi N. Clayton is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

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1. **Obey All Laws**

   Respondent shall obey all state and federal laws and regulations.

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

   - an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
   - a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
   - a conviction of any crime
   - discipline, citation, or other administrative action filed by any state or federal agency which involves respondent’s Pharmacist License or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

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

2. **Report to the Board**

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

3. **Interview with the Board**

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

4. **Cooperate with Board Staff**

   Respondent shall cooperate with the board’s inspection program and with the board’s monitoring and investigation of respondent’s compliance with the terms and conditions of her probation. Failure to cooperate shall be considered a violation of probation.

5. **Continuing Education**

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

6. **Notice to Employers**

   During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 5810 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

   Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent’s tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 5810, and terms and conditions imposed thereby. It shall be respondent’s responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

   If respondent works for or is employed by or through a pharmacy employment service, respondent must notify her direct supervisor, pharmacist-in-charge, and owner at every entity licensed by the board of the terms and conditions of the decision in case number 5810 in advance of the respondent commencing work at each licensed entity. A record of this notification must be provided to the board upon request.

   Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause her direct supervisor with the pharmacy employment service to
report to the board in writing acknowledging that she has read the decision in case number 5810 and the terms and conditions imposed thereby. It shall be respondent’s responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

7. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as Designated Representative-in-Charge, Supervision of Compounding, or Serving as a Consultant

During the period of probation, respondent shall not supervise any intern pharmacist, be the pharmacist-in-charge or designated representative-in-charge of any entity licensed by the board, supervise any compounding practice, nor serve as a consultant unless otherwise specified in this order. Assumption of any such unauthorized supervision responsibilities shall be considered a violation of probation. After respondent completes two (2) years of probation, the board or its designee, in its discretion and without the need for respondent to petition the board, may lift the prohibition on supervision of compounding practice as deemed appropriate; this does not preclude respondent from exercising any right of petition that exists under California law.

8. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, respondent shall pay to the board its costs of investigation and prosecution in the amount of $11,194.50. Respondent shall make said payments according to a payment plan approved by the board.

There shall be no deviation from this schedule absent prior written approval by the board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

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The filing of bankruptcy by respondent shall not relieve respondent of her responsibility to reimburse the board its costs of investigation and prosecution.

9. **Probation Monitoring Costs**

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

10. **Status of License**

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

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

11. **License Surrender While on Probation/Suspension**

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

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

12. Notification of a Change in Name, Residence Address, Mailing Address or Employment

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

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

13. Tolling of Probation

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

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

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

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

14. **Violation of Probation**

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

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

15. **Completion of Probation**

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

16. **Community Service Program**

Within sixty (60) days of the effective date of this decision, respondent shall submit to the board or its designee, for prior approval, a community service program in which respondent shall provide free health-care related services on a regular basis to a community or charitable facility or agency for at least 20 hours per year during each year of probation. Within thirty (30) days of board approval thereof, respondent shall submit documentation to the board demonstrating commencement of the community service program. A record of this notification must be provided to the board upon request. Respondent shall report on progress with the community service
program in the quarterly reports. Failure to timely submit, commence, or comply with the program shall be considered a violation of probation.

17. Remedial Education

Within sixty (60) days of the effective date of this decision, respondent shall submit to the board or its designee, for prior approval, an appropriate program of remedial education related to compounding, pharmacy law, and managing/supervising a pharmacy. The program of remedial education shall consist of at least ten (10) hours during each year of the period of probation, which shall be completed at respondent's own expense. At least five (5) of these ten (10) units shall be completed by attending "in person" C.E. All remedial education shall be in addition to, and shall not be credited toward, continuing education (CE) courses used for license renewal purposes.

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

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

18. No Ownership of Licensed Premises

Respondent shall not own, have any legal or beneficial interest in, or serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90) days following the effective date of this decision and shall immediately thereafter provide written proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide documentation thereof shall be considered a violation of probation.
19. Ethics Course

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

Respondent shall submit a certificate of completion to the board or its designee within five days after completing the course.

ACCEPTANCE

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

DATED: 9-25-17

MIMI N. CLAYTON
Respondent

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

DATED: 9-25-17

RACHELE BERGLUND
Attorney for Respondent
ENDORSEMENT

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

Dated: 9/25/2017

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
KENT D. HARRIS
Supervising Deputy Attorney General

[Signature]

DAVID E. BRIE
Deputy Attorney General
Attorneys for Complainant
Exhibit A

Accusation No. 5810
BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: Case No. 5810
MIMI N. CLAYTON
18300 Avenue 296
Exeter, CA 93221
Pharmacist License No. RPH 46784
Respondent.

Complainant alleges:

PARTIES

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

2. On or about October 15, 1993, the Board issued Pharmacist License Number RPH 46784 to Mimi N. Clayton ("Respondent"). On or about January 31, 2015, Respondent became the pharmacist-in-charge of Emanuel Medical Center ("EMC") located in Turlock, California. The pharmacist license was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2017, unless renewed.

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///
///

(MIMI N. CLAYTON) ACCUSATION
JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code ("Code") unless otherwise indicated.

4. Code section 4300 states, in pertinent part:

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

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

(1) Suspending judgment.

(2) Placing him or her upon probation.

(3) Suspending his or her right to practice for a period not exceeding one year.

(4) Revoking his or her license.

(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper . . .

5. Code section 4300.1 states:

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

STATUTORY AND REGULATORY PROVISIONS

6. Code section 4301 states, in pertinent part:

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

....

(c) Gross negligence.

....

(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....

7. Code section 4113, subdivision (c), states that "[t]he pharmacist-in-charge shall be
responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining
to the practice of pharmacy."

8. Title 16, California Code of Regulations ("CCR"), section 1711 states, in pertinent
part:

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

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

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

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

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

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

....

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

....

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

///

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

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

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

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

9. Title 16, CCR, section 1735.2 states, in pertinent part:

(d) A drug product shall not be compounded until the pharmacy has first prepared a written master formula record that includes at least the following elements:

(1) Active ingredients to be used.
(2) Equipment to be used.
(3) Expiration dating requirements.
(4) Inactive ingredients to be used.
(5) Process and/or procedure used to prepare the drug.
(6) Quality reviews required at each step in preparation of the drug.
(7) Post-compounding process or procedures required, if any...

COST RECOVERY

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

**DRUG CLASSIFICATIONS**

11. "Vancocin" is the brand name for vancomycin, an antibiotic. Vancocin is a dangerous drug pursuant to Code section 4022.

**STATEMENT OF FACTS**

12. On or about March 9, 2015, Respondent contacted Board Inspector D. P. and informed her that L. L., a staff pharmacist at EMC, had made a medication error on March 8, 2015. Respondent reported that L. L. had prepared vancomycin IV bags with a medication dose less than the labeled dose. Respondent asked the inspector if the medication error needed to be reported to the Board. The inspector told Respondent that the Board’s first concern was the determination of patient care issues related to the medication error; the Board’s second concern was that the medication error was appropriately investigated per Title 16, CCR, section 1711.

13. On or about March 10, 2015, Respondent called the inspector and told her that the medication error had caused the death of a patient (Respondent informed the inspector later that the sub-therapeutic dose of vancomycin was not a factor in the patient’s death). Respondent also stated that L. L. had been placed on administrative leave because she admitted she had not checked the strength of the vancomycin stock bottle, but had just verified it was the right drug.

14. That same day (March 10, 2015), the inspector received various emails from L. L., which she had sent to Respondent, including an email dated March 8, 2015. L. L. stated in the email that she had discovered her medication error that day. L. L. explained that she had used a stock vial containing 5 gm of vancomycin instead of 10 gm of vancomycin and that the compounded vancomycin IV bags had contained one-half of the labeled strength of the drug. L. L. found that 51 vancomycin IV bags had been prepared incorrectly on March 6 and 7, 2015, and that 29 doses had been administered to patients. Once L. L. discovered the error, she immediately pulled all of the incorrect doses from all areas of EMC. L. L. identified 14 patients, who might have received the reduced doses of vancomycin, and contacted almost all of the patients’ physicians. On or about March 8, 2015, Respondent sent L. L. an email asking her to
see if patients needed to be notified of the medication error, and instructing her to review the current policy. Respondent also instructed L. L. to create a new storage bin for the vancomycin 5 gm dose and to contact “Thao” (pharmacist T. L., EMC’s Clinical Pharmacy Coordinator) to create a new compound worksheet.

15. On or about March 9, 2015, L. L. sent Respondent an email, stating that she had contacted all of the physicians whose patients may have received a reduced dose of vancomycin and that the kinetic pharmacist was following all of the patients who were currently on vancomycin. Respondent sent L. L. an email stating that she (“Respondent”) would speak to the patients. Respondent again instructed L. L. to find the policy on disclosing medication errors to patients. L. L. sent Respondent a reply, stating that since she was working as a staff pharmacist, T. L. would be doing the “Verge” reporting (Verge was the in-house name for the medication error/quality assurance reports).

16. On or about March 11, 2015, the inspector had several telephone discussions with L. L. L. told the inspector EMC had discovered that other pharmacists had also made the same medication error; i.e., they had used a 5 gm stock bottle rather than a 10 gm stock bottle of vancomycin. L. L. stated that pharmacy staff had not been informed EMC had received a vancomycin 5 gm stock bottle when a vancomycin 10 gm stock bottle had been used previously, which contributed to the medication error.

17. On or about March 12, 2015, the inspector called EMC and spoke with T. L. T. L. told the inspector she was responsible for investigating and documenting medication errors and that for some unknown reason, she was being excluded from the vancomycin investigation.

18. On or about March 13, 2015, the inspector went to EMC to conduct an inspection of the pharmacy. The inspector met with T. L. and obtained copies of T. L.’s email communications with Respondent and EMC’s medication error policies and procedures. T. L. told the inspector that as Clinical Coordinator, she had always been in charge of investigations of medication errors and of entering the errors into EMC’s “Verge” system. T. L. stated that she had come a long way in the investigation of the vancomycin error before Respondent told her to stop. The inspector reviewed the emails and found as follows:
a. T. L. told Respondent in an email dated March 9, 2015, that she was completing the 
Verge incident reports and investigation of patients affected by the vancomycin medication error. 
Respondent sent T. L. a reply, asking T. L. to keep her in the loop of any updates.

b. On March 11, 2015, T. L. sent Respondent an email containing a summary of her 
vancomycin medication error findings, including the following: 1) 25 vials of vancomycin 5 gm 
had been delivered to EMC on February 26, 2015, and 15 vials had been delivered on March 9, 
2015; 2) T. L. identified the 2 lot numbers involved; 3) potentially 130 bags of IV vancomycin 
were compounded incorrectly, starting on February 26, 2015; 4) it was unknown how many bags 
had reached the patients because the pharmacy department did not track which lot was dispensed 
to which patients; and 5) T. L. ran a Meditech report, which showed that a total of approximately 
87 patients received IV vancomycin between February 19, 2015 and March 8, 2015.

c. On March 12, 2015, Respondent sent T. L. an email, stating that she (T. L.) was 
"independently doing this (the investigation)" without any instructions from Respondent and that 
Respondent needed her to stop.

19. During the inspection, the inspector went to the pharmacy and observed Respondent 
and pharmacy technician A. W. digging through a pharmacy waste bin. About 15 empty glass 
vials were laid out on the floor. The inspector asked Respondent and A. W. what they were 
doing. A. W. told the inspector they were looking at empty vancomycin bottles to try and 
determine all of the vancomycin lot numbers that were involved in the medication error. The 
inspector asked Respondent why they were just now looking to identify the lot numbers of the 
vancomycin. Respondent stated that they just found out more patients received inaccurate doses 
of the drug. The inspector asked Respondent who was in charge of the investigation. Respondent 
stated L. L. The inspector asked Respondent how that would work since L. L. was on 
administrative leave. Respondent claimed that A. W. was actually in charge, then admitted that 
she, herself, was in charge of the investigation. The inspector asked A. W. if there was a master 
formula or compounding log worksheet for 5 gm vancomycin in the pharmacy prior to the time 
the vancomycin 5 gm was received. A. W. said no.

///
20. The inspector asked Respondent if she had written quality assurance reports on all of the affected patients. Respondent stated that medication error information on 19 patients had been input into the Verge program, but admitted that quality assurance reports were not prepared for 68 patients. The inspector asked Respondent to show her the medication error forms. Respondent stated that she did not have access to the Verge program, but would have the forms printed. Respondent left to obtain copies of the forms. Later, A. W. provided the inspector with only one of the 19 medication error forms. The inspector asked Respondent for a copy of EMC's medication error policy. Respondent began checking her computer. About 15 minutes later, Respondent found the policy and provided a copy to the inspector.

**FIRST CAUSE FOR DISCIPLINE**

*(Failure to Comply with Quality Assurance Program)*

21. Respondent is subject to disciplinary action for unprofessional conduct pursuant to Code section 4301, subdivision (o), in that Respondent failed to comply with Title 16, CCR, section 1711, as follows:

   a. On or about March 13, 2015, Respondent failed to immediately retrieve or provide to Board Inspector D. P. EMC pharmacy's quality assurance policy and procedure.

   b. Respondent provided Board Inspector D. P. with a copy of only one quality assurance report relating to the pharmacy's vancomycin medication error when, in fact, there were a total of approximately 87 patients who could have been affected by the medication error.

**SECOND CAUSE FOR DISCIPLINE**

*(Gross Negligence)*

22. Respondent is subject to disciplinary action for unprofessional conduct pursuant to Code section 4301, subdivision (b), in that Respondent committed acts or omissions constituting gross negligence, as follows:

   a. Respondent failed to identify the patients who received the wrong dose of the vancomycin within 2 business days from the date the medication error was discovered.
b. Respondent made an assessment that no patient had been harmed by the pharmacy's vancomycin medication error prior to identifying all of the patients who were possibly affected by the medication error.

c. Respondent failed to concentrate on patient care issues during the initial investigation of the vancomycin medication error and instead, focused the investigation on assigning blame to the person(s) involved in the error.

d. Respondent failed to follow EMC's Administrative Policy No. 07-09-01 to promote a non-punitive process in the investigation of the vancomycin medication error in that Respondent initiated punitive action against L. L., who discovered and reported the medication error.

e. Respondent failed to utilize all resources available to her to investigate and determine the cause of the vancomycin medication error, to identify the patients who could possibly have been affected by the medication error, and to provide an appropriate response to the medication error as part of a mission to improve the quality of EMC's pharmacy service and prevent errors.

f. Respondent failed to identify the lot numbers of the vancomycin 5 gm vials that were obtained and used in error in the preparation of the compounded vancomycin IV bags within 5 days from the discovery of the vancomycin medication error.

g. Respondent failed to review the pharmacy's compounding records to determine the actual number of vancomycin preparations that were compounded in error.

h. Respondent failed to immediately retrieve or provide to Board Inspector D. P. the pharmacy's quality assurance policy and procedure, as set forth in subparagraph 21 (a) above.

i. Respondent failed to immediately identify herself to Board Inspector D. P. as the person in charge of EMC's investigation of the vancomycin medication error.

j. Respondent failed to provide accurate medication error event data to Board Inspector D. P.

k. Respondent subverted, or attempted to subvert, a thorough investigation of the vancomycin medication error.
THIRD CAUSE FOR DISCIPLINE

(Failure to Prepare Master Formulas Prior to Compounding)

23. Respondent is subject to disciplinary action for unprofessional conduct pursuant to Code section 4301, subdivision (o), in that Respondent violated Title 16, CCR, section 1735.2, subdivision (d), as follows: Respondent failed to prepare a written master formula for the use of the vancomycin 5 gm that was used in the compounding of the vancomycin IV bags, which contributed to the pharmacy’s vancomycin medication error.

PRAYER

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

1. Revoking or suspending Pharmacist License Number RPH 46784, issued to Mimi N. Clayton;
2. Ordering Mimi N. Clayton to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 10/10/16

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

SA2016101615
12423535.docx
Nevada State Board of Pharmacy – Renewal Application - PHARMACIST

431 W Plumb Lane • Reno, NV 89509 • nvbop.com

For the period of November 1, 2017 to October 31, 2019
Money Order ONLY (NO BUSINESS or PERSONAL CHECKS, NO CASH)
$180.00 (postmarked on or before 10/31/2017) OR $320.00 (postmarked after 10/31/2017)

LICENSE: 16985
Kristen Rae Gorski
COLFAX HWY,
Grass Valley, CA 95945

Please make any changes to name or address next to the old information

RENEW BY MAIL
1. Complete ALL sections on this form
2. Sign and date this form
3. Send MO with this form (do NOT staple)
4. Mail original form/payment to address above
5. NO COPIES
6. NO SIGNATURE STAMPS ACCEPTED

<OR>

RENEW ONLINE
1. Go to nvbop.com
2. FOLLOW the instructions on the page
3. Once you’ve successfully completed your license renewal, you will receive an email with a link to your certificate. We no longer mail certificates so please do not discard this link.

Section 1: Since your last renewal or recent licensure have you:

<table>
<thead>
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<th>Yes</th>
<th>No</th>
</tr>
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<tbody>
<tr>
<td>☐</td>
<td>☑</td>
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</tbody>
</table>

- Been diagnosed or treated for any mental illness, including alcohol or substance abuse, or
- Physical condition that would impair your ability to perform the essential functions of your license
  - ☐
  - ☑
- Been charged, arrested or convicted of a felony or misdemeanor in any state
  - ☐
  - ☑
- Been the subject of a board citation or an administrative action whether completed or pending in any state?
  - ☐
  - ☑
- Had your license subjected to any discipline for violation of pharmacy or drug laws in any state?
  - ☐
  - ☑

If you marked YES to any of the numbered questions (1-3) above, include the following information & letter of explanation:

Board Administrative Action:

<table>
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<tr>
<th>State</th>
<th>Date:</th>
<th>Case #:</th>
</tr>
</thead>
<tbody>
<tr>
<td>CA</td>
<td>01/30/2017</td>
<td>5534</td>
</tr>
</tbody>
</table>

Criminal Action:

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<th>Date:</th>
<th>Case #:</th>
<th>County</th>
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</thead>
<tbody>
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Section 2:

Are you the subject of a court order for the support of a child?

- ☐
- ☑

If you marked YES to the question above, are you in compliance with the court order?

- ☐
- ☑

Section 3: (Fees apply to either status) (see colored insert for details)

By signing below, you certify that you have completed ALL required CE Hours due for the 17/19 Renewal period.
(Dated from Nov. 1, 15 – Oct. 31, 17; 1.25hrs per mo.). The exemption period is 2yrs after graduation only.

OR may check the box for Inactive if you did NOT complete CE. You cannot renew online if you change to Inactive

Inactive - ☐ By checking this box you certify that you are NOT practicing in NV and do not wish to comply with the CE requirements of NV and would like your license changed to inactive status. Before re-activating your license it will be necessary to submit an application and to become compliant with current CE requirements (NAC 639.219). See reverse of insert for more information.

Section 4: NON-DISCIPLINARY STATE-MANDATED QUESTIONS

1. Though it is NOT required to have, SB21 requires the Board to ask if you have a Nevada State Business license and if you do, please provide the #:
   Leave blank if non-applicable

2. Have you ever served in the military, either active, reserve or retired?
   - Yes ☐ No ☑
   Branch:

Military Occupation/Specialty:

Dates of Service:

Section 5:

It is a violation of Nevada law to falsify this application and sanctions will be imposed for misrepresentation. I hereby certify that I have read this application. I certify that all statements made are true and correct. I attest to knowledge of and compliance with the guidelines of the Centers for Disease Control and Prevention concerning the prevention of transmission of infectious agents through safe and appropriate injection practices. I understand that Nevada law requires a licensed pharmacist who, in their professional or occupational capacity, comes to know of a child being abused or neglected, to report the abuse/neglect to an agency which provides child welfare services and to a local law enforcement agency.

