



## Renewal Application

### 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?

☐ 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

☒ Yes ☐ No

CA Board Upload Mini Clayton.pdf

(Includes/Uploads/96db9addb9bf41a0981f5065a90151bf.pdf)

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

☐ Yes ☒ No

Upload Supporting Doc.

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:

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

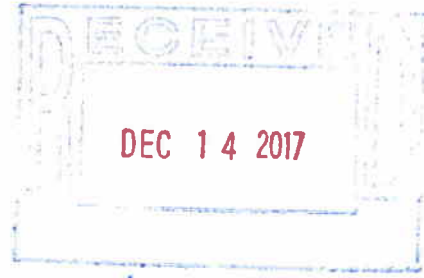
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Generate License



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

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**

Case No. 5810

OAH No. 2017010178

Respondent.

**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

1 XAVIER BECERRA  
Attorney General of California  
2 KENT D. HARRIS  
Supervising Deputy Attorney General  
3 DAVID E. BRICE  
Deputy Attorney General  
4 State Bar No. 269443  
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7 E-mail: David.Brice@doj.ca.gov  
*Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5810

12 **MIMI N. CLAYTON**  
13 **18300 Avenue 296**  
14 **Exeter, CA 93221**

OAH No. 2017010178

15 **Pharmacist License No. RPH 46784**

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

16 Respondent.

17  
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
19 entitled proceedings that the following matters are true:

20 PARTIES

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

25 2. Mimi N. Clayton (Respondent) is represented in this proceeding by attorney Rachele  
26 Berglund, whose address is: Herr Pedersen & Berglund, 100 Willow Plaza, Suite 300, Visalia,  
27 California, 93291.

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1       3.    On or about October 15, 1993, the Board issued Pharmacist License No. RPH 46784  
2 to Respondent. The Pharmacist License was in full force and effect at all times relevant to the  
3 charges brought in Accusation No. 5810, and will expire on April 30, 2019, unless renewed.

4                                   JURISDICTION

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

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

11                                  ADVISEMENT AND WAIVERS

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

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

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

24                                  CULPABILITY

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

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

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1           **1.     Obey All Laws**

2           Respondent shall obey all state and federal laws and regulations.

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

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

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

16           **2.     Report to the Board**

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

25           **3.     Interview with the Board**

26          Upon receipt of reasonable prior notice, respondent shall appear in person for interviews  
27          with the board or its designee, at such intervals and locations as are determined by the board or its  
28          designee. Failure to appear for any scheduled interview without prior notification to board staff,

1 or failure to appear for two (2) or more scheduled interviews with the board or its designee during  
2 the period of probation, shall be considered a violation of probation.

3 **4. Cooperate with Board Staff**

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

7 **5. Continuing Education**

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

10 **6. Notice to Employers**

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

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

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

26 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen  
27 (15) days of respondent undertaking any new employment by or through a pharmacy employment  
28 service, respondent shall cause her direct supervisor with the pharmacy employment service to



1 report to the board in writing acknowledging that she has read the decision in case number 5810  
2 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure  
3 that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

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

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

22 **8. Reimbursement of Board Costs**

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

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

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

3 **9. Probation Monitoring Costs**

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

8 **10. Status of License**

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

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

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

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

24 Upon acceptance of the surrender, respondent shall relinquish her pocket and wall license to  
25 the board within ten (10) days of notification by the board that the surrender is accepted.

26 Respondent may not reapply for any license from the board for three (3) years from the effective  
27 date of the surrender. Respondent shall meet all requirements applicable to the license sought as

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1 of the date the application for that license is submitted to the board, including any outstanding  
2 costs.

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

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

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

12 **13. Tolling of Probation**

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

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

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

27 "Cessation of practice" means any calendar month during which respondent is  
28 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

1 month during which respondent is practicing as a pharmacist for at least forty (40)  
2 hours as a pharmacist as defined by Business and Professions Code section 4000 et  
3 seq.

4 **