Original Signature: ______________________________ Date: 10/30/17
BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

SIERRA COMPOUNDING PHARMACY
ROBERT HILBERT SETWERT, OWNER
ANGALINE MARIE WUSSTIG, PIC
1101 Maidu Drive, #200
Auburn, CA 95603
Pharmacy Permit No. PHY 49228,

ANGALINE MARIE WUSSTIG
3813 Rogue River Circle
West Sacramento, CA 95691
Pharmacist License No. RPH 69944,

and

KRISTEN R. GORSKI
Colfax Highway
Grass Valley, CA 95945
Pharmacist License No. RPH 67057

Respondents.

Case No. 5534
OAH No. 2016061130

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

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 March 1, 2017.

It is so ORDERED on January 30, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

[Signature]

By
Amy Gutierrez, Pharm.D.
Board President
BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: Case No. 5534

SIERRA COMPOUNDING PHARMACY OAH No. 2016061130
ROBERT HILBERT SEIWERT, OWNER STIPULATED SETTLEMENT AND DISCIPLINARY ORDER
ANGALINE MARIE WUSSTIG, PIC
1101 Maidu Drive, #200
Auburn, CA 95603

Pharmacy Permit No. PHY 49228,

ANGALINE MARIE WUSSTIG
3813 Rogue River Circle
West Sacramento, CA 95691

Pharmacist License No. RPH 69944,

and

KRISTEN R. GORSKI
Colfax Highway
Grass Valley, CA 95945

Pharmacist License No. RPH 67057

Respondents.

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

//
PARTIES

1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy (Board). She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Anahita S. Crawford, Deputy Attorney General.

2. Respondent Kirsten R. Gorski, PIC (Respondent) is represented in this proceeding by attorney Natalia Mazina of Kelly, Hocket, & Klein, P.C. whose address is: 44 Montgomery Street, Suite 1500, San Francisco, CA 94104.

3. On or about April 19, 2012, the Board issued Pharmacist License Number RPH 67057 to Kristen R. Gorski ("Respondent Gorski"). The pharmacist license was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2017, unless renewed.

JURISDICTION

4. Accusation No. 5534 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on May 24, 2016. Respondent timely filed her Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 5534 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 5534. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of evidence.
documents; the right to reconsideration and court review of an adverse decision; and all other
rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
every right set forth above.

CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Accusation
No. 5534.

10. Respondent agrees that her Pharmacist License is subject to discipline and she agrees
to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

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

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

13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
integrated writing representing the complete, final, and exclusive embodiment of their agreement.
It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
writing executed by an authorized representative of each of the parties.
14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

**DISCIPLINARY ORDER**

IT IS HEREBY ORDERED that Pharmacist License Number RPH 67057 issued to Kristen R. Gorski is revoked. However, the revocation is stayed and Respondent is placed on probation for two (2) years on the following terms and conditions.

1. **Obey All Laws**
   
   Respondent shall obey all state and federal laws and regulations.
   
   Respondent shall report any of the following occurrences to the board, in writing, within seventy-two (72) hours of such occurrence:
   
   - an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
   
   - a plea of guilty or nolo contendre in any state or federal criminal proceeding to any criminal complaint, information or indictment
   
   - a conviction of any crime
   
   - discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's Pharmacist License or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

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

2. **Report to the Board**

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

3. Interview with the Board

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

4. Cooperate with Board Staff

Respondent shall cooperate with the board's inspection program and with the board's
monitoring and investigation of respondent's compliance with the terms and conditions of her
probation. Failure to cooperate shall be considered a violation of probation.

5. Continuing Education

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

6. Notice to Employers

During the period of probation, respondent shall notify all present and prospective
employers of the decision in case number 5534 and the terms, conditions and restrictions imposed
on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
respondent undertaking any new employment, respondent shall cause her direct supervisor,
pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent’s
tenure of employment) and owner to report to the board in writing acknowledging that the listed
individual(s) has/have read the decision in case number 5534, and terms and conditions imposed
thereby. It shall be respondent’s responsibility to ensure that her employer(s) and/or supervisor(s)
submit timely acknowledgment(s) to the board.
If respondent works for or is employed by or through a pharmacy employment service, respondent must notify her direct supervisor, pharmacist-in-charge, and owner at every entity licensed by the board of the terms and conditions of the decision in case number 5534 in advance of the respondent commencing work at each licensed entity. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause her direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that he has read the decision in case number 5534 and the terms and conditions imposed thereby. It shall be respondent’s responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

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

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

8. Probation Monitoring Costs

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

9. Status of License

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

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

10. License Surrender While on Probation/Suspension

Following the effective date of this decision, should respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender her license to the board for surrender. The board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent’s license history with the board.

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

11. Notification of a Change in Name, Residence Address, Mailing Address or Employment

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

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

12. Tolling of Probation

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

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

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

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

13. Violation of Probation

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

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

14. Completion of Probation

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

15. Remedial Education

Within thirty (30) days of the effective date of this decision, respondent shall submit to the
board or its designee, for prior approval, an appropriate program of remedial education related to
compounding drugs. The program of remedial education shall consist of at least 10 hours, which
shall be completed within 30 months at respondent's own expense. All remedial education shall
be in addition to, and shall not be credited toward, continuing education (CE) courses used for
license renewal purposes.

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

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

ACCEPTANCE

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

DATED: 11.17.2016

KRISTEN R. GORSKI
Respondent

I have read and fully discussed with Respondent Sierra Compounding Pharmacy; Robert Hilbert Seiwert, Owner; Angaline Marie Wusstig, PIC the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: Nov. 17, 2016

NATALIA MAZINA
KELLY, HOCKEL, & KLEIN P.C.
Attorney for Respondent
ENDORSEMENT

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

Dated: 11/17/16

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California

JANICE K. LACHMAN
Supervising Deputy Attorney General

ANAHITA S. CRAWFORD
Deputy Attorney General

Attorneys for Complainant
Exhibit A

Accusation No. 5534
BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 5534

SIERRA COMPOUNDING PHARMACY
ROBERT HILBERT SEIWERT, OWNER
ANGALINE MARIE WUSSTIG, PIC
1101 Malibu Drive, #200
Auburn, CA 95603

Pharmacy Permit No. PHY 49228,

ANGALINE MARIE WUSSTIG
3813 Rogue River Circle
West Sacramento, CA 95691

Pharmacist License No. RPH 69944,

and

KRISTEN R. GORSKI
Colfax Highway
Grass Valley, CA 95945

Pharmacist License No. RPH 67057

Respondents:

Complainant alleges:

PARTIES

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

(SIERRA COMPOUNDING PHARMACY) ACCUSATION
2. On or about December 29, 2008, the Board issued Pharmacy Permit Number PHY 49228 to Robert Hilbert Seiwert ("Respondent"), owner of Sierra Compounding Pharmacy. The pharmacy permit was in full force and effect at all times relevant to the charges brought herein and will expire on December 1, 2016, unless renewed.

3. On or about October 3, 2013, the Board issued Pharmacist License Number RPH 69944 to Angaline Marie Wusstig ("Respondent Wusstig"). The pharmacist license was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2017, unless renewed.

4. On or about April 19, 2012, the Board issued Pharmacist License Number RPH 67057 to Kristen R. Gorski ("Respondent Gorski"). The pharmacist license was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2017, unless renewed.

JURISDICTION

5. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code ("Code") unless otherwise indicated.

6. Code section 4300.1 states:

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

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

8. Code section 4300 states, in pertinent part:

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

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

(SIERRA COMPOUNDING PHARMACY) ACCUSATION
(1) Suspending judgment.

(2) Placing him or her upon probation.

(3) Suspending his or her right to practice for a period not exceeding one year.

(4) Revoking his or her license.

(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper...

STATUTORY PROVISIONS

Business and Professions Code (Disciplinary Provisions)

9. Code section 4301 states, in pertinent part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct... Unprofessional conduct shall include, but is not limited to, any of the following:

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

(c) 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. Code section 4306.5 states, in pertinent part:

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

(b) Acts or omissions that involve, in whole or in part, the failure to exercise or implement his or her best professional judgment or corresponding responsibility with regard to the dispensing or furnishing of controlled substances, dangerous drugs, or dangerous devices, or with regard to the provision of services.

(c) Acts or omissions that involve, in whole or in part, the failure to consult appropriate patient, prescription, and other records pertaining to the performance of any pharmacy function...

11. Additionally, Code section 4113, subdivision (c), states that "[t]he pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy."
12. Section 4013(a) of the Code states:

Any facility licensed by the board shall join the board’s e-mail notification list within 60 days of obtaining a license or at the time of license renewal.

13. Section 4169 of the Code states:

(a) A person or entity shall not do any of the following:

(3) Purchase, trade, sell, or transfer dangerous drugs that the person knew or reasonably should have known were misbranded, as defined in Section 111335 of the Health and Safety Code.

State and Federal Drug Codes (Misbranded Drugs)

14. Health and Safety Code section 111335 states that “(a)ny drug or device is misbranded if its labeling or packaging does not conform to the requirements of Chapter 4 (commencing with Section 110290).”

15. Health and Safety Code section 111400 provides that a drug is misbranded if it is dangerous to “health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in its labeling.”

16. Title 21, United States Code, section 352 states, in pertinent part:

A Drug or device shall be deemed to be misbranded —

(2) Directions for use and warnings on label

Unless its labeling bears (1) adequate directions for use; and (2) such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users, except that where any requirement of clause (1) of this paragraph, as applied to any drug or device, is not necessary for the protection of the public health, the Secretary shall promulgate regulations exempting such drug or device from such requirement. Required labeling for prescription devices intended for use in health care facilities or by a health care professional and required labeling for in vitro diagnostic devices intended solely by electronic means, provided that the labeling complies with all applicable requirements of law, and that the manufacturer affords such users the opportunity to request the labeling in paper form, and after such request, promptly provides the requested information without additional cost.

Health and Safety Codes (Prohibition on Misbranded Drugs)
17. Health and Safety Code section 111440 states that "It is unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any drug or device that is misbranded."

18. Health and Safety Code section 111450 provides that it is unlawful for any person to receive in commerce any drug or device that is misbranded or to deliver or proffer for delivery any drug or device.

REGULATORY PROVISIONS

19. California Code of Regulations, title 16, section 1735, subdivision (a):

states in pertinent part:

"Compounding" means any of the following activities occurring in a licensed pharmacy, by or under the supervision of a licensed pharmacist, pursuant to a prescription:

(1) Altering the dosage form or delivery system of a drug
(2) Altering the strength of a drug
(3) Combining components or active ingredients
(4) Preparing a drug product from chemicals or bulk drug substances

20. California Code of Regulations, title 16, section 1735.2 states:

(d) A drug product shall not be compounded until the pharmacy has first prepared a written master formula record that includes at least the following elements:

(1) Active ingredients to be used.
(2) Equipment to be used.
(3) Expiration dating requirements.
(4) Inactive ingredients to be used.
(5) Process and/or procedure used to prepare the drug.
(6) Quality reviews required at each step in preparation of the drug.
(7) Post-compounding process or procedures required, if any.
(i) The pharmacist performing or supervising compounding is responsible for the proper preparation, labeling, storage, and delivery of the compounded drug product.

**COST RECOVERY**

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

**DRUG**

22. "Domperidone" is an anti-dopaminergic drug that acts as an antiemetic and a prokinetic agent, and is used to relieve nausea and vomiting and to increase lactation. It is a dangerous drug under Business and Professions Code section 4022. Domperidone is not approved for use in humans in the United States by the Food and Drug Administration. Drug products compounded using domperidone are subject to the approval requirements of the federal Food, Drug and Cosmetic Act.

**FACTUAL BACKGROUND**

23. On and between October 16, 2012 and April 24, 2015, Kristen R. Gorski ("Respondent Gorski") was the pharmacist-in-charge at Sierra Compounding Pharmacy. On or about April 27, 2015, Angeline Marie Wustig ("Respondent Wustig") replaced Respondent Gorski as the pharmacist-in-charge.

24. On June 7, 2004, the U.S. Food and Drug Administration ("FDA") issued a talk paper titled, "FDA Warns Against Women Using Unapproved Drug, Domperidone, to Increase Milk Production." The paper stated in pertinent part that domperidone is an "unapproved drug," and that it is not approved in the US for human use. It also warned breast-feeding women not to use the product because of safety concerns, and that FDA field personnel were alerted to be on the lookout for attempts to import domperidone so it could be detained. The talk paper indicated that the FDA issued six letters to pharmacies that compound products containing domperidone and firms that supply domperidone for use in compounding. The paper stated, "[t]he letters..."
violate the Federal Food, Drug, and Cosmetic Act (the Act)\(^1\) because they are unapproved new
drugs and misbranded. In addition, distribution within the U.S., or importation of domperidone-
containing products, violates the law.” Over the next several years, the FDA continued to issue
and publish warning letters to laboratories and pharmacies that it identified were distributing and
compounding domperidone for human use, in violation of the Act.

25. On March 18, 2011, the FDA issued an import alert for domperidone indicating the
agency learned domperidone was being imported as a bulk active pharmaceutical ingredient for
pharmacy compounding, which presented a public health risk and violated the Act.

26. On March 12, 2012, the FDA issued a revised import alert for domperidone. This
revised import alert stated that “...domperidone is not appropriate for pharmacy compounding
use because this bulk active ingredient is not a component of an FDA approved drug, or is a
component of a drug that was withdrawn or removed from the market for safety reasons.”

27. On or about April 14, 2015, the Board of Pharmacy issued a “subscriber alert” to
pharmacies and pharmacists stating, “Domperidone is not FDA-approved for any use in humans
in the United States. Drug products compounded using domperidone are subject to the approval
requirements of the Federal Food, Drug, and Cosmetic Act.”

28. Respondents did not possess any FDA approval allowing them to receive or dispense
domperidone.

29. On or between April 29, 2014 and April 29, 2015, Respondents compounded 5,191
capsules of various strengths of domperidone which were dispensed on over 50 prescriptions.
Respondent pharmacy stated that the pharmacy compounded domperidone pursuant to
prescriptions and that the drug had been purchased from PCCA.

30. Invoices from PCCA showed that the pharmacy had purchased domperidone from
PCCA on or between August 19, 2014 to April 29, 2015.

\(^1\) 21 U.S.C. § 301 et seq.
FIRST CAUSE FOR DISCIPLINE
(Failure to Exercise or Implement Best Professional Judgment or Corresponding Responsibility)

31. Respondent Seiwert’s pharmacy permit and Respondents Gorski’s and Wustig’s pharmacist licenses are subject to disciplinary action for unprofessional conduct pursuant to Code section 4301, as defined by Code section 4306.5 subdivision (b), in that Respondents failed to exercise or implement their best professional judgment or corresponding responsibility by compounding and dispensing domperidone, a drug that had not been approved for human use by the FDA and for which the FDA had issued a warning against its use, as further set forth in paragraphs 24-30, above and incorporated herein by reference.

SECOND CAUSE FOR DISCIPLINE
(Failing to Consult Appropriate Records)

32. Respondent Seiwert’s pharmacy permit and Respondents Gorski’s and Wustig’s pharmacist licenses are subject to disciplinary action for unprofessional conduct pursuant to Code section 4301, as defined by Code section 4306.5 subdivision (c), in that Respondents failed to consult appropriate FDA records pertaining to the performance of pharmacy functions when they compounded and dispensed domperidone, a drug that had not been approved for human use by the FDA and for which the FDA had issued warnings against its use, as further set forth in paragraphs 24-30, above and incorporated herein by reference.

THIRD CAUSE FOR DISCIPLINE
(Received, Delivered and/or Sold Misbranded Drugs)

33. Respondent Seiwert’s pharmacy permit and Respondents Gorski’s and Wustig’s pharmacist licenses are subject to disciplinary action for unprofessional conduct pursuant to Code section 4301 subdivision (j), for violating statutes regulating dangerous drugs, in that Respondents received, sold and/or delivered misbranded drugs, as defined by Health and Safety Code sections 111335, 111400, and United States Code, title 21, section 352, subdivision (f) and in violation of Health and Safety Code section 111440 and 111450, as further set forth in paragraphs 24-30, above and incorporated herein by reference.
FOURTH CAUSE FOR DISCIPLINE

(Commission of Prohibited Acts)

34. Respondents are subject to disciplinary action under Code sections 4301, subdivision (o), in that Respondents violated or attempted to violate provisions of the pharmacy laws and/or of the applicable federal and state laws and regulations governing pharmacy, when Respondent’s received, compounded, delivered and/or sold domperidone without FDA approval in violation of section 4169, subdivision (a)(3), and as more fully set forth in paragraphs 24-33, above, which are incorporated herein by reference.

MATTERS IN AGGRAVATION

35. To determine the degree of discipline to be assessed against Respondents Setwert and Gorski, if any, Complainant alleges as follows:

Respondent Setwert/Sierra Compounding Pharmacy

a. On or about June 30, 2011, the Board issued Citation and Fine No. CI 2010 46937 against Sierra Compounding Pharmacy for violating California Code of Regulations (“CCR”), title 16, section 1761, subdivision (a)/Health and Safety Code section 11170 (no pharmacist shall compound or dispense any prescription which contains any significant error or omission/prohibition of prescribing, etc. controlled substance for sale); Health and Safety Code section 11165, subdivision (d) (for each prescription for a Schedule II or Schedule III controlled substance, the dispensing pharmacy shall report to the Department of Justice); and section 4081, subdivision (a)/section 4105, subdivision (a) (records of dangerous drugs kept open for inspection/retaining records of dangerous drugs and devices on licensed premises; temporary removal; waivers; access to electronically maintained records). The Board ordered Respondent to pay a fine of $4,500 by July 30, 2011. "The citation has been paid in full and is final.

b. On or about March 24, 2014, the Board issued Citation and Fine No. CI 2013 58024 against Sierra Compounding Pharmacy for violating Title 21, Code of Federal Regulations (“CFR”), section 1304.04, subdivisions (b)(1) and (2) (inventories and records of all controlled substances listed in Schedules I and II shall be maintained separately from all other records of the pharmacy/Schedules III, IV, and V shall be maintained either separately from all other records of.

(SIERRA COMPOUNDING PHARMACY) ACCUSATION
the pharmacy); Title 21, CFR, section 1301.75, subdivision (b) (controlled substances listed in
Schedules II, III, IV, and V shall be stored in a securely locked, substantially constructed
cabinet); and CCR, title 16, section 1707.5, subdivision (d) (patient-centered labels for
prescription drug containers; requirements; pharmacy shall have policies and procedures in place
to help patients with limited or no English proficiency understand the information on the label).
The Board ordered Respondent to pay fines totaling $1,250 by April 23, 2014. The citation has
been paid in full and is final.

Respondent Gorski

c. On or about March 24, 2014, the Board issued Citation and Fine No. CI 2013
60613 against Respondent Gorski for violating Title 21, CFR, section 1304.04, subdivisions
(h)(1) and (2) (inventories and records of all controlled substances listed in Schedules I and II
shall be maintained separately from all other records of the pharmacy/Schedules III, IV, and V
shall be maintained either separately from all other records of the pharmacy); Title 21, CFR,
section 1301.75, subdivision (b) (controlled substances listed in Schedules II, III, IV, and V shall
be stored in a securely locked, substantially constructed cabinet); and CCR, title 16, section
1707.5, subdivision (d) (patient-centered labels for prescription drug containers; requirements;
pharmacy shall have policies and procedures in place to help patients with limited or no English
proficiency understand the information on the label). The Board ordered Respondent to pay fines
totaling $1,250 by April 23, 2014. The citation has been paid in full and is final.

PRAYER

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

1. Revoking or suspending Pharmacy Permit No. PHY.49228, issued to Robert Hilbert
Seiwert, owner of Sierra Compounding Pharmacy;

2. Revoking or suspending Pharmacist License No. RPH 69944, issued to Angaline
Marie Wusstig;

3. Revoking or suspending Pharmacist License No. RPH 67057, issued to Kristen R.
Gorski;
4. Ordering Robert Hilbert Seiwert, owner of Sierra Compounding Pharmacy, Angaline Marie Wusstig, and Kristen R. Gorski to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

DATED: 5/4/16

VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant
Nevada State Board of Pharmacy - Renewal Application - PHARMACIST

431 W Plumb Lane • Reno, NV 89509 • bop.nv.gov

For the period of November 1, 2015 to October 31, 2017

Money Order ONLY (NO BUSINESS OR PERSONAL CHECKS, NO CASH)

$140.00 (postmarked or before 10/31/15) OR $320.00 (postmarked after 10/31/15)

Please make any changes to name or address next to the old information

LICENSE: 15622
Iroegbu Clifford Esomonu
KINGSMILL TER,
Dublin, CA 94568

Section 1: Since your last renewal or recent licensure have you: (Please fill in completely)

Yes No

1. Been diagnosed or treated for any mental illness, including alcohol or substance abuse, or
   physical condition that would impair your ability to perform the essential functions of your license?

2. Been charged, arrested or convicted of a felony or misdemeanor in any state?

3. Had your license subject to any discipline for violation of pharmacy or drug laws in any state?

If you marked YES to any of the numbered questions (1-3) above, include the following information & letter of explanation:

Board Administrative Action: 
State: CA
Date: 09/05/2015
Case #: 4579

Criminal Action: 
State: 
Date: / 
Case #: 
County: 
Court: 

Section 2: Are you the subject of a court order for the support of a child?

Yes No

If you marked YES to the question above, are you in compliance with the court order?

Section 3: (Fees apply to either status) (see colored insert for details)

By signing below, you certify that you have completed ALL required CE Hours due for the 15/17 Renewal period.
(Dated from Nov. 1, 13 – Oct. 31, 15: 1,256hrs per mo.). The exemption period is 2yrs after graduation only.
OR you may check the box for Inactive if you did NOT complete CE.

Inactive • By checking this box you certify that you are NOT practicing in NV and do not wish to comply with the CE requirements of NV and would like your license changed to inactive status. Before re-activating your license it will be necessary to submit an application and to become compliant with current CE requirements (NAC 639.213). See reverse of insert for more information.

Section 4: NON-DISCIPLINARY STATE-MANDATED QUESTIONS

1. Though it is NOT required to have, SB21 requires the Board to ask if you have a Nevada State Business license and if you do, please provide the #:

2. Have you ever served in the military, either active, reserve or retired?

Yes No

Military Occupation/Specialty: 
Dates of Service:

Section 5: It is a violation of Nevada law to falsify this application and sanctions will be imposed for misrepresentation. I hereby certify that I have read this application. I certify that all information and statements made are true and correct. I attest to knowledge of and compliance with the guidelines of the Centers for Disease Control and Prevention concerning the prevention of transmission of infectious agents through safe and proper injection practices. I understand that Nevada law requires a pharmacist who, in their professional or occupational capacity, comes to know or has reasonable cause to believe, a child has been abused/neglected, to report the abuse/neglect to an agency which provides child welfare services or to a local law enforcement agency.

Original Signature: 
Date: 10/30/2015
The Nevada State Board of Pharmacy

Explanations of CA Board Administrative Case #4579

I had started a pharmacy in Oakland CA in April 2009, with my sister. The pharmacy was called Fruitvale Avenue Pharmacy, Phy 50064. We were located on Fruitvale Avenue in Oakland and catered to Alameda county mental health department. We also filled prescription for walk-in patients.

Mainly in 2010 and some part of 2011 we started filling for pain patients. We had thought that we were the darlings of our community, but apparently we had also fallen victim to medicine shoppers and fraudsters. After a board inspection, in 2011, the board investigated us for a couple of years, and in 2013 filed an administrative action against our pharmacy, myself and my sister. We had stopped filling controlled substances as per pain physician in 2012, as well as stopped accepting cash for any prescriptions. We instead became pharmacy 340B pharmacy for HIV and Hep C.

The administrative mediation went on for two years and in April 2015, I accepted to surrender my license for a period of three years...
I was allowed to sell the pharmacy to another specialty HIV company, who still operates the pharmacy as a DBA in same name. I accept that I was negligent in my supervisory role as P.I.C of the pharmacy, but I had learnt all I need to know about divers and the drug epidemic. I can no longer be fooled by any one as far as controlled substance go. I am ready to become a model pharmacist in the state of Nevada.

Sinceley
Ioseph C. Esomona
# 15622

N.B.
Case has been emailed
+2 Pharmacy @pharmacy.mvd.gov.
BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Second Amended Accusation Against:

FRUITVALE AVENUE PHARMACY INC.
2693 Fruitvale Avenue
Oakland, CA  94601

Pharmacy License No. PHY 50064,

IJEOMA NWAYIOCHA ESOMONU
FRUITVALE AVENUE PHARMACY INC.
16 Minaret Road
Oakley, CA  94561

Pharmacist License No. RPH 53516,

and

IROEGBU CLIFFORD ESOMONU
FRUITVALE AVENUE PHARMACY INC.
6726 Corte Santa Maria
Pleasanton, CA  94566

Pharmacist License No. RPH 53445

Respondents.

Case No. 4579
OAH No. 2014061007

STIPULATED SURRENDER OF LICENSE AND ORDER AS TO RESPONDENT FRUITVALE AVENUE PHARMACY INC. AND RESPONDENT IROEGBU CLIFFORD ESOMONU ONLY

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 on July 8, 2015.

It is so ORDERED on July 6, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

AMARYLIS GUTIERREZ
Board President
BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Second Amended
Accusation Against:

FRUITVALE AVENUE PHARMACY INC.
2693 Fruitvale Avenue
Oakland, CA 94601

Pharmacy License No. PHY 50064,

IEOMA NWAYIOCHA ESOMONU
FRUITVALE AVENUE PHARMACY INC.
16 Minaret Road
Oakley, CA 94561

Pharmacist License No. RPH 53516,

and

IROEGBU CLIFFORD ESOMONU
FRUITVALE AVENUE PHARMACY INC.
6726 Corte Santa Maria
Pleasanton, CA 94566

Pharmacist License No. RPH 53445

Respondents.

Case No. 4579
OAH No. 2014061007

STIPULATED SURRENDER OF
LICENSE AND ORDER AS TO
RESPONDENT FRUITVALE AVENUE
PHARMACY INC. AND RESPONDENT
IROEGBU CLIFFORD ESOMONU

Stipulated Surrender of License (Case No. 4579)
IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
entitled proceedings that the following matters are true:

PARTIES

1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy. She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Timothy J. McDonough, Deputy Attorney General.

2. Fruitvale Avenue Pharmacy, Inc. (Respondent Fruitvale) and Iroegbu Clifford Esomonu (Respondent Esomonu) are represented in this proceeding by attorney John Fleer, whose address is 1850 Mt. Diablo Boulevard, Suite 120, Walnut Creek, CA 94596.

3. On or about October 21, 2009, the Board of Pharmacy issued Pharmacy Permit No. PHY 50064 to Fruitvale Avenue Pharmacy, Inc. The Pharmacy License was in full force and effect at all times relevant to the charges brought in Second Amended Accusation No. 4579 and will expire on October 1, 2015, unless renewed.

4. On or about March 28, 2002, the Board of Pharmacy issued Pharmacist License No. RPH 53445 to Iroegbu Clifford Esomonu. The pharmacist license was in full force and effect at all times relevant to the charges brought in Second Amended Accusation No. 4579 and will expire on September 30, 2015, unless renewed.

JURISDICTION

5. Second Amended Accusation No. 4579 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondents. The Second Amended Accusation and all other statutorily required documents were properly served on Respondents on May 6, 2015. A copy of Second Amended Accusation No. 4579 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

6. Respondents have carefully read, fully discussed with counsel, and understand the charges and allegations in Second Amended Accusation No. 4579. Respondents also have
carefully read, fully discussed with counsel, and understands the effects of this Stipulated
Surrender of License and Order.

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

8. Respondents voluntarily, knowingly, and intelligently waives and gives up each and
every right set forth above.

CULPABILITY

9. Respondents admit the truth of each and every charge and allegation in Second
Amended Accusation No. 4579, agree that cause exists for discipline and hereby surrenders their
Pharmacy Permit No. PHY 50064 and Pharmacist License Number RPH 53445 for the Board's
formal acceptance.

10. Respondents understand that by signing this stipulation, Respondent Fruitvale and
Respondent Esomonu enable the Board to issue an order accepting the surrender of Pharmacy
Permit No. PHY 50064 and Pharmacist License No. RPH 53445 without further process.

RESERVATION

11. The admissions made by Respondents in this stipulation are only for the purposes of
this proceeding, or any other proceedings in which the Board of Pharmacy or other professional
licensing agency is involved, and shall not be admissible in any other criminal or civil
proceeding.

CONTINGENCY

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

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

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

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

ORDER

IT IS HEREBY ORDERED that Pharmacist License No. RPH 53445, issued to Respondent
Esomonu and Pharmacy Permit No. PHY 50064 issued to Respondent Fruitvale are surrendered
and accepted by the Board of Pharmacy. The effective date of the Decision as to Respondent
Fruitvale’s permit surrender, however, shall be stayed until July 8, 2015, at which time the
pharmacy shall be sold or closed.

1. The surrender of Respondents’ Pharmacy Permit and Pharmacist License and the
acceptance of the surrendered licenses by the Board shall constitute the imposition of discipline
against Respondents. This stipulation constitutes a record of the discipline and shall become a
part of Respondents’ license history with the Board of Pharmacy.
2. In the event that Fruitvale Avenue Pharmacy, Inc. is sold and an application for a new permit is submitted to the Board, the Board shall expedite the processing of that application.

3. Respondent Fruitvale shall lose all rights and privileges as a pharmacy in California as of the effective date of the Board's Decision and Order.

4. Respondent Esomonu shall lose all rights and privileges as a pharmacist in California as of the effective date of the Board's Decision and Order.

5. Respondent Esomonu shall cause to be delivered to the Board its pocket license and, if one was issued, its wall certificate, on or before the effective date of the Decision and Order.

6. If Respondent ever applies for licensure or petitions for reinstatement in the State of California, the Board shall treat it as a new application for licensure. Respondent must comply with all the laws, regulations, and procedures for licensure in effect at the time the application or petition is filed, and all of the charges and allegations contained in Second Amended Accusation No. 4579 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the application or petition.

7. Respondent shall pay the agency its costs of investigation and enforcement in the amount of $50,973.50 prior to issuance of a new or reinstated license.

8. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Second Amended Accusation, No. 4579 shall be deemed to be true, correct, and admitted by Respondents for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

9. In the event that Fruitvale Avenue Pharmacy, Inc. is not sold by July 8, 2015, Respondent Fruitvale shall, within ten (10) days of the stayed effective date of the Board’s order, arrange for the destruction of, the transfer to, sale of or storage in a facility licensed by the Board of all controlled substances and dangerous drugs and devices. Respondent Fruitvale shall further provide written proof of such disposition and submit a completed Discontinuance of Business form according to Board guidelines.
Respondent owner shall also, by the effective date of this decision, arrange for the
continuation of care for ongoing patients of the pharmacy by, at minimum, providing a written
notice to ongoing patients that specifies the anticipated closing date of the pharmacy and that
identifies one or more area pharmacies capable of taking up the patients' care, and by cooperating
as may be necessary in the transfer of records or prescriptions for ongoing patients. Within five
days of its provision to the pharmacy's ongoing patients, Respondent owner shall provide a copy
of the written notice to the board. For the purposes of this provision, "ongoing patients" means
those patients for whom the pharmacy has on file a prescription with one or more refills
outstanding, or for whom the pharmacy has filled a prescription within the preceding sixty (60)
days.

10. Respondent may not apply, reapply, or petition for any licensure or registration of the
Board for three (3) years from the effective date of the Decision and Order.

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ACCEP T AN CE

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

DATED: 06.19.15

IROEGBU CLIFFORD ESOMONU
FRUITVALE AVENUE PHARMACY, INC.
Respondent

I have read and fully discussed with Respondent Fruitvale Avenue Pharmacy, Inc. and Respondent Iroegbu Clifford Esomonu the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: 06.22.15

JOHN FLEER
Attorney for Respondent
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: 6-22-2015

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
DIANN SOKOLOFF
Supervising Deputy Attorney General

TIMOTHY J. MCDONOUGH
Deputy Attorney General
Attorneys for Complainant

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ACCEPTANCE

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

DATED: _____________________________ IROEGBU CLIFFORD ESOMONU
FRUITVALE AVENUE PHARMACY, INC.
Respondent

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

DATED: _____________________________ IROEGBU CLIFFORD ESOMONU
Respondent

I have read and fully discussed with Respondent Fruitvale Avenue Pharmacy, Inc. and Respondent Iroegbu Clifford Esomonu the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: _____________________________ JOHN FLEER
Attorney for Respondent
Exhibit A

Second Amended Accusation No. 4579
BEFORE THE 
BOARD OF PHARMACY 
DEPARTMENT OF CONSUMER AFFAIRS 
STATE OF CALIFORNIA 

In the Matter of the Second Amended 
Accusation Against:

FRUITVALE AVENUE PHARMACY INC. 
2693 Fruitvale Avenue 
Oakland, CA 94601

Pharmacy License No. PHY 50064,

JEOMA NWAYIOCHA ESOMONU 
FRUITVALE AVENUE PHARMACY INC. 
16 Minaret Road 
Oakley, CA 94561

Pharmacist License No. RPH 53516,

and

IROEGBU CLIFFORD ESOMONU 
FRUITVALE AVENUE PHARMACY INC. 
6726 Corte Santa Maria 
Pleasanton, CA 94566

Pharmacist No. RPH 53445

Respondents.

Case No. 4579

SECOND AMENDED ACCUSATION

Second Amended Accusation
Complainant alleges:

PARTIES

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

2. On or about October 21, 2009, the Board of Pharmacy issued Pharmacy License Number PHY 50064 to Fruitvale Avenue Pharmacy Inc. (Respondent FAP). The Pharmacy License was in full force and effect at all times relevant to the charges brought in this Second Amended Accusation and will expire on October 1, 2015, unless renewed.

3. On or about April 23, 2002, the Board of Pharmacy issued Pharmacist License Number RPH 53516 to Ijeoma Nwanyiocha Esomonu (Respondent INE). The Pharmacist License was in full force and effect at all times relevant to the charges brought in this Second Amended Accusation and will expire on April 30, 2017, unless renewed.

4. On or about March 28, 2002, the Board of Pharmacy issued Pharmacist License Number RPH 53445 to Iroegbu Clifford Esomonu (Respondent ICE). The Pharmacist License was in full force and effect at all times relevant to the charges brought in this Second Amended Accusation and will expire on September 30, 2015, unless renewed.

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

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

7. Section 4300 of the Code states, in relevant part:

   "(a) Every license issued may be suspended or revoked."
“(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

“(1) Suspending judgment.
“(2) Placing him or her upon probation.
“(3) Suspending his or her right to practice for a period not exceeding one year.
“(4) Revoking his or her license.
“(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

... 

“(c) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure.”

8. Section 4300.1 of the Code provides that “[t]he expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.”

STATUTORY/REGULATORY PROVISIONS

9. Section 4301 of the Code states, in relevant part:

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

“(a) Gross immorality.

...
"(d) The clearly excessive furnishing of controlled substances in violation of subdivision (a) of Section 11153 of the Health and Safety Code.

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

... "(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. Section 4081 of the Code states:

"(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

"(b) The owner, officer, and partner of any pharmacy, wholesaler, or veterinary food-animal drug retailer shall be jointly responsible, with the pharmacist-in-charge or representative-in-charge, for maintaining the records and inventory described in this section.

"(c) The pharmacist-in-charge or representative-in-charge shall not be criminally responsible for acts of the owner, officer, partner, or employee that violate this section and of which the pharmacist-in-charge or representative-in-charge had no knowledge, or in which he or she did not knowingly participate."
11. Section 4113, subdivision (c), of the Code provides that "the pharmacist-in-charge shall be responsible for a pharmacy’s compliance with all state and federal laws and regulations pertaining to the practice of pharmacy."

12. Section 4333 of the Code states, in relevant part, that all prescriptions filled by a pharmacy and all other records required by Section 4081 shall be maintained on the premises and available for inspection by authorized officers of the law for a period of at least three years. In cases where the pharmacy discontinues business, these records shall be maintained in a board-licensed facility for at least three years.

13. Health and Safety Code section 11165, subdivision (d), states:

“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.

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

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

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

“(5) Quantity of the controlled substance dispensed.

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

“(7) Number of refills ordered.

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

“(9) Date of origin of the prescription."
“(10) Date of dispensing of the prescription.”

14. Health and Safety Code section 11164 states, in relevant part:

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

“(a) Each prescription for a controlled substance classified in Schedule II, III, IV, or V,
extcept as authorized by subdivision (b), shall be made on a controlled substance prescription form
as specified in Section 11162.1 ....”

15. Health and Safety Code section 11162.1 states, in relevant part:

“(a) The prescription forms for controlled substances shall be printed with the following
features:

...(7)(A) Six quantity check off boxes shall be printed on the form so that the prescriber
may indicate the quantity by checking the applicable box where the following quantities shall
appear:

- 1-24
- 25-49
- 50-74
- 75-100
- 101-150
- 151 and over.

...(8) Prescription blanks shall contain a statement printed on the bottom of the
prescription blank that the ‘Prescription is void if the number of drugs prescribed is not noted.’"

...(b) Each batch of controlled substance prescription forms shall have the lot number printed
on the form and each form within that batch shall be numbered sequentially beginning with the
numeral one.”

16. Health and Safety Code section 11153, subdivision (a), states:

“A prescription for a controlled substance shall only be issued for a legitimate medical
purpose by an individual practitioner acting in the usual course of his or her professional
practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. Except as authorized by this division, the following are not legal prescriptions: (1) an order purporting to be a prescription which is issued not in the usual course of professional treatment or in legitimate and authorized research; or (2) an order for an addict or habitual user of controlled substances, which is issued not in the course of professional treatment or as part of an authorized narcotic treatment program, for the purpose of providing the user with controlled substances, sufficient to keep him or her comfortable by maintaining customary use."

17. Health and Safety Code section 111295 states:

"It is unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any drug or device that is adulterated."

18. California Code of Regulations, title 16, section 1761, states:

"(a) No pharmacist shall compound or dispense any prescription which contains any significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon receipt of any such prescription, the pharmacist shall contact the prescriber to obtain the information needed to validate the prescription.

"(b) Even after conferring with the prescriber, a pharmacist shall not compound or dispense a controlled substance prescription where the pharmacist knows or has objective reason to know that said prescription was not issued for a legitimate medical purpose."

19. California Code of Regulations, title 16, section 1707.2, states, in relevant part:

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

"(1) upon request; or

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

"(b)(1) In addition to the obligation to consult set forth in subsection (a), a pharmacist shall provide oral consultation to his or her patient or the patient's agent in any care setting in which the patient or agent is present;"
“(A) whenever the prescription drug has not previously been dispensed to a patient; or
“(B) whenever a prescription drug not previously dispensed to a patient in the same dosage
form, strength or with the same written directions, is dispensed by the pharmacy.”

20. California Code of Regulations, title 16, section 1716, states:
“Pharmacists shall not deviate from the requirements of a prescription except upon the
prior consent of the prescriber or to select the drug product in accordance with Section 4073 of
the Business and Professions Code.

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

21. California Code of Regulations, title 16, section 1718, states:
“Current Inventory” as used in Sections 4081 and 4332 of the Business and Professions
Code shall be considered to include complete accountability for all dangerous drugs handled by
every licensee enumerated in Sections 4081 and 4332.

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

22. Code section 4306.5, states:
“Unprofessional conduct for a pharmacist may include any of the following:
“(a) Acts or omissions that involve, in whole or in part, the inappropriate exercise of his or
her education, training, or experience as a pharmacist, whether or not the act or omission arises in
the course of the practice of pharmacy or the ownership, management, administration, or
operation of a pharmacy or other entity licensed by the board.

“(b) Acts or omissions that involve, in whole or in part, the failure to exercise or implement
his or her best professional judgment or corresponding responsibility with regard to the
dispensing or furnishing of controlled substances, dangerous drugs, or dangerous devices, or with
regard to the provision of services.

“(c) Acts or omissions that involve, in whole or in part, the failure to consult appropriate
patient, prescription, and other records pertaining to the performance of any pharmacy function.

“(d) Acts or omissions that involve, in whole or in part, the failure to fully maintain and
retain appropriate patient-specific information pertaining to the performance of any pharmacy function.”

23. Section 4307 of the Code states, in relevant part:

“(a) Any person who has been denied a license or whose license has been revoked or is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a manager, administrator, owner member, officer, director, associate, or partner of any partnership, corporation, firm, or association whose application for a license has been denied or revoked, is under suspension or has been placed on probation, and while acting as the manager, administrator, owner, member, officer, director, associate, or partner had knowledge or knowingly participated in any conduct for which the license was denied, revoked, suspended, or placed on probation, shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee as follows:

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

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

24. Code section 4022, states:

“'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self-use in humans or animals, and includes the following:

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

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

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

25. Section 4021 of the Code states:

"Controlled substance' means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."

26. Oxycodone is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(M).

27. Hydrocodone with acetaminophen is a Schedule III controlled substance as designated by Health and Safety Code section 11056, subdivision (e)(4).

28. Promethazine with codeine is a Schedule V controlled substance as designated by Health and Safety Code section 11058.

COST RECOVERY

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

FACTUAL BACKGROUND

30. From about October 21, 2009, to the present, Respondent Fruitvale Avenue Pharmacy (FAP) has been operating as a pharmacy in Oakland, California. From on or about October 21, 2009, until about May 19, 2011, Respondent Ijeoma Nwanyiocha Esomonu (INE), the owner of FAP, was also the pharmacist-in-charge (PIC) at FAP. From on or about October 21, 2009, to the present, Respondent Iroegbu Clifford Esomonu (ICE) worked as a pharmacist at FAP. From about May 19, 2011, to the present, Respondent ICE worked as the PIC at FAP.

May 17, 2011 Inspection

31. On May 17, 2011, a Board inspector (Inspector 1) conducted an inspection at FAP because the Board identified FAP as a pharmacy that failed to report any Controlled Substances Utilization Review and Evaluation System (CURES) data to the Department of Justice (DOJ).
During the inspection, Inspector 1 observed several pharmacy law violations, including, but not limited to, never transmitting any CURBS data to the DOJ.

32. While at FAP, Inspector 1 reviewed prescription documents from Bay Internal Medicine (BIM). The prescriptions appeared legitimate but, upon further investigation, Inspector 1 found that none of the prescribers' contact information on the prescriptions contained a valid working phone number. Inspector 1 asked Respondent ICE to verify the BIM prescribers on the Medical Board of California's website. The web search revealed that none of the BIM prescribers' listed addresses on the Medical Board's website matched the addresses on the prescriptions. Significantly, Respondent ICE admitted to Inspector 1 that he had never before verified a prescriber using the Medical Board's website. In addition, Inspector 1 observed numerous other violations of pharmacy laws. During his inspection, Inspector 1 obtained several materials including prescription documents, dispensing detail reports, and Cardinal Health Narcotic Sales Reports. Inspector 1 also requested FAP to provide additional documents and explanations regarding pharmacy law violations indicated in the report. At the conclusion of the inspection, Inspector 1 prepared an inspection report documenting various pharmacy law violations. Inspector 1 gave a copy of the report to Respondent ICE, and then had Respondent ICE review and sign off on it.

33. On or about May 30, 2011, Inspector 1 received and reviewed faxed responses from FAP. Subsequently, Inspector 1 contacted 15 different prescribers listed as the supposed prescriber on the prescription documents. Inspector 1 sent each prescriber a list of prescriptions from FAP to verify the legitimacy of the prescriptions. Each of the prescribers responded with a written statement that they did not authorize the prescriptions from FAP. In fact, one prescriber from Kaiser stated he did not authorize any of the prescriptions and that they were written on prescriptions that were stolen from his locker at the hospital. Additionally, one prescriber from BIM stated BIM's practice had been closed since June 2009. All the BIM prescription documents that Inspector 1 sent to the BIM prescribers to review were dated and filled by FAP in 2011.
34. Physician Assistant G. P.\(^1\) (G.P.) was one of the 15 prescribers that Inspector 1 contacted to verify the legitimacy of the prescription documents he got from FAP. On or about June 7, 2011, Inspector 1 received a response from G.P., indicating that he did not authorize the prescriptions and the documents were forgeries. In addition, G.P. noted that several of the prescription documents were not written on proper controlled substances prescription forms. Significantly, during the May 17, 2012 visit to FAP, Inspector 1 made the same observation; that FAP had improperly dispensed controlled substances on five invalid prescription documents.

These five prescription documents were invalid because they lacked several required security features such as quantity check off boxes, the required statement of “Prescription is void if the number of drugs prescribed is not noted,” and the prescriptions were not sequentially numbered.

35. Inspector 1’s investigation revealed that from October 2009, to about April 2011, FAP failed to transmit CURES data to the DOJ. The investigation further showed that from about July 2010, to May 2011, Respondent INE and Respondent ICE had filled approximately 350 fraudulent prescriptions. Many of these prescription documents contained significant irregularities that should have prompted Respondent INE and Respondent ICE to verify the legitimacy of the prescription before dispensing the controlled substances. In addition, a review of FAP’s dispensing printouts obtained during the investigation showed Respondent ICE’s initials on most, if not all, of the printouts’ “filled by” section. Furthermore, in a written statement, Respondent ICE admitted that he was the pharmacist on duty everyday since the opening of FAP.

### September 17, 2014 Inspection

36. On or about July 7, 2014, the Board opened an investigation for pharmacies filing prescriptions written by Dr. Tan Nguyen based on news articles stating the prescriber was charged with excessive prescribing of controlled substances. The subsequent review of pharmacies filling those prescriptions revealed that 44.59 percent of written prescriptions by another prescriber, Dr. Hai Nguyen, were being filled at Fruitvale Avenue Pharmacy (FAP). That information led to an investigation of FAP and its dispensing practices regarding several

\(^1\) G.P. is used in this document rather than the actual name of the Physician Assistant.
prescribers, Dr. Hai Nguyen, Dr. Collin Leong, Dr. Tan Nguyen, and Dr. Daniel Shin (the
Prescribers).

37. On July 25, 2014, a Board inspector (Inspector 2) began an investigation which
included gathering information and conducting an inspection of FAP. Documents and
information were requested from FAP and information was obtained regarding the prescription
patterns of the Prescribers. These documents and information included, but were not limited to,
CURES reports, prescriptions, and drug usage reports.

38. On September 17, 2014, Inspector 2 reviewed the Medical Board of California’s
website and checked the license status of the Prescribers. That same day, Inspector 2 and other
board inspectors went to FAP, conducted an inspection, and reviewed pharmacy operations and
various documents, including pharmacy self-assessment data, policy and procedures on
preventing medication diversion and controlled substances, DEA biennial inventory for CIII-V
controlled substances report, dispensing reports, sample prescription labels, the current inventory
including a large box filled with approximately 80-100 prescription vials returned by patients for
destruction, and prescription hard copies for controlled substances.

39. During the inspection, Inspector 2 interviewed the Pharmacist-in-Charge (PIC),
Respondent ICE, and asked about prescription dispensing and filling processes in general, and
specifically regarding the Prescribers. Inspector 2 requested additional documents including,
multiple dispensing histories for various prescribers, some drug usage reports, on-hand quantity
of selected drugs, the DEA biennial inventory, total prescriptions dispensed from September 17,
2011, to September 17, 2014, prescription hard copies for Dr. Tan Nguyen, purchase history for
selected drugs, policy and procedure for theft/diversion, interpretive services and quality
assurance, and patient centered labeling corrections (font and clustering information). FAP failed
to provide the current DEA biennial inventory for inspection.

40. On October 21, 2014, Inspector 2 sent survey letters to numerous patients listed on
FAP’s dispensing records for prescriptions written by the Prescribers. The surveys were sent to
gather information from the patients who used FAP to have their prescriptions filled.
41. The evaluation of dispensing practices of FAP demonstrates that the Prescribers aided the medically illegitimate dispensing of controlled substances, and that FAP and Respondent ICE filled and dispensed medically illegitimate prescriptions. The data showed that FAP dispensed excessive amounts of controlled substances for irregular or uncertain prescriptions and ignored key objective factors suggesting the medical illegitimacy of the prescriptions. Some of these objective factors were: (1) payment methods for controlled substances were in excess of normal distribution between cash and insurance; (2) there was an irregular pattern of patients willing to pay cash for expensive medication (100% cash payment method for 2 of the 4 Prescribers); (3) there was an irregular pattern of patients willing to drive well over 50 miles to obtain controlled substance prescriptions from the Prescribers and to fill prescriptions at FAP (average distance travelled was 165.55 miles); (4) sequential or near sequential numbering of prescriptions filled for patients of the Prescribers; (5) excessive filling of controlled substances in comparison to competitor pharmacies in proximity to FAP; (6) failing to assess “narcotic naïve” patients to determine if large doses of highly abused drugs were written for a legitimate medical purpose; (7) failing to exercise professional judgment when filling prescriptions for large quantities of controlled substances for highly abused drugs; and (8) failing to exercise education, training and experience as a pharmacist when assessing prescriptions written for highly abused controlled substances. Additionally, FAP and its PIC (Respondent ICE) did not assume their corresponding responsibility when they failed to appropriately scrutinize patients’ drug therapy with readily available tools such as CURES reports and industry “red flags” to verify prescriptions, so they repeatedly prescribed controlled substances to pharmacy and doctor shoppers. Some of the “red flags” that existed but were not heeded were: prescribers and patients from outside the pharmacy service area, prescriptions for highly abused drugs, prescriptions paid for in cash (or debit or credit card), large quantities outside the normal scope of dispensing, early dispensing, and sequential filling of prescriptions from a single prescriber for multiple patients for “drug cocktails”\(^2\)

\(^2\)“Drug cocktails” are typically a combination of hydrocodone/APAP 10/325 mg, promethazine with codeine, oxycodone 30 mg, diazepam 10 mg, carisoprodol 350 mg and other (continued...)
42. During the inspection, Inspector 2 interviewed Respondent ICE regarding FAP's controlled substance filling and dispensing practices. Respondent ICE explained that FAP is registered for the CURES PDMP program but he does not utilize it much because he knows the doctors are checking the CURES, so he does not do it.

43. From September 17, 2011, to September 17, 2014, FAP dispensed controlled substances with an established history of high potential for abuse despite multiple cues of irregularity and uncertainty based on the patients and prescribers. In general, FAP dispensed 32,553 prescriptions and 19,502 prescriptions for various controlled substances from 4 specific prescribers. FAP dispensed a total of 598,928 doses of hydrocodone/APAP 10/32mg, 312,680 tablets of oxycodone 30mg, and 5,336 pints of promethazine with codeine. Specifically, FAP dispensed 15,926 controlled substance prescriptions written by Dr. Hai Nguyen, 2,822 by Dr. Collin Leong, 704 by Dr. Daniel Shin, and 50 by Dr. Tan Nguyen with disregard or negligence to the following factors: distance from FAP to the prescriber's office, distance from FAP to patient's home, percentage of cash patients in relation to specific prescribers, same or similar prescribing patterns for individual patients, and filling controlled substance prescriptions in groups. Also, FAP did not scrutinize patients' drug therapy with readily available tools, like the CURES PDMP program, and industry "red flags" to verify prescriptions. These omissions resulted in repeated dispensing of controlled substances to patients who engaged in doctor and pharmacy shopping activity, and filling prescriptions for large quantities of narcotics for patients who used multiple controlled substances prescribed all together or in other combinations of 2 or 3 of these drugs.

3 The CURES PDMP program allows the pharmacist to look up a patient's prescription fill history.

4 A pharmacist must be alert to see potential "red flags" that will suggest that the prescriptions are not for a legitimate medical purposes some of these "red flags include, but are not limited to:

a. prescriptions written by prescribers from outside the pharmacy service area;

b. patients are from outside the pharmacy service area;

c. prescriptions for highly abused drugs;

d. prescriptions paid for in cash;

e. large quantities of medicine prescribed outside the normal scope of dispensing;

f. early dispensing;

g. sequential filling of prescriptions from a single prescriber for multiple patients for "drug cocktails."

Second Amended Accusation
prescribers and without confirming the prescriptions and that the quantities of narcotics
prescribed were for a legitimate medical purpose.

44. Inspector 2’s review of the prescription hard copies revealed: 39 prescription hard
copies were not provided; 18 prescriptions were in scanned image form, not hard copies; and
several prescriptions were processed with the wrong prescriber. Also, FAP could not account for
140.8 pints of promethazine with codeine syrup that it purchased between September 17, 2011
and September 17, 2014.

45. During the September 17, 2014, board inspector 2 spoke with two FAP clerks who
stated that when a “new” prescription is picked up, they review the patient’s profile to see if the
patient was previously on the medication and ask the patients if they have any questions for the
pharmacists. During the inspection on September 17, 2014, the inspector observed that there
were no requests for consultation from the pharmacist.

Prescriber Information

46. Dr. Collin Leung surrendered his California Medical License with an effective date of
February 4, 2014. Dr. Leung’s surrender of his license was a disciplinary resolution to
Accusation No. 03-2012-220574 brought against his medical license by the Medical Board of
California. There were numerous causes for discipline alleged in the Accusation including causes
based on excessive prescribing.

47. On October 3, 2014, Dr. Tan Nguyen surrendered his California Medical License.
Dr. Tan Nguyen’s surrender of his license was a disciplinary resolution to Accusation No.
5002014000107 brought against his medical license.

48. On March 20, 2014, the Medical Board of California filed Accusation No. 122011
216564 against Dr. Hai Van Nguyen’ medical license. The Accusation alleges numerous causes
for discipline including several causes for discipline for prescribing dangerous drugs without
appropriate prior examination and indication. The Accusation is currently pending against Dr.
Hai Van Nguyen.

49. On March 25, 2014, Judge Longoria of the Los Angeles County Superior Court
issued an order in the case of State of California v. Daniel Shin, Case No. BA421892, that as a
condition of his bail, Dr. Daniel Shin shall cease and desist from the practice of medicine, and
immediately surrender any and all controlled substance prescription forms. Previously, on
January 13, 2012, the Medical Board of California filed Accusation No. 19-2010-208332 against
Dr. Daniel Shin’s medical license. On August 31, 2012, the Medical Board of California placed
Dr. Shin’s medical license on probation for 5 years.

CAUSES OF DISCIPLINE AGAINST RESPONDENT FAP

FIRST CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Failure to Transmit Dispensing Data to CURES)
(Bus. & Prof. § 4301, subd. (j), & Health and Safety Code § 11165, subd. (d))

50. Respondent Fruitvale Avenue Pharmacy’s (FAP) Pharmacy License is subject to
disciplinary action under Code section 4301, subdivision (j), because FAP violated Health and
Safety Code section 11165, subdivision (d), in that from on or about October 21, 2009, until
approximately April 2011, FAP failed to transmit dispensing data for Schedule II, Schedule III,
and Schedule IV controlled substances to the Department of Justice for the Controlled Substances
Utilization Review and Evaluation System (CURES) on a weekly basis. The circumstances are
further explained in paragraphs 30 through 35, above.

SECOND CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Filled Prescriptions with Significant Irregularity)
(Bus. & Prof. § 4301, subd. (o) and 16 CCR § 1761, subd. (a))

51. Respondent FAP’s Pharmacy License is subject to disciplinary action under Code
section 4301, subdivision (o), because FAP violated California Code of Regulations, title 16,
section 1761, subdivision (a), in that pharmacists and staff at FAP filled approximately 350
irregular prescriptions. Many of these prescriptions reflect orders for an unusually large amount
of controlled substances for “as-needed” purposes. The circumstances are further explained in
paragraphs 30 through 35, above.

THIRD CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Failure to Verify Legitimacy of Prescriptions for Controlled Substances)
(Bus. & Prof. § 4301, subd. (j), and Health and Safety Code § 11153, subd. (a))

52. Respondent FAP’s Pharmacy License is subject to disciplinary action under Code
section 4301, subdivision (j), because FAP violated Health and Safety Code section 11153,
subdivision (a), in that pharmacists and staff at FAP failed to uphold their corresponding
responsibility of verifying the patient's legitimate medical purposes for controlled substances.

The pharmacists and staff at FAP breached their corresponding responsibility by furnishing unusually large quantities of controlled substances to patients without confirming the legitimacy of the prescriptions with the supposed prescribers. In fact, the pharmacists and staff at FAP filled approximately 350 fraudulent prescriptions, many of which were for unusually large quantities of controlled substances. The circumstances are further explained in paragraphs 30-35, above.

**FOURTH CAUSE FOR DISCIPLINE**
(Unprofessional Conduct-Dispensed Controlled Substances on Invalid Prescriptions)
(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11164)

53. Respondent FAP's Pharmacy License is subject to disciplinary action under Code section 4301, subdivision (j), because FAP violated Health and Safety Code section 11164, in that the pharmacists and staff at FAP furnished controlled substances to patients based on invalid controlled substances prescription forms. Specifically, during May 2011, FAP filled five prescription documents that lacked several required security measures. The circumstances are further explained in paragraph 34, above.

**FIFTH CAUSE FOR DISCIPLINE**
(Unprofessional Conduct-Failure to Maintain Records of Disposition)
(Bus. & Prof. §§ 4301, subd. (j), & 4333)

54. Respondent FAP's Pharmacy License is subject to disciplinary action under Code section 4301, subd. (j), because it violated Code section 4081, in that it did not maintain on its premises and have available for inspection all records of disposition for three years. Specifically, on September 17, 2014, Inspector 2 obtained prescription hard copies and requested additional documents after the inspection. During the inspection, 39 prescription hard copies—which were filled between September 17, 2011 and September 17, 2014—were missing and FAP only provided scan images of 18 prescriptions filled by the pharmacy during this three year period for patients of Dr. Tan Nguyen.

**SIXTH CAUSE FOR DISCIPLINE**
(Unprofessional Conduct-Possessing Adulterated Drugs)
(Bus. & Prof. § 4301, subd. (j), and Health and Safety Code § 111295)

55. Respondent FAP's Pharmacy License is subject to disciplinary action under Code sections 4301, subd. (j), in that FAP violated Health and Safety Code section 111295, in that the
pharmacists and staff at FAP possessed dangerous drugs that had been adulterated. Specifically, on September 17, 2014, during an inspection at FAP, a board inspector discovered a large box filled with approximately 80 prescription vials returned by patients for destruction in the pharmacy.

**SEVENTH CAUSE FOR DISCIPLINE**
(Unprofessional Conduct-Failure to Provide Record of DEA Biennial Inventory) (Bus. & Prof. § 4301, subd. (0), & 16 CCR § 1718)

56. Respondent FAP’s Pharmacy License is subject to disciplinary action under Code section 4301, subdivision (o), because it failed to comply with title 16 section 1718 of the California Code of Regulations. Specifically, on September 17, 2014, during an inspection, a Board inspector requested the record of the DEA biennial inventory for inspection. Respondent FAP failed to provide the record for inspection.5

**EIGHTH CAUSE FOR DISCIPLINE**
(Unprofessional Conduct-Failure to Consult with Patient) (Bus. & Prof. § 4301, subd. (o), and 16 CCR § 1707.2, subd. (b)(1)(A))

57. Respondent FAP’s Pharmacy License is subject to disciplinary action under Code section 4301, subdivision (o), because FAP violated California Code of Regulations, title 16, section 1707.2, subdivision (b)(1)(A), in that FAP failed to consult with patients regarding new medications. The circumstances are further explained in paragraph 45, above.

**NINTH CAUSE FOR DISCIPLINE**
(Unprofessional Conduct-Failure to Verify Legitimacy of Prescriptions for Controlled Substances) (Bus. & Prof. § 4301, subd. (d), & Health and Safety Code § 11153, subd. (a))

58. Respondent FAP’s Pharmacy License is subject to disciplinary action under Code section 4301, subdivision (d), because FAP engaged in the excessive furnishing of controlled substances in violation of Health and Safety Code section 11153, subdivision (a), in that pharmacists and staff at FAP failed to uphold their corresponding responsibility of verifying the patient’s legitimate medical purposes for controlled substances. Specifically, the pharmacists and staff at FAP breached their corresponding responsibility by furnishing unusually large quantities

5 Under title 21 of the Code of Federal Regulations (CFR) section 1304, the DEA biennial inventory shall be available for inspection upon request for at least 3 years after the date of the inventory.
of controlled substances to patients from September 17, 2011 to September 17, 2014. The
circumstances are further explained in paragraphs 36-49, above.

TENTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Variation from Prescription)
(Bus. & Prof. § 4301, subd. (o) and 16 CCR § 1716)

59. Respondent FAP’s Pharmacy License is subject to disciplinary action under Code
section 4301, subdivision (o), because FAP violated California Code of Regulations, title 16,
section 1716, in that FAP deviated from the requirements of a prescription without prior consent
of the prescriber on several occasions. During the inspection of FAP on September 17, 2014,
Inspector 2 reviewed prescription hard copies which were processed with the wrong prescriber.
The circumstances are further explained in paragraph 44, above.

ELEVENTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Failure to Maintain Records of Disposition)
(Bus. & Prof. § 4301, subd. (o), and 4081)

60. Respondent FAP’s Pharmacy License is subject to disciplinary action under Code
section 4301, subdivision (o), because FAP violated Code section 4081, in that Respondent FAP
did not have all records of manufacturer and of sale, acquisition, or disposal of dangerous
drugs or dangerous devices at all times during business hours open to inspection by an authorized
officer of the law, for at least three years. Specifically, between the dates of September 17, 2011
and September 17, 2014, FAP could not account for 140.8 pints of promethazine with codeine
syrup. The circumstances are further explained in paragraphs 36 through 44, above.

CAUSES OF DISCIPLINE AGAINST RESPONDENT INE

TWELFTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Failure to Transmit Dispensing Data to CURES)
(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11165, subd. (d))

61. Respondent Ijeoma Nwanyiocha Esomonu (INE), as Pharmacist-in-Charge of FAP,
has subjected her Pharmacist License to disciplinary action under Code section 4301, subdivision
(j), by violating Health and Safety Code sections 11165, subdivision (d), in that from on or about
October 21, 2009, until approximately May 19, 2011, INE failed to insure that FAP transmit to
the Department of Justice for the Controlled Substances Utilization Review and Evaluation
System (CURES) dispensing data for Schedule II, Schedule III, and Schedule IV controlled
substances on a weekly basis. The circumstances are further explained in paragraphs 30-35, above.

THIRTEENTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Filled Prescriptions with Significant Irregularity)
(Bus. & Prof. § 4301, subd. (o) and 16 CCR § 1761, subd. (a))

62. Respondent INE, as Pharmacist-in-Charge of FAP, has subjected her Pharmacist License to disciplinary action under Code section 4301, subdivision (o), because she violated California Code of Regulations, title 16, section 1761, subdivision (a), in that pharmacists and staff at FAP filled approximately 350 irregular prescriptions. Many of these prescriptions order an unusually large amount of controlled substances for "as-needed" purposes. The circumstances are further explained in paragraphs 30-35, above.

FOURTEENTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Failure to Verify Legitimacy of Prescriptions for Controlled Substances)
(Bus. & Prof. § 4301, subd. (j), & Health and Safety Code § 11153, subd. (a))

63. Respondent INE, as Pharmacist-in-Charge of FAP, has subjected her Pharmacist License to disciplinary action under Code section 4301, subdivision (j), because she violated Health and Safety Code section 11153, subdivision (a), in that pharmacists and staff at FAP failed to uphold their corresponding responsibility of verifying the patient’s legitimate medical purposes for controlled substances. The pharmacists and staff at FAP breached their corresponding responsibility by furnishing unusually large quantities of controlled substances to patients without confirming with the supposed prescribers the legitimacy of the prescriptions. In fact, the pharmacists and staff at FAP filled approximately 350 fraudulent prescriptions, many of which were for unusually large quantities of controlled substances. The circumstances are further explained in paragraphs 30-35, above.

FIFTEENTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Dispensed Controlled Substances on Invalid Prescriptions)
(Bus. & Prof. § 4301, subd. (j), & Health and Safety Code § 11164)

64. Respondent INE, as Pharmacist-in-Charge of FAP, has subjected her Pharmacist License to disciplinary action under Code section 4301, subdivision (j), because she violated Health and Safety Code section 11164, in that the pharmacists and staff at FAP furnished controlled substances to patients based on invalid controlled substances prescription forms.
Specifically, during May 2011, FAP filled five prescription documents that lacked several required security measures. The circumstances are further explained in paragraph 34, above.

CAUSES OF DISCIPLINE AGAINST RESPONDENT ICE

SIXTEENTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Filled Prescriptions with Significant Irregularity)
(Bus. & Prof. § 4301, subd. (o), & 16 CCR § 1761, subd. (a))

65. Respondent Iroegbu Clifford Esomou (ICE), as a pharmacist of FAP, has subjected his Pharmacist License to disciplinary action under Code section 4301, subdivision (o), because he violated California Code of Regulations, title 16, section 1761, subdivision (a), in that Respondent ICE filled prescriptions with significant irregularity. Many of the prescriptions ordered unusually large quantities of controlled substances including oxycodone, hydrocodone with acetaminophen, alprazolam and promethazine with codeine. The circumstances are further explained in paragraphs 30-35, above.

SEVENTEENTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Failure to Verify Legitimacy of Prescriptions for Controlled Substances)
(Bus. & Prof. § 4301, subd. (j), & Health and Safety Code § 11153, subd. (a))

66. Respondent ICE, as a pharmacist of FAP, has subjected his Pharmacist License to disciplinary action under Code section 4301, subdivision (j), because he violated Health and Safety Code section 11153, subdivision (a), in that, on numerous occasions, Respondent ICE failed to verify the legitimate medical purpose for prescribing an unusually large quantity of controlled substances. In fact, FAP’s drug dispensing printouts show that Respondent ICE filled approximately 350 fraudulent prescriptions, many which were for unusually large quantities of controlled substances. The circumstances are further explained in paragraphs 30-35, above.

EIGHTEENTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Dispensed Controlled Substances on Invalid Prescriptions)
(Bus. & Prof. § 4301, subd. (j), & Health and Safety Code § 11164)

67. Respondent ICE has subjected his Pharmacist License to disciplinary action under Code section 4301, subdivision (j), in that Respondent ICE dispensed controlled substances based on invalid prescription documents. Specifically, Respondent ICE’s initials were on the pharmacy dispensing printouts for five invalid prescription documents. The circumstances are further explained in paragraph 34, above.
NINETEENTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Failure to Maintain Records of Disposition)
(Bus. & Prof. §§ 4301, subd. (j), & 4081)

68. Respondent ICE, as the pharmacist-in-charge of FAP, has subjected his Pharmacist License to disciplinary action under Code section 4301, subd. (j), because he violated Code section 4081, in that he did not maintain on FAP’s premises and have available for inspection all records of disposition for inspection for 3 years. Specifically, on September 17, 2014, inspector 2 obtained prescription hard copies and requested additional documents after the inspection. During the inspection, 39 prescription hard copies—which were filled between September 17, 2011 and September 17, 2014—were missing and FAP provided scan images of 18 prescriptions filled by the pharmacy during this three year period for patients of Dr. Tan Nguyen.

TWENTIETH CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Possessing Adulterated Drugs)
(Bus. & Prof. § 4301, subd. (j), and Health and Safety Code § 111295)

69. Respondent ICE, as pharmacist-in-charge of FAP, has subjected his Pharmacist License to disciplinary action under Code sections 4031, subd. (j) because FAP violated Health and Safety Code section 111295, in that the pharmacists and staff at FAP possessed dangerous drugs that had been adulterated. Specifically, on September 17, 2014, during an inspection at FAP, a board inspector discovered a large box fill with approximately 80 prescription vials returned by patients for destruction in the pharmacy.

TWENTY-FIRST CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Failure to Provide Record of DEA Biennial Inventory)
(Bus. & Prof. § 4031, subd. (o), & 16 CCR § 1718)

70. Respondent ICE, as pharmacist-in-charge of FAP, has subjected his Pharmacist License to disciplinary action under Code Section 4301, subdivision (o), because he failed to comply with title 16 section 1718 of the California Code of Regulations. Specifically, on September 17, 2104, during an inspection, a Board inspector requested the record of the DEA biennial inventory for inspection. Respondent FAP failed to provide the record for inspection.6

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6 On or about September 19, 2011, Respondent ICE became the PIC at Fruitvale Avenue Pharmacy.
7 Under title 21 of the CFR section 1304, the DEA biennial inventory shall be available for inspection upon request for at least 3 years after the date of the inventory.
**TWENTY-SECOND CAUSE FOR DISCIPLINE**
(Unprofessional Conduct-Failure to Consult with Patient)
(Bus. & Prof. § 4301, subd. (o) and 16 CCR § 1707.2, subd. (b)(1)(A))

71. Respondent ICE, as pharmacist-in-charge of FAP, has subjected his Pharmacist License to disciplinary action under Code section 4301, subdivision (o), because he violated California Code of Regulations, title 16, section 1707.2, subdivision (b)(1)(A), in that pharmacists and staff at FAP failed to consult with patients regarding new medications. The circumstances are further explained in paragraph 45, above.

**TWENTY-THIRD CAUSE FOR DISCIPLINE**
(Unprofessional Conduct-Failure to Verify Legitimacy of Prescriptions for Controlled Substances)
(Bus. & Prof. § 4301, subd. (d), & Health and Safety Code § 11153, subd. (a))

72. Respondent ICE, as pharmacist-in-charge of FAP, has subjected his Pharmacist License to disciplinary action under Code section 4301, subdivision (d), because FAP engaged in the excessive furnishing of controlled substances in violation of Health and Safety Code section 11153, subdivision (a), in that pharmacists and staff at FAP failed to uphold their corresponding responsibility of verifying the patient’s legitimate medical purposes for controlled substances. Specifically, the pharmacists and staff at FAP breached their corresponding responsibility by furnishing unusually large quantities of controlled substances to patients from September 17, 2011 to September 17, 2014. The circumstances are further explained in paragraphs 36-49, above.

**TWENTY-FOURTH CAUSE FOR DISCIPLINE**
(Unprofessional Conduct-Variation from Prescription)
(Bus. & Prof. § 4301, subd. (o), & 16 CCR § 1716)

73. Respondent ICE, as the pharmacist-in-charge of FAP, has subjected his Pharmacist License to disciplinary action under Code section 4301, subdivision (o), because FAP violated California Code of Regulations, title 16, section 1716, in that FAP deviated from the requirements of a prescription without prior consent of the prescriber on several occasions. During the inspection of FAP on September 17, 2014, Inspector 2 reviewed prescription hard copies which were processed with the wrong prescriber. The circumstances are further explained in paragraph 44, above.

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TWENTY-FIFTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Failure to Maintain Records of Disposition)
(Bus. & Prof. § 4301, subd. (o), & 4081)

74. Respondent ICE, as the pharmacist-in-charge of FAP, has subjected his Pharmacist License to disciplinary action under Code section 4301, subdivision (o), because FAP violated Code section 4081, in that Respondent FAP did not have all records of manufacturer and of sale, acquisition, or disposition of dangerous drugs or dangerous devices at all times during business hours open to inspection by an authorized officer of the law, for at least three years. Specifically, between the dates of September 17, 2011 and September 17, 2014, FAP could not account for 140.8 pints of promethazine and codeine syrup. The circumstances are further explained in paragraphs 36 through 44, above.

TWENTY-SIXTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Misuse of Education by Pharmacist)
(Bus. & Prof. §§ 4301, subd. (o), & 4306.5)

75. Respondent ICE, as the pharmacist-in-charge of FAP, has subjected his Pharmacist License to disciplinary action under Code sections 4301, subdivision (o), and 4306 in that between September 17, 2011 and September 17, 2014, Respondent ICE failed to use his education, training, and experience when he filled prescriptions for large quantities of narcotics for patients who used multiple prescribers without confirming the prescriptions and the quantities of narcotics prescribed were for a legitimate medical purpose. The circumstances are further explained in paragraphs 36 through 49, above.

OTHER MATTERS

76. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number PHY 50064 issued to Fruitvale Avenue Pharmacy Inc., it shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 50064 is placed on probation or until Pharmacy Permit Number PHY 50064 are reinstated if they are revoked.

77. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number PHY 50064 issued to Fruitvale Avenue Pharmacy, Inc., while Respondent Iroegbu Clifford Esomonu had been an officer and owner and had knowledge of or knowingly participated in any
conduct for which the licensee was disciplined, Respondent Iroegbu Clifford Esomonu shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 50064 are placed on probation or until Pharmacy Permit Number PHY 50064 are reinstated if they are revoked.

78. Pursuant to Code section 4307, if discipline is imposed on Pharmacist License No. RPH 53445 issued to Respondent Iroegbu Clifford Esomonu, Respondent Iroegbu Clifford Esomonu, shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacist License Number RPH 53445 is placed on probation or until Pharmacist License Number RPH 53445 is reinstated if it is revoked.

DISCIPLINE CONSIDERATIONS

79. To determine the degree of discipline, if any, to be imposed on Respondent ICE, Complainant alleges that on or about December 28, 2010, in a prior action, the Board of Pharmacy issued Citation Number CI 2010 45230 and ordered Respondent ICE to pay a $2,500 fine for violating sections 4301, subdivisions (h) and (l) (arrest for driving under the influence and conviction on the lesser charge of wet/reckless). That Citation is now final and is incorporated by reference as if fully set forth.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this Second Amended Accusation, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy License Number PHY 50064, issued to Fruitvale Avenue Pharmacy Inc.;
2. Revoking or suspending Pharmacist License Number RPH 53516, issued to Ijeoma Nwanylocha Esomonu, Fruitvale Avenue Pharmacy Inc.;
3. Revoking or suspending Pharmacist License Number RPH 53445, issued to Iroegbu Clifford Esomonu, Fruitvale Avenue Pharmacy Inc.;
4. Prohibiting Fruitvale Avenue Pharmacy, Inc. from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 50064 are placed on probation or until Pharmacy Permit Number PHY 50064 are reinstated if Pharmacy Permit Number PHY 50064 issued to Fruitvale Avenue Pharmacy, Inc. are revoked;

5. Prohibiting Respondent Iroegbu Clifford Esomunu from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 50064 is placed on probation or until Pharmacy Permit Numbers PHY 50064 are reinstated if Pharmacy Permit Number PHY 50064 issued to Fruitvale Avenue Pharmacy, Inc. is revoked;

6. Prohibiting Respondent Iroegbu Clifford Esomunu from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacist License Number RPH 53445 is placed on probation or until Pharmacist License Number RPH 53445 is reinstated if Pharmacist License Number RPH 53445 issued to Respondent Iroegbu Clifford Esomunu is revoked;

7. Ordering Fruitvale Avenue Pharmacy Inc., Ijeoma Nwanyiocha Esomunu and Iroegbu Clifford Esomunu to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 5/6/15

VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant
BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

FRUITVALE AVENUE PHARMACY INC.
2693 Fruitvale Avenue
Oakland, CA 94601

Pharmacy License No. PHY 50064,

IJOMA NWAYIOCHA ESOMONU
FRUITVALE AVENUE PHARMACY INC.
16 Minaret Road
Oakley, CA 94561

Pharmacist License No. RPH 53516,

and

IROEGBU CLIFFORD ESOMONU
FRUITVALE AVENUE PHARMACY INC.
6726 Corte Santa Maria
Pleasanton, CA 94566

Pharmacist No. RPH 53445

Respondents.

Case No. 4579

AMENDED ACCUSATION
Complainant alleges:

PARTIES

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

2. On or about October 21, 2009, the Board of Pharmacy issued Pharmacy License Number PHY 50064 to Fruitvale Avenue Pharmacy Inc. (Respondent FAP). The Pharmacy License was in full force and effect at all times relevant to the charges brought in this Accusation and will expire on October 1, 2013, unless renewed.

3. On or about April 23, 2002, the Board of Pharmacy issued Pharmacist License Number RPH 53516 to Ijeoma Nwanyiocha Esomonu (Respondent INE). The Pharmacist License was in full force and effect at all times relevant to the charges brought in this Accusation and will expire on April 30, 2015, unless renewed.

4. On or about March 28, 2002, the Board of Pharmacy issued Pharmacist Number RPH 53445 to Iroegbu Clifford Esomonu (Respondent ICE). The Pharmacist License was in full force and effect at all times relevant to the charges brought in this Accusation and will expire on September 30, 2013, unless renewed.

JURISDICTION

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

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

7. Section 4300 of the Code states:

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

"(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:
“(1) Suspending judgment.
“(2) Placing him or her upon probation.
“(3) Suspending his or her right to practice for a period not exceeding one year.
“(4) Revoking his or her license.
“(5) Taking any other action in relation to disciplining him or her as the board in its
discretion may deem proper.

... 
“(a) The proceedings under this article shall be conducted in accordance with Chapter 5
(commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board
shall have all the powers granted therein. The action shall be final, except that the propriety of
the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of
Civil Procedure.”

8. Section 4300.1 of the Code provides that “[t]he expiration, cancellation, forfeiture, or
suspension of a board-issued license by operation of law or by order or decision of the board or a
court of law, the placement of a license on a retired status, or the voluntary surrender of a license
by a licensee shall not deprive the board of jurisdiction to commence or proceed with any
investigation of, or action or disciplinary proceeding against, the licensee or to render a decision
suspending or revoking the license.”

STATUTORY/REGULATORY PROVISIONS

9. Section 4301 of the Code states, in relevant part:
“The board shall take action against any holder of a license who is guilty of unprofessional
conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
Unprofessional conduct shall include, but is not limited to, any of the following:
“(a) Gross immorality.
... 
“(b) The administering to oneself, of any controlled substance, or the use of any dangerous
drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
oneself, to a person holding a license under this chapter, or to any other person or to the public, or
to the extent that the use impairs the ability of the person to conduct with safety to the public the
practice authorized by the license.

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

"(l) The conviction of a crime substantially related to the qualifications, functions, and
duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
(commencing with Section 801) of Title 21 of the United States Code regulating controlled
substances or of a violation of the statutes of this state regulating controlled substances or
dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
The board may inquire into the circumstances surrounding the commission of the crime, in order
to fix the degree of discipline or, in the case of a conviction not involving controlled substances
or dangerous drugs, to determine if the conviction is of an offense substantially related to the
qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
of this provision. The board may take action when the time for appeal has elapsed, or the
judgment of conviction has been affirmed on appeal or when an order granting probation is made
suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
indictment.

"(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. Section 4113, subdivision (c), of the Code provides that "[t]he pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy."

11. Section 490 of the Code provides, in relevant part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of the license.

12. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

"As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'"

13. Health and Safety Code section 11165, subdivision (d), states:

"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."
"(2) The prescriber's category of licensure and license number; federal controlled
substance registration number; and the state medical license number of any prescriber using the
federal controlled substance registration number of a government-exempt facility.
"(3) Pharmacy prescription number, license number, and federal controlled substance
registration number.
"(4) NDC (National Drug Code) number of the controlled substance dispensed.
"(5) Quantity of the controlled substance dispensed.
"(6) ICD-9 (diagnosis code), if available.
"(7) Number of refills ordered.
"(8) Whether the drug was dispensed as a refill of a prescription or as a first-time request.
"(9) Date of origin of the prescription.
"(10) Date of dispensing of the prescription.”

14. Health and Safety Code section 11164 states, in relevant part:
"Except as provided in Section 11167, no person shall prescribe a controlled substance, nor shall
any person fill, compound, or dispense a prescription for a controlled substance, unless it
complies with the requirements of this section.”

"(a) Each prescription for a controlled substance classified in Schedule II, III, IV, or V,
except as authorized by subdivision (b), shall be made on a controlled substance prescription form
as specified in Section 11162.1…..”

15. Health and Safety Code section 11162.1 states, in relevant part:
“(a) The prescription forms for controlled substances shall be printed with the following features:

“(7)(A) Six quantity check off boxes shall be printed on the form so that the prescriber
may indicate the quantity by checking the applicable box where the following quantities shall
appear:
- 1-24
- 25-49
- 50-74
- 75-100
- 101-150
- 151 and over.
(8) Prescription blanks shall contain a statement printed on the bottom of the prescription blank that the 'Prescription is void if the number of drugs prescribed is not noted.'

(b) Each batch of controlled substance prescription forms shall have the lot number printed on the form and each form within that batch shall be numbered sequentially beginning with the numeral one.

16. Health and Safety Code section 11153, subdivision (a), states:

'A prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. Except as authorized by this division, the following are not legal prescriptions: (1) an order purporting to be a prescription which is issued not in the usual course of professional treatment or in legitimate and authorized research; or (2) an order for an addict or habitual user of controlled substances, which is issued not in the course of professional treatment or as part of an authorized narcotic treatment program, for the purpose of providing the user with controlled substances, sufficient to keep him or her comfortable by maintaining customary use.'

17. California Code of Regulations, title 16, section 1761, states:

(a) No pharmacist shall compound or dispense any prescription which contains any significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon receipt of any such prescription, the pharmacist shall contact the prescriber to obtain the information needed to validate the prescription.

(b) Even after conferring with the prescriber, a pharmacist shall not compound or dispense a controlled substance prescription where the pharmacist knows or has objective reason to know that said prescription was not issued for a legitimate medical purpose.'

18. California Code of Regulations, title 16, 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."

CONTROLLED SUBSTANCES

19. Section 4021 of the Code states:

"'Controlled substance' means any substance listed in Chapter 2 (commencing with Section
11053) of Division 10 of the Health and Safety Code."

20. Oxycodone is a Schedule II controlled substance as designated by Health and Safety
Code section 11055, subdivision (b)(1)(M).

21. Hydrocodone with acetaminophen is a Schedule III controlled substance as
designated by Health and Safety Code section 11056, subdivision (e)(4).

22. Alprazolam is a Schedule IV controlled substance as designated by Health and Safety
Code section 11057, subdivision (d)(1).

23. Promethazine with codeine is a Schedule V controlled substance as designated by
Health and Safety Code section 11058.

COST RECOVERY

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

FACTUAL BACKGROUND

25. From about October 21, 2009, to the present, Respondent Fruitvale Avenue Pharmacy
(FAP) has been operating as a pharmacy in Oakland, California. From on or about October 21,
2009, until May 19 2011, Respondent Ijeoma Nwanyiocha Esomonu (INE), the owner of FAP,
was also the pharmacist-in-charge (PIC) at FAP. From on or about October 21, 2009, until May 19, 2011, Respondent Iroegbu Clifford Esomonu (ICE) worked as a pharmacist at FAP. From May 19, 2011, to the present, Respondent ICE took over as the PIC at FAP.

26. On May 17, 2011, a Board inspector (inspector) conducted an inspection at FAP because the Board had identified FAP as a pharmacy that failed to report any Controlled Substances Utilization Review and Evaluation System (CURBS) data to the Department of Justice (DOJ). During the inspection at FAP, the inspector observed several pharmacy law violations. Specifically, the inspector noted that FAP had never transmitted any CURBS data to the DOJ.

27. While at FAP, the inspector looked into prescription documents from Bay Internal Medicine (BIM). The prescriptions appeared legitimate but, upon further investigation, the inspector found that none of prescribers' contact information on the prescriptions contained a valid working phone number. The inspector asked Respondent ICE to verify the BIM prescribers on the Medical Board of California’s website. The web search revealed that none of the BIM prescribers' listed addresses on the Medical Board’s website matched the addresses on the prescriptions. Significantly, Respondent ICE admitted to the inspector that he had never before verified a prescriber using the Medical Board’s website. In addition, the inspector observed numerous other violations of pharmacy laws. At the conclusion of the inspection, the inspector prepared an inspection report documenting various pharmacy law violations. The inspector gave a copy of the report to Respondent ICE, and then had Respondent ICE review and sign off on it.

During his inspection, the inspector obtained certain documents including prescription documents, dispensing detail reports, and Cardinal Health Narcotic Sales Reports. The inspector also requested FAP to provide additional documents and explanations regarding pharmacy law violations indicated in the report.

28. On or about May 30, 2011, the inspector received and reviewed faxed responses from FAP. Subsequently, the inspector contacted 15 different prescribers listed as the supposed prescriber on the prescription documents. The inspector sent each prescriber a list of prescriptions from FAP to verify the legitimacy of the prescriptions. Each of the prescribers
responded with a written statement that they did not authorize the prescriptions from FAP. In
fact, one prescriber from Kaiser stated he did not authorize any of the prescriptions and that they
were written on prescriptions that were stolen from his locker at the hospital. Additionally, one
prescriber from BIM stated their practice had been closed since June 2009. All the BIM
prescription documents that the inspector sent to the BIM prescribers to review were dated and
filled by FAP in 2011.

29. Physician Assistant G. P.1 (G. P.) was one of the 15 prescribers that the inspector
contacted to verify the legitimacy of the prescription documents he got from FAP. On or about
June 7, 2011, the inspector received a response from G. P., indicating that he did not authorize the
prescriptions and the documents were forgeries. In addition, G. P. noted that several of the
prescription documents were not written on proper controlled substances prescription forms.

Significantly, during the May 17, 2011 visit to FAP, the inspector had made the same observation
that FAP had improperly dispensed controlled substances on five invalid prescription documents.
These five prescription documents were invalid because they lacked several required security
features such as quantity check off boxes, the required statement of "Prescription is void if the
number of drugs prescribed is not noted," and the prescriptions were not sequentially numbered.

30. The inspector's investigation revealed that, from October 2009, to about April 2011,
FAP failed to transmit CURES data to the DOJ. The investigation further showed that, from
about July 2010, to May 2011, Respondent INE, and Respondent ICE had filled over 350
fraudulent prescriptions. Many of these prescription documents contained significant
irregularities that should have prompted Respondent INE and Respondent ICE to verify the
legitimacy of the prescription before dispensing the controlled substances. In addition, a review
of FAP's dispensing printouts obtained during the investigation showed Respondent ICE's initials
on most, if not all, of the printouts' "filled by" section. Furthermore, in a written statement,
Respondent ICE admitted that he was the pharmacist on duty everyday since the opening of FAP.

1 G. P. is used in this document rather than the actual name of the Physician Assistant.
CAUSES OF DISCIPLINE AGAINST RESPONDENT FAP

FIRST CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Failure to Transmit Dispensing Data to CURES)  
(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11165, subd. (d))

31. Respondent Fruitvale Avenue Pharmacy’s (FAP) Pharmacy License is subject to disciplinary action under Code section 4301, subdivision (j), because FAP violated Health and Safety Code section 11165, subdivision (d), in that from on or about October 21, 2009, until approximately April 2011, FAP failed to transmit dispensing data for Schedule II, Schedule III, and Schedule IV controlled substances to the Department of Justice for the Controlled Substances Utilization Review and Evaluation System (CURES) on a weekly basis. The circumstances are further explained in paragraphs 25-30, above.

SECOND CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Filled Prescriptions with Significant Irregularity)  
(Bus. & Prof. § 4301, subd. (o) and 16 CCR § 1761, subd. (a))

32. Respondent FAP’s Pharmacy License is subject to disciplinary action under Code section 4301, subdivision (o), because FAP violated California Code of Regulations, title 16, section 1761, subdivision (a), in that pharmacists and staff at FAP filled over 350 irregular prescriptions. Many of these prescription documents order an unusually large amount of controlled substances for “as-needed” purposes. The circumstances are further explained in paragraphs 25-30, above.

THIRD CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Failure to Verify Legitimacy of Prescriptions for Controlled Substances)  
(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11153, subd. (a))

33. Respondent FAP’s Pharmacy License is subject to disciplinary action under Code section 4301, subdivision (j), because FAP violated Health and Safety Code section 11153, subdivision (a), in that pharmacists and staff at FAP failed to uphold their corresponding responsibility of verifying the patient’s legitimate medical purposes for controlled substances. The pharmacists and staff at FAP breached their corresponding responsibility by furnishing unusually large quantities of controlled substances to patients without confirming with the supposed prescribers the legitimacy of the prescriptions. In fact, the pharmacists and staff at FAP filled approximately 350 fraudulent prescriptions, many of which were for unusually large

Amended Accusation
quantities of controlled substances. The circumstances are further explained in paragraphs 25-30, above.

FOURTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Dispensed Controlled Substances on Invalid Prescriptions)
(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11164)

34. Respondent FAP’s Pharmacy License is subject to disciplinary action under Code section 4301, subdivision (j), because FAP violated Health and Safety Code section 11164, in that the pharmacists and staff at FAP furnished controlled substances to patients based on invalid controlled substances prescription forms. Specifically, during May 2011, FAP filled five prescription documents that lacked several required security measures. The circumstances are further explained in paragraphs 25-30, above.

CAUSES OF DISCIPLINE AGAINST RESPONDENT INE

FIFTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Failure to Transmit Dispensing Data to CURES)
(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11165, subd. (d))

35. Respondent Ijeoma Nwanyiacha Esomonu (INE), as Pharmacist-in-Charge of FAP, has subjected her Pharmacist License to disciplinary action under Code section 4301, subdivision (j), by violating Health and Safety Code sections 11165, subdivision (d), in that from on or about October 21, 2009, until approximately April 2011, INE failed to insure that FAP transmit to the Department of Justice for the Controlled Substances Utilization Review and Evaluation System (CURES) dispensing data for Schedule II, Schedule III, and Schedule IV controlled substances on a weekly basis. The circumstances are further explained in paragraphs 25-30, above.

SIXTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Filled Prescriptions with Significant Irregularity)
(Bus. & Prof. § 4301, subd. (o) and 16 CCR § 1761, subd. (a))

36. Respondent INE, as Pharmacist-in-Charge of FAP, has subjected her Pharmacist License to disciplinary action under Code section 4301, subdivision (o), because she violated California Code of Regulations, title 16, section 1761, subdivision (a), in that pharmacists and staff at FAP filled over 350 irregular prescriptions. Many of these prescription documents order an unusually large amount of controlled substances for “as-needed” purposes. The circumstances are further explained in paragraphs 25-30, above.

Amended Accusation
SEVENTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct—Failure to Verify Legitimacy of Prescriptions for Controlled Substances)
(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11153, subd. (a))

37. Respondent INE, as Pharmacist-in-Charge of FAP, has subjected her Pharmacist License to disciplinary action under Code section 4301, subdivision (j), because she violated Health and Safety Code section 11153, subdivision (e), in that pharmacists and staff at FAP failed to uphold their corresponding responsibility of verifying the patient's legitimate medical purposes for controlled substances. The pharmacists and staff at FAP breached their corresponding responsibility by furnishing unusually large quantities of controlled substances to patients without confirming with the supposed prescribers the legitimacy of the prescriptions. In fact, the pharmacists and staff at FAP filled approximately 350 fraudulent prescriptions, many of which were for unusually large quantities of controlled substances. The circumstances are further explained in paragraphs 25-30, above.

EIGHTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct—Dispensed Controlled Substances on Invalid Prescriptions)
(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11164)

38. Respondent INE, as Pharmacist-in-Charge of FAP, has subjected her Pharmacist License to disciplinary action under Code section 4301, subdivision (j), because she violated Health and Safety Code section 11164, in that the pharmacists and staff at FAP furnished controlled substances to patients based on invalid controlled substances prescription forms. Specifically, during May 2011, FAP filled five prescription documents that lacked several required security measures. The circumstances are further explained in paragraphs 25-30, above.

CAUSES OF DISCIPLINE AGAINST RESPONDENT ICE

NINTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct—Filled Prescriptions with Significant Irregularity)
(Bus. & Prof. § 4301, subd. (o) and 16 CCR § 1761, subd. (a))

39. Respondent Iroegbu Clifford Esomonu (ICE), as a pharmacist of FAP, has subjected his Pharmacist License to disciplinary action under Code section 4301, subdivision (o), because he violated California Code of Regulations, title 16, section 1761, subdivision (a), in that Respondent ICE filled prescriptions with significant irregularity. Many of the prescriptions order unusually large quantities of controlled substances including oxycodone, hydrocodone with
acetaminophen, alprazolam and promethazine with codeine. The circumstances are further explained in paragraphs 25-30, above.

**TENTH CAUSE FOR DISCIPLINE**
(Unprofessional Conduct-Failure to Verify Legitimacy of Prescriptions for Controlled Substances)
(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11153, subd. (a))

40. Respondent ICE, as a pharmacist of FAP, has subjected his Pharmacist License to disciplinary action under Code section 4301, subdivision (j), because he violated Health and Safety Code section 11153, subdivision (a), in that, on numerous occasions, Respondent ICE failed to verify the legitimate medical purpose for prescribing an unusually large quantity of controlled substances. In fact, FAP's drug dispensing printouts show that Respondent ICE filled approximately 350 fraudulent prescriptions, many which were for unusually large quantities of controlled substances. The circumstances are further explained in paragraphs 25-30, above.

**ELEVENTH CAUSE FOR DISCIPLINE**
(Unprofessional Conduct-Dispensed Controlled Substances on Invalid Prescriptions)
(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11164)

41. Respondent ICE, as a pharmacist of FAP, has subjected his Pharmacist License to disciplinary action under Code section 4301, subdivision (j), in that Respondent ICE dispensed controlled substances based on invalid prescription documents. Specifically, Respondent ICE's initials were on the pharmacy dispensing printouts for those five invalid prescription documents. The circumstances are further explained in paragraphs 25-30 above.

**TWELFTH CAUSE FOR DISCIPLINE**
(Unprofessional Conduct-Use of Alcohol in a Dangerous Manner)
(Bus. & Prof. § 4301, subd. (h))

42. Respondent ICE has subjected his Pharmacist License to disciplinary action under Code section 4301, subdivision (h), in that on or about April 23, 2012, Respondent ICE was arrested by a San Leandro police officer for driving under the influence of alcohol. The circumstances are as follows:

43. On or about 12:25 a.m. on April 23, 2012, a San Leandro police officer stopped Respondent's vehicle for a violation of Vehicle Code section 21650 (a vehicle on the highway must be driven on the right side of the road). The officer approached Respondent's vehicle and observed symptoms of intoxication including red watery eyes, alcoholic odor emitting from
Respondent's breath and slurred speech. Respondent failed a series of field sobriety tests. Two
breath tests from Respondent at approximately 1:19 a.m. and 1:22 a.m. revealed a blood alcohol
concentration (BAC) of .13.

**THIRTEENTH CAUSE FOR DISCIPLINE**
(Unprofessional Conduct-Criminal)
(Bus. & Prof. §§ 490 & 4301, subd. (1))

44. Respondent ICE has subjected his Pharmacist License to disciplinary action under
Code section 4301, subdivision (1), and section 490, in that Respondent ICE was convicted of a
crime substantially related to the qualifications, functions and duties of a pharmacist. The
circumstances are as follows:

45. On or about December 13, 2012, in a criminal matter entitled *People of the State of
California v. Iroegbu Clifford Esomom*, in the Alameda County Superior Court, Respondent ICE
was convicted upon plea of no contest to the violation of Vehicle Code section 23152,
subdivision (b) (driving with a blood alcohol level of .08 or more), a misdemeanor. Respondent
ICE was ordered to serve 15 days in county jail. Respondent was placed on probation for 3 years
with various conditions including completing a Drinking Driver Program and paying various fees
and fines.

**DISCIPLINE CONSIDERATIONS**

46. To determine the degree of discipline, if any, to be imposed on Respondent ICE,
Complainant alleges that on or about December 28, 2010, in a prior action, the Board of
Pharmacy issued Citation Number CI 2010 45230 and ordered Respondent ICE to pay a $2,500
fine for violating sections 4301, subdivisions (h) and (l) [arrest for driving under the influence
and conviction on the lesser charge of wet/reckless]. That Citation is now final and is
incorporated by reference as if fully set forth.

**PRAYER**

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

1. Revoking or suspending Pharmacy License Number PHY 50064, issued to
Fruitvale Avenue Pharmacy Inc.;
2. Revoking or suspending Pharmacist License Number RPH 53516, issued to Ijeoma Nwanyiocha Esomonu, Fruitvale Avenue Pharmacy Inc.;

3. Revoking or suspending Pharmacist License Number RPH 53445, issued to Iroegbu Clifford Esomonu, Fruitvale Avenue Pharmacy Inc.;

4. Ordering Fruitvale Avenue Pharmacy Inc., Ijeoma Nwanyiocha Esomonu and Iroegbu Clifford Esomonu to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 12/17/13

VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complaint
BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

FRUITVALE AVENUE PHARMACY INC.
2693 Fruitvale Avenue
Oakland, CA 94601

Pharmacy License No. PHY 50064,

JIEOMA NWAYIOCHA ESOMONU
FRUITVALE AVENUE PHARMACY INC.
16 Minaret Road
Oakley, CA 94561

Pharmacist License No. RPH 53516,

and

IROEGBU CLIFFORD ESOMONU
FRUITVALE AVENUE PHARMACY INC.
6726 Corte Santa Maria
Pleasanton, CA 94566

Pharmacist No. RPH 53445

Respondents,

Case No. 4579

ACCUSATION
Complainant alleges:

PARTIES

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

2. On or about October 21, 2009, the Board of Pharmacy issued Pharmacy License Number PHY 50064 to Fruitvale Avenue Pharmacy Inc. (Respondent FAP). The Pharmacy License was in full force and effect at all times relevant to the charges brought in this Accusation and will expire on October 1, 2013, unless renewed.

3. On or about April 23, 2002, the Board of Pharmacy issued Pharmacist License Number RPH 53516 to Ijeoma Nwanyiocha Esomumu (Respondent INE). The Pharmacist License was in full force and effect at all times relevant to the charges brought in this Accusation and will expire on April 30, 2015, unless renewed.

4. On or about March 28, 2002, the Board of Pharmacy issued Pharmacist Number RPH 53445 to Iroegbu Clifford Esomumu (Respondent ICE). The Pharmacist License was in full force and effect at all times relevant to the charges brought in this Accusation and will expire on September 30, 2013, unless renewed.

JURISDICTION

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

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

7. Section 4300 of the Code states:

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

"(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:
“(1) Suspending judgment.

“(2) Placing him or her upon probation.

“(3) Suspending his or her right to practice for a period not exceeding one year.

“(4) Revoking his or her license.

“(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

... 

“(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure.”

8. Section 4300.1 of the Code provides that “[t]he expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.”

STATUTORY/REGULATORY PROVISIONS

9. Section 4301 of the Code states, in relevant part:

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

“(a) Gross immorality.

... 

“(b) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or
to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

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

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

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

"(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. Section 4113, subdivision (c), of the Code provides that "[t]he pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy."

11. Section 490 of the Code provides, in relevant part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of the license.

12. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

"As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'"

13. Health and Safety Code section 11165, subdivision (d), states:

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

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

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

"(5) Quantity of the controlled substance dispensed.

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

"(7) Number of refills ordered.

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

"(9) Date of origin of the prescription.

"(10) Date of dispensing of the prescription.

14. Health and Safety Code section 11164 states, in relevant part:

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

"(a) Each prescription for a controlled substance classified in Schedule II, III, IV, or V, except as authorized by subdivision (b), shall be made on a controlled substance prescription form as specified in Section 11162.1 ...."

15. Health and Safety Code section 11162.1 states, in relevant part:

"(a) The prescription forms for controlled substances shall be printed with the following features:

"(7)(A) Six quantity check off boxes shall be printed on the form so that the prescriber may indicate the quantity by checking the applicable box where the following quantities shall appear:

- 1-24
- 25-49
- 50-74
- 75-100
- 101-150
- 151 and over.
“(8) Prescription blanks shall contain a statement printed on the bottom of the
prescription blank that the ‘Prescription is void if the number of drugs prescribed is not noted.’”

“(b) Each batch of controlled substance prescription forms shall have the lot number printed on
the form and each form within that batch shall be numbered sequentially beginning with the
numeral one.”

16. Health and Safety Code section 11153, subdivision (a), states:

“A prescription for a controlled substance shall only be issued for a legitimate medical
purpose by an individual practitioner acting in the usual course of his or her professional
practice. The responsibility for the proper prescribing and dispensing of controlled substances is
upon the prescribing practitioner, but the corresponding responsibility rests with the pharmacist
who fills the prescription. Except as authorized by this division, the following are not legal
prescriptions: (1) an order purporting to be a prescription which is issued not in the usual course
of professional treatment or in legitimate and authorized research; or (2) an order for an addict or
habitual user of controlled substances, which is issued not in the course of professional treatment
or as part of an authorized narcotic treatment program, for the purpose of providing the user with
controlled substances, sufficient to keep him or her comfortable by maintaining customary use.”

17. California Code of Regulations, title 16, section 1761, states:

“(a) No pharmacist shall compound or dispense any prescription which contains any
significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon receipt of any
such prescription, the pharmacist shall contact the prescriber to obtain the information needed to
validate the prescription.

“(b) Even after conferring with the prescriber, a pharmacist shall not compound or dispense
a controlled substance prescription where the pharmacist knows or has objective reason to know
that said prescription was not issued for a legitimate medical purpose.”

18. California Code of Regulations, title 16, 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."

CONTROLLED SUBSTANCES

19. Section 4021 of the Code states:

"Controlled substance' means any substance listed in Chapter 2 (commencing with Section
11053) of Division 10 of the Health and Safety Code."

20. Oxycodone is a Schedule II controlled substance as designated by Health and Safety
Code section 11055, subdivision (b)(1)(M).

21. Hydrocodone with acetaminophen is a Schedule III controlled substance as
designated by Health and Safety Code section 11056, subdivision (e)(4).

22. Alprazolam is a Schedule IV controlled substance as designated by Health and Safety
Code section 11057, subdivision (d)(1).

23. Promethazine with codeine is a Schedule V controlled substance as designated by
Health and Safety Code section 11058.

COST RECOVERY

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

FACTUAL BACKGROUND

25. From about October 21, 2009, to the present, Respondent Fruitvale Avenue Pharmacy
(FAP) has been operating as a pharmacy in Oakland, California. From on or about October 21,
2009, until May 19 2011, Respondent Ijeoma Nwanyiocha Esomonu (INE), the owner of FAP,
was also the pharmacist-in-charge (PIC) at FAP. From on or about October 21, 2009, until May 19, 2011, Respondent Iroegbu Clifford Esomonu (ICE) worked as a pharmacist at FAP. From May 19, 2011, to the present, Respondent ICE took over as the PIC at FAP.

26. On May 17, 2011, Board Inspector [REDACTED] conducted an inspection at FAP because the Board had identified FAP as a pharmacy that failed to report any Controlled Substances Utilization Review and Evaluation System (CURES) data to the Department of Justice (DOJ). During the inspection at FAP, Inspector [REDACTED] observed several pharmacy law violations. Specifically, Inspector [REDACTED] noted that FAP had never transmitted any CURES data to the DOJ.

27. While at FAP, Inspector [REDACTED] looked into prescription documents from Bay Internal-Medicine (BIM). The prescriptions appeared legitimate but, upon further investigation, Inspector [REDACTED] found that none of prescribers' contact information on the prescriptions contained a valid working phone number. Inspector [REDACTED] asked Respondent ICE to verify the BIM prescribers on the Medical Board of California's website. The web search revealed that none of the BIM prescribers' listed addresses on the Medical Board's website matched the addresses on the prescriptions. Significantly, Respondent ICE admitted to Inspector [REDACTED] that he had never before verified a prescriber using the Medical Board's website. In addition, Inspector [REDACTED] observed numerous other violations of pharmacy laws. At the conclusion of the inspection, Inspector [REDACTED] prepared an inspection report documenting various pharmacy law violations. Inspector [REDACTED] gave a copy of the report to Respondent ICE, and then had Respondent ICE review and sign off on it. During his inspection, Inspector [REDACTED] obtained certain documents including prescription documents, dispensing detail reports, and Cardinal Health Narcotic Sales Reports. Inspector [REDACTED] also requested FAP to provide additional documents and explanations regarding pharmacy law violations indicated in the report.

28. On or about May 30, 2011, Inspector [REDACTED] received and reviewed faxed responses from FAP. Subsequently, Inspector [REDACTED] contacted 15 different prescribers listed as the supposed prescriber on the prescription documents. Inspector [REDACTED] sent each prescriber a list of prescriptions from FAP to verify the legitimacy of the prescriptions. Each of the prescribers
responded with a written statement that they did not authorize the prescriptions from FAP. In
fact, one prescriber from Kaiser stated he did not authorize any of the prescriptions and that they
were written on prescriptions that were stolen from his locker at the hospital. Additionally, one
prescriber from BIM stated their practice had been closed since June 2009. All the BIM
prescription documents that Inspector [redacted] sent to the BIM prescribers to review were dated
and filled by FAP in 2011.

29. Physician Assistant George Pearson was one of the 15 prescribers that Inspector
[redacted] contacted to verify the legitimacy of the prescription documents he got from FAP. On or
about June 7, 2011, Inspector [redacted] received a response from Mr. Pearson, indicating that he
did not authorize the prescriptions and the documents were forgeries. In addition, Mr. Pearson
noted that several of the prescription documents were not written on proper controlled substances
prescription forms. Significantly, during the May 17, 2011 visit to FAP, Inspector [redacted] had
made the same observation that FAP had improperly dispensed controlled substances on five
invalid prescription documents. These five prescription documents were invalid because they
lacked several required security features such as quantity check off boxes, the required statement
of ”Prescription is void if the number of drugs prescribed is not noted,” and the prescriptions were
not sequentially numbered.

30. Inspector [redacted]’s investigation revealed that, from October 2009, to about April
2011, FAP failed to transmit CURES data to the DOJ. The investigation further showed that,
from about July 2010, to May 2011, Respondent INE, and Respondent ICE had filled over 350
fraudulent prescriptions. Many of these prescription documents contained significant
irregularities that should have prompted Respondent INE and Respondent ICE to verify the
legitimacy of the prescription before dispensing the controlled substances. In addition, a review
of FAP’s dispensing printouts obtained during the investigation showed Respondent ICE’s initials
on most, if not all, of the printouts’ “filled by” section. Furthermore, in a written statement,
Respondent ICE admitted that he was the pharmacist on duty everyday since the opening of FAP.
CAUSES OF DISCIPLINE AGAINST RESPONDENT FAP

FIRST CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Failure to Transmit Dispensing Data to CURES)
(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11165, subd. (d))

31. Respondent Fruitvale Avenue Pharmacy’s (FAP) Pharmacy License is subject to disciplinary action under Code section 4301, subdivision (j), because FAP violated Health and Safety Code section 11165, subdivision (d), in that from on or about October 21, 2009, until approximately April 2011, FAP failed to transmit dispensing data for Schedule II, Schedule III, and Schedule IV controlled substances to the Department of Justice for the Controlled Substances Utilization Review and Evaluation System (CURES) on a weekly basis. The circumstances are further explained in paragraphs 25-30, above.

SECOND CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Filled Prescriptions with Significant Irregularity)
(Bus. & Prof. § 4301, subd. (o) and 16 CCR § 1761, subd. (a))

32. Respondent FAP’s Pharmacy License is subject to disciplinary action under Code section 4301, subdivision (o), because FAP violated California Code of Regulations, title 16, section 1761, subdivision (a), in that pharmacists and staff at FAP filled over 350 irregular prescriptions. Many of these prescription documents order an unusually large amount of controlled substances for “as-needed” purposes. The circumstances are further explained in paragraphs 25-30, above.

THIRD CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Failure to Verify Legitimacy of Prescriptions for Controlled Substances)
(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11153, subd. (a))

33. Respondent FAP’s Pharmacy License is subject to disciplinary action under Code section 4301, subdivision (j), because FAP violated Health and Safety Code section 11153, subdivision (a), in that pharmacists and staff at FAP failed to uphold their corresponding responsibility of verifying the patient’s legitimate medical purposes for controlled substances. The pharmacists and staff at FAP breached their corresponding responsibility by furnishing unusually large quantities of controlled substances to patients without confirming with the supposed prescribers the legitimacy of the prescriptions. In fact, the pharmacists and staff at FAP filled approximately 350 fraudulent prescriptions, many of which were for unusually large...
quantities of controlled substances. The circumstances are further explained in paragraphs 25-30, above.

FOURTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Dispensed Controlled Substances on Invalid Prescriptions)
(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11164)

34. Respondent FAP's Pharmacy License is subject to disciplinary action under Code section 4301, subdivision (j), because FAP violated Health and Safety Code section 11164, in that the pharmacists and staff at FAP furnished controlled substances to patients based on invalid controlled substances prescription forms. Specifically, during May 2011, FAP filled five prescription documents that lacked several required security measures. The circumstances are further explained in paragraphs 25-30, above.

CAUSES OF DISCIPLINE AGAINST RESPONDENT INE

FIFTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Failure to Transmit Dispensing Data to CURES)
(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11165, subd. (d))

35. Respondent Ifeoma Nwanyiccha Esomunu (INE), as Pharmacist-in-Charge of FAP, has subjected her Pharmacist License to disciplinary action under Code section 4301, subdivision (j), by violating Health and Safety Code sections 11165, subdivision (d), in that from on or about October 21, 2009, until approximately April 2011, INE failed to insure that FAP transmit to the Department of Justice for the Controlled Substances Utilization Review and Evaluation System (CURES) dispensing data for Schedule II, Schedule III, and Schedule IV controlled substances on a weekly basis. The circumstances are further explained in paragraphs 25-30, above.

SIXTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Filled Prescriptions with Significant Irregularity)
(Bus. & Prof. § 4301, subd. (o) and 16 CCR § 1761, subd. (a))

36. Respondent INE, as Pharmacist-in-Charge of FAP, has subjected her Pharmacist License to disciplinary action under Code section 4301, subdivision (o), because she violated California Code of Regulations, title 16, section 1761, subdivision (a), in that pharmacists and staff at FAP filled over 350 irregular prescriptions. Many of these prescription documents order an unusually large amount of controlled substances for "as-needed" purposes. The circumstances are further explained in paragraphs 25-30, above.
SEVENTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Failure to Verify Legitimacy of Prescriptions for Controlled Substances)  
(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11153, subd. (a))

37. Respondent INE, as Pharmacist-in-Charge of FAP, has subjected her Pharmacist License to disciplinary action under Code section 4301, subdivision (j), because she violated Health and Safety Code section 11153, subdivision (e), in that pharmacists and staff at FAP failed to uphold their corresponding responsibility of verifying the patient’s legitimate medical purposes for controlled substances. The pharmacists and staff at FAP breached their corresponding responsibility by furnishing unusually large quantities of controlled substances to patients without confirming with the supposed prescribers the legitimacy of the prescriptions. In fact, the pharmacists and staff at FAP filled approximately 350 fraudulent prescriptions, many of which were for unusually large quantities of controlled substances. The circumstances are further explained in paragraphs 25-30, above.

EIGHTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Dispensed Controlled Substances on Invalid Prescriptions)  
(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11164)

38. Respondent INE, as Pharmacist-in-Charge of FAP, has subjected her Pharmacist License to disciplinary action under Code section 4301, subdivision (j), because she violated Health and Safety Code section 11164, in that the pharmacists and staff at FAP furnished controlled substances to patients based on invalid controlled substances prescription forms. Specifically, during May 2011, FAP filled five prescription documents that lacked several required security measures. The circumstances are further explained in paragraphs 25-30, above.

CAUSES OF DISCIPLINE AGAINST RESPONDENT ICE

NINTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Filled Prescriptions with Significant Irregularity)  
(Bus. & Prof. § 4301, subd. (o) and 16 CCR § 1761, subd. (a))

39. Respondent Iroegbu Clifford Esomonu (ICE), as a pharmacist of FAP, has subjected his Pharmacist License to disciplinary action under Code section 4301, subdivision (o), because he violated California Code of Regulations, title 16, section 1761, subdivision (a), in that Respondent ICE filled prescriptions with significant irregularity. Many of the prescriptions ordered unusually large quantities of controlled substances including oxycodone, hydrocodone with
acetaminophen, alprazolam and promethazine with codeine. The circumstances are further explained in paragraphs 25-30, above.

TENTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct—Failure to Verify Legitimacy of Prescriptions for Controlled Substances)
(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11153, subd. (a))

40. Respondent ICE, as a pharmacist of FAP, has subjected his Pharmacist License to disciplinary action under Code section 4301, subdivision (j), because he violated Health and Safety Code section 11153, subdivision (a), in that, on numerous occasions, Respondent ICE failed to verify the legitimate medical purpose for prescribing an unusually large quantity of controlled substances. In fact, FAP’s drug dispensing printouts show that Respondent ICE filled approximately 350 fraudulent prescriptions, many which were for unusually large quantities of controlled substances. The circumstances are further explained in paragraphs 25-30, above.

ELEVENTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct—Dispensed Controlled Substances on Invalid Prescriptions)
(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11164)

41. Respondent ICE, as a pharmacist of FAP, has subjected his Pharmacist License to disciplinary action under Code section 4301, subdivision (j), in that Respondent ICE dispensed controlled substances based on invalid prescription documents. Specifically, Respondent ICE’s initials were on the pharmacy dispensing printouts for those five invalid prescription documents. The circumstances are further explained in paragraphs 25-30 above.

TWELFTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct—Use of Alcohol in a Dangerous Manner)
(Bus. & Prof. § 4301, subd. (h))

42. Respondent ICE has subjected his Pharmacist License to disciplinary action under Code section 4301, subdivision (h), in that on or about April 23, 2012, Respondent ICE was arrested by a San Leandro police officer for driving under the influence of alcohol. The circumstances are as follows:

43. On or about 12:25 a.m., on April 23, 2012, a San Leandro police officer stopped Respondent’s vehicle for a violation of Vehicle Code section 21650 (a vehicle on the highway must be driven on the right side of the road). The officer approached Respondent’s vehicle and observed symptoms of intoxication including red watery eyes, alcoholic odor emitting from...
Respondent's breath and slurred speech. Respondent failed a series of field sobriety tests. Two
breath tests from Respondent at approximately 1:19 a.m. and 1:22 a.m. revealed a blood alcohol
concentration (BAC) of .13.

THIRTEENTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Crime)
(Bus. & Prof. §§ 490 & 4301, subdiv. (l))

44. Respondent ICE has subjected his Pharmacist License to disciplinary action under
Code section 4301, subdivision (l), and section 490, in that Respondent ICE was convicted of a
crime substantially related to the qualifications, functions and duties of a pharmacist. The
circumstances are as follows:

45. On or about December 13, 2012, in a criminal matter entitled People of the State of
California v. Iroegbu Clifford Esonamu in the Alameda County-Superior Court, Respondent ICE
was convicted upon plea of no contest to the violation of Vehicle Code section 23152,
subdivision (b) (driving with a blood alcohol level of .08 or more), a misdemeanor. Respondent
ICE was ordered to serve 15 days in county jail. Respondent was placed on probation for 3 years
with various conditions including completing a Drinking Driver Program and paying various fees
and fines.

DISCIPLINE CONSIDERATIONS

46. To determine the degree of discipline, if any, to be imposed on Respondent ICE,
Complainant alleges that on or about December 28, 2010, in a prior action, the Board of
Pharmacy issued Citation Number CI 2010 45230 and ordered Respondent ICE to pay a $2,500
fine for violating sections 4301, subdivisions (h) and (l) [arrest for driving under the influence
and conviction on the lesser charge of wet/reckless]. That Citation is now final and is
incorporated by reference as if fully set forth.

PRAYER

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

1. Revoking or suspending Pharmacy License Number PHY 50064, issued to
Fruitvale Avenue Pharmacy Inc.;
2. Revoking or suspending Pharmacist License Number RPH 53516, issued to Ijeoma Nwanyiocha Esomonu, Fruitvale Avenue Pharmacy Inc.;

3. Revoking or suspending Pharmacist License Number RPH 53445, issued to Iroegbu Clifford Esomonu, Fruitvale Avenue Pharmacy Inc.;

4. Ordering Fruitvale Avenue Pharmacy Inc., Ijeoma Nwanyiocha Esomonu and Iroegbu Clifford Esomonu to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 9/6/13

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

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

In the Matter of the Accusation Against:

ACCUSATION

FRUITVALE AVENUE PHARMACY INC.
2693 Fruitvale Avenue
Oakland, CA 94601

Pharmacy License No. PHY 50064,

IEOMA NWAYIOCHA ESOMONU
FRUITVALE AVENUE PHARMACY INC.
16 Minaret Road
Oakley, CA 94561

Pharmacist License No. RPH 53516,

and

IROEGBU CLIFFORD ESOMONU
FRUITVALE AVENUE PHARMACY INC.
6726 Corte Santa Maria
Pleasanton, CA 94566

Pharmacist No. RPH 53445

Respondents.
Complainant alleges:

PARTIES

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

2. On or about October 21, 2009, the Board of Pharmacy issued Pharmacy License Number PHY 50064 to Fruitvale Avenue Pharmacy Inc. (Respondent FAP). The Pharmacy License was in full force and effect at all times relevant to the charges brought in this Accusation and will expire on October 1, 2013, unless renewed.

3. On or about April 23, 2002, the Board of Pharmacy issued Pharmacist License Number RPH 53516 to Ijeoma Nwanyioca Esomonu (Respondent INE). The Pharmacist License was in full force and effect at all times relevant to the charges brought in this Accusation and will expire on April 30, 2015, unless renewed.

4. On or about March 28, 2002, the Board of Pharmacy issued Pharmacist Number RPH 53445 to Iroegbu Clifford Esomonu (Respondent ICE). The Pharmacist License was in full force and effect at all times relevant to the charges brought in this Accusation and will expire on September 30, 2013, unless renewed.

JURISDICTION

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

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

7. Section 4300 of the Code states:

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

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:
"(1) Suspending judgment.

"(2) Placing him or her upon probation.

"(3) Suspending his or her right to practice for a period not exceeding one year.

"(4) Revoking his or her license.

"(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

....

"(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure."

8. Section 4300.1 of the Code provides that "[t]he expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license."

STATUTORY/REGULATORY PROVISIONS

9. Section 4301 of the Code states, in relevant part:

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

"(a) Gross immorality.

....

"(b) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or
to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

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

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

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

"(a) 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. Section 4113, subdivision (c), of the Code provides that "[t]he pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy."

11. Section 490 of the Code provides, in relevant part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of the license.

12. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

"As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'"

13. Health and Safety Code section 11165, subdivision (d), states:

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

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

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

"(5) Quantity of the controlled substance dispensed.

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

"(7) Number of refills ordered.

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

"(9) Date of origin of the prescription.

"(10) Date of dispensing of the prescription."

14. Health and Safety Code section 11164 states, in relevant part:

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

"(a) Each prescription for a controlled substance classified in Schedule II, III, IV, or V,
except as authorized by subdivision (b), shall be made on a controlled substance prescription form
as specified in Section 11162.1 ...."

15. Health and Safety Code section 11162.1 states, in relevant part:

"(a) The prescription forms for controlled substances shall be printed with the following features:

"(7)(A) Six quantity check off boxes shall be printed on the form so that the prescriber
may indicate the quantity by checking the applicable box where the following quantities shall
appear:

- 1-24
- 25-49
- 50-74
- 75-100
- 101-150
- 151 and over.
"(8) Prescription blanks shall contain a statement printed on the bottom of the
prescription blank that the 'Prescription is void if the number of drugs prescribed is not noted.'"

"(b) Each batch of controlled substance prescription forms shall have the lot number printed on
the form and each form within that batch shall be numbered sequentially beginning with the
numeral one."

16. Health and Safety Code section 11153, subdivision (a), states:

"A prescription for a controlled substance shall only be issued for a legitimate medical
purpose by an individual practitioner acting in the usual course of his or her professional
practice. The responsibility for the proper prescribing and dispensing of controlled substances is
upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist
who fills the prescription. Except as authorized by this division, the following are not legal
prescriptions: (1) an order purporting to be a prescription which is issued not in the usual course
of professional treatment or in legitimate and authorized research; or (2) an order for an addict or
habitual user of controlled substances, which is issued not in the course of professional treatment
or as part of an authorized narcotic treatment program, for the purpose of providing the user with
controlled substances, sufficient to keep him or her comfortable by maintaining customary use."

17. California Code of Regulations, title 16, section 1761, states:

"(a) No pharmacist shall compound or dispense any prescription which contains any
significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon receipt of any
such prescription, the pharmacist shall contact the prescriber to obtain the information needed to
validate the prescription.

"(b) Even after conferring with the prescriber, a pharmacist shall not compound or dispense
a controlled substance prescription where the pharmacist knows or has objective reason to know
that said prescription was not issued for a legitimate medical purpose."

18. California Code of Regulations, title 16, 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.”

**CONTROLLED SUBSTANCES**

19. Section 4021 of the Code states:

“‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.”

20. Oxycodone is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (g)(1)(M).

21. Hydrocodone with acetaminophen is a Schedule III controlled substance as designated by Health and Safety Code section 11056, subdivision (c)(4).

22. Alprazolam is a Schedule IV controlled substance as designated by Health and Safety Code section 11057, subdivision (d)(1).

23. Promethazine with hydrocodeine is a Schedule V controlled substance as designated by Health and Safety Code section 11058.

**COST RECOVERY**

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

**FACTUAL BACKGROUND**

25. From about October 21, 2009, to the present, Respondent Fruitvale Avenue Pharmacy (FAP) has been operating as a pharmacy in Oakland, California. From on or about October 21, 2009, until May 19 2011, Respondent Ijeoma Nwanyiocha Esomouni (INE), the owner of FAP,
was also the pharmacist-in-charge (PIC) at FAP. From on or about October 21, 2009, until May 19, 2011, Respondent Iroegbu Clifford Esomonu (ICE) worked as a pharmacist at FAP. From May 19, 2011, to the present, Respondent ICE took over as the PIC at FAP.

26. On May 17, 2011, Board Inspector [redacted] conducted an inspection at FAP because the Board had identified FAP as a pharmacy that failed to report any Controlled Substances Utilization Review and Evaluation System (CURES) data to the Department of Justice (DOJ). During the inspection at FAP, Inspector [redacted] observed several pharmacy law violations. Specifically, Inspector [redacted] noted that FAP had never transmitted any CURES data to the DOJ.

27. While at FAP, Inspector [redacted] looked into prescription documents from Bay Internal Medicine (BIM). The prescriptions appeared legitimate but, upon further investigation, Inspector [redacted] found that none of prescribers’ contact information on the prescriptions contained a valid working phone number. Inspector [redacted] asked Respondent ICE to verify the BIM prescribers on the Medical Board of California’s website. The web search revealed that none of the BIM prescribers’ listed addresses on the Medical Board’s website matched the addresses on the prescriptions. Significantly, Respondent ICE admitted to Inspector [redacted] that he had never before verified a prescriber using the Medical Board’s website. In addition, Inspector [redacted] observed numerous other violations of pharmacy laws. At the conclusion of the inspection, Inspector [redacted] prepared an inspection report documenting various pharmacy law violations. Inspector [redacted] gave a copy of the report to Respondent ICE, and then had Respondent ICE review and sign off on it. During his inspection, Inspector [redacted] obtained certain documents including prescription documents, dispensing detail-reports, and Cardinal Health Narcotic Sales Reports. Inspector [redacted] also requested FAP to provide additional documents and explanations regarding pharmacy law violations indicated in the report.

28. On or about May 30, 2011, Inspector [redacted] received and reviewed faxed responses from FAP. Subsequently, Inspector [redacted] contacted 15 different prescribers listed as the supposed prescriber on the prescription documents. Inspector [redacted] sent each prescriber a list of prescriptions from FAP to verify the legitimacy of the prescriptions. Each of the prescribers
responded with a written statement that they did not authorize the prescriptions from FAP. In fact, one prescriber from Kaiser stated he did not authorize any of the prescriptions and that they were written on prescriptions that were stolen from his locker at the hospital. Additionally, one prescriber from BIM stated their practice had been closed since June 2009. All the BIM prescription documents that Inspector [redacted] sent to the BIM prescribers to review were dated and filled by FAP in 2011.

29. Physician Assistant George Pearson was one of the 15 prescribers that Inspector [redacted] contacted to verify the legitimacy of the prescription documents he got from FAP. On or about June 7, 2011, Inspector [redacted] received a response from Mr. Pearson, indicating that he did not authorize the prescriptions and the documents were forgeries. In addition, Mr. Pearson noted that several of the prescription documents were not written on proper controlled substances prescription forms. Significantly, during the May 17, 2011 visit to FAP, Inspector [redacted] had made the same observation that FAP had improperly dispensed controlled substances on five invalid prescription documents. These five prescription documents were invalid because they lacked several required security features such as quantity check off boxes, the required statement of "Prescription is void if the number of drugs prescribed is not noted," and the prescriptions were not sequentially numbered.

30. Inspector [redacted]'s investigation revealed that, from October 2009, to about April 2011, FAP failed to transmit CURES data to the DOJ. The investigation further showed that, from about July 2010, to May 2011, Respondent INE, and Respondent ICE had filled over 350 fraudulent prescriptions. Many of these prescription documents contained significant irregularities that should have prompted Respondent INE and Respondent ICE to verify the legitimacy of the prescription before dispensing the controlled substances. In addition, a review of FAP's dispensing printouts obtained during the investigation showed Respondent Ice's initials on most, if not all, of the printouts' "filled by" section. Furthermore, in a written statement, Respondent ICE admitted that he was the pharmacist on duty everyday since the opening of FAP.
CAUSES OF DISCIPLINE AGAINST RESPONDENT FAP

FIRST CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Failure to Transmit Dispensing Data to CURES)
(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11165, subd. (d))

31. Respondent Fruitvale Avenue Pharmacy’s (FAP) Pharmacy License is subject to disciplinary action under Code section 4301, subdivision (j), because FAP violated Health and Safety Code section 11165, subdivision (d), in that from on or about October 21, 2009, until approximately April 2011, FAP failed to transmit dispensing data for Schedule II, Schedule III, and Schedule IV controlled substances to the Department of Justice for the Controlled Substances Utilization Review and Evaluation System (CURES) on a weekly basis. The circumstances are further explained in paragraphs 25-30, above.

SECOND CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Filled Prescriptions with Significant Irregularity)
(Bus. & Prof. § 4301, subd. (o) and 16 CCR § 1761, subd. (a))

32. Respondent FAP’s Pharmacy License is subject to disciplinary action under Code section 4301, subdivision (o), because FAP violated California Code of Regulations, title 16, section 1761, subdivision (a), in that pharmacists and staff at FAP filled over 350 irregular prescriptions. Many of these prescription documents order an unusually large amount of controlled substances for “as-needed” purposes. The circumstances are further explained in paragraphs 25-30, above.

THIRD CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Failue to Verify Legitimacy of Prescriptions for Controlled Substances)
(Bus. & Prof. § 4301, subd. (q) and Health and Safety Code § 11153, subd. (a))

33. Respondent FAP’s Pharmacy License is subject to disciplinary action under Code section 4301, subdivision (q), because FAP violated Health and Safety Code section 11153, subdivision (a), in that pharmacists and staff at FAP failed to uphold their corresponding responsibility of verifying the patient’s legitimate medical purposes for controlled substances. The pharmacists and staff at FAP breached their corresponding responsibility by furnishing unusually large quantities of controlled substances to patients without confirming with the supposed prescribers the legitimacy of the prescriptions. In fact, the pharmacists and staff at FAP filled approximately 350 fraudulent prescriptions, many of which were for unusually large quantities of controlled substances.
quantities of controlled substances. The circumstances are further explained in paragraphs 25-30, above.

FOURTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Dispensed Controlled Substances on Invalid Prescriptions)
(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11164)

34. Respondent FAP’s Pharmacy License is subject to disciplinary action under Code section 4301, subdivision (j), because FAP violated Health and Safety Code section 11164, in that the pharmacists and staff at FAP furnished controlled substances to patients based on invalid controlled substances prescription forms. Specifically, during May 2011, FAP filled five prescription documents that lacked several required security measures. The circumstances are further explained in paragraphs 25-30, above.

CAUSES OF DISCIPLINE AGAINST RESPONDENT INE

FIFTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Failure to Transmit Dispensing Data to CURES)
(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11165, subd. (d))

35. Respondent Ijeoma Nwanyiocha Esomonu (INE), as Pharmacist-in-Charge of FAP, has subjected her Pharmacist License to disciplinary action under Code section 4301, subdivision (j), by violating Health and Safety Code sections 11165, subdivision (d), in that from on or about October 21, 2009, until approximately April 2011, INE failed to ensure that FAP transmit to the Department of Justice for the Controlled Substances Utilization Review and Evaluation System (CURES) dispensing data for Schedule II, Schedule III, and Schedule IV controlled substances on a weekly basis. The circumstances are further explained in paragraphs 25-30, above.

SIXTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Filled Prescriptions with Significant Irregularity)
(Bus. & Prof. § 4301, subd. (o) and 16 CCR § 1761, subd. (a))

36. Respondent INE, as Pharmacist-in-Charge of FAP, has subjected her Pharmacist License to disciplinary action under Code section 4301, subdivision (o), because she violated California Code of Regulations, title 16, section 1761, subdivision (a), in that pharmacists and staff at FAP filled over 350 irregular prescriptions. Many of these prescription documents order an unusually large amount of controlled substances for “as-needed” purposes. The circumstances are further explained in paragraphs 25-30, above.
SEVENTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct—Failure to Verify Legitimacy of Prescriptions for Controlled Substances)
(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11153, subd. (a))

37. Respondent INE, as Pharmacist-in-Charge of FAP, has subjected her Pharmacist License to disciplinary action under Code section 4301, subdivision (j), because she violated Health and Safety Code section 11153, subdivision (a), in that pharmacists and staff at FAP failed to uphold their corresponding responsibility of verifying the patient's legitimate medical purposes for controlled substances. The pharmacists and staff at FAP breached their corresponding responsibility by furnishing unusually large quantities of controlled substances to patients without confirming with the supposed prescribers the legitimacy of the prescriptions. In fact, the pharmacists and staff at FAP filled approximately 350 fraudulent prescriptions, many of which were for unusually large quantities of controlled substances. The circumstances are further explained in paragraphs 25-30, above.

EIGHTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct—Dispensed Controlled Substances on Invalid Prescriptions)
(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11164)

38. Respondent INE, as Pharmacist-in-Charge of FAP, has subjected her Pharmacist License to disciplinary action under Code section 4301, subdivision (j), because she violated Health and Safety Code section 11164, in that the pharmacists and staff at FAP furnished controlled substances to patients based on invalid controlled substances prescription forms. Specifically, during May 2011, FAP filled five prescription documents that lacked several required security measures. The circumstances are further explained in paragraphs 25-30, above.

CAUSES OF DISCIPLINE AGAINST RESPONDENT ICE

NINTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct—Filled Prescriptions with Significant Irregularity)
(Bus. & Prof. § 4301, subd. (o) and 16 CCR § 1761, subd. (a))

39. Respondent Iroegbu Clifford Esomonu (ICE), as a pharmacist of FAP, has subjected his Pharmacist License to disciplinary action under Code section 4301, subdivision (o), because he violated California Code of Regulations, title 16, section 1761, subdivision (a), in that Respondent ICE filled prescriptions with significant irregularity. Many of the prescriptions order unusually large quantities of controlled substances including oxycodone, hydrocodone with
acetaminophen, alprazolam and promethazine with codeine. The circumstances are further explained in paragraphs 25-30, above.

TENTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Failure to Verify Legitimacy of Prescriptions for Controlled Substances)
(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11153, subd. (a))

40. Respondent ICE, as a pharmacist of FAP, has subjected his Pharmacist License to disciplinary action under Code section 4301, subdivision (j), because he violated Health and Safety Code section 11153, subdivision (a), in that, on numerous occasions, Respondent ICE failed to verify the legitimate medical purpose for prescribing an unusually large quantity of controlled substances. In fact, FAP’s drug dispensing printouts show that Respondent ICE filled approximately 350 fraudulent prescriptions, many which were for unusually large quantities of controlled substances. The circumstances are further explained in paragraphs 25-30, above.

ELEVENTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Dispensed Controlled Substances on Invalid Prescriptions)
(Bus. & Prof. § 4301, subd. (j) and Health and Safety Code § 11164)

41. Respondent ICE, as a pharmacist of FAP, has subjected his Pharmacist License to disciplinary action under Code section 4301, subdivision (j), in that Respondent ICE dispensed controlled substances based on invalid prescription documents. Specifically, Respondent ICE’s initials were on the pharmacy dispensing printouts for those five invalid prescription documents. The circumstances are further explained in paragraphs 25-30 above.

TWELFTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Use of Alcohol in a Dangerous Manner)
(Bus. & Prof. § 4301, subd. (h))

42. Respondent ICE has subjected his Pharmacist License to disciplinary action under Code section 4301, subdivision (h), in that on or about April 23, 2012, Respondent ICE was arrested by a San Leandro police officer for driving under the influence of alcohol. The circumstances are as follows:

43. On or about 12:25 a.m., on April 23, 2012, a San Leandro police officer stopped Respondent’s vehicle for a violation of Vehicle Code section 21650 (a vehicle on the highway must be driven on the right side of the road). The officer approached Respondent’s vehicle and observed symptoms of intoxication including red watery eyes, alcoholic odor emitting from
Respondent’s breath and slurred speech. Respondent failed a series of field sobriety tests. Two breath tests from Respondent at approximately 1:19 a.m. and 1:22 a.m. revealed a blood alcohol concentration (BAC) of .13.

THIRTEENTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Conviction)
(Bus. & Prof. §§ 490 & 4301, subd. (l))

44. Respondent ICE has subjected his Pharmacist License to disciplinary action under Code section 4301, subdivision (l), and section 490, in that Respondent ICE was convicted of a crime substantially related to the qualifications, functions and duties of a pharmacist. The circumstances are as follows:

45. On or about December 13, 2012, in a criminal matter entitled People of the State of California v. Iroegbu Clifford Esomunwa-in the Alameda County Superior Court, Respondent ICE was convicted upon plea of no contest to the violation of Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol level of .08 or more), a misdemeanor. Respondent ICE was ordered to serve 15 days in county jail. Respondent was placed on probation for 3 years with various conditions including completing a Drinking Driver Program and paying various fees and fines.

DISCIPLINE CONSIDERATIONS

46. To determine the degree of discipline, if any, to be imposed on Respondent ICE, Complainant alleges that on or about December 28, 2010, in a prior action, the Board of Pharmacy issued Citation Number CI 2010 45230 and ordered Respondent ICE to pay a $2,500 fine for violating sections 4301, subdivisions (h) and (l) [arrest for driving under the influence and conviction on the lesser charge of wet/reckless]. That Citation is now final and is incorporated by reference as if fully set forth.

PRAYER

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

1. Revoking or suspending Pharmacy License Number PHY 50064, issued to Fruitvale Avenue Pharmacy Inc.;
2. Revoking or suspending Pharmacist License Number RPH 53516, issued to Ijeoma Nwanyiocha Esomonu, Fruitvale Avenue Pharmacy Inc.;

3. Revoking or suspending Pharmacist License Number RPH 53445, issued to Iroegbu Clifford Esomonu, Fruitvale Avenue Pharmacy Inc.;

4. Ordering Fruitvale Avenue Pharmacy Inc., Ijeoma Nwanyiocha Esomonu and Iroegbu Clifford Esomonu to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 9/6/13

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

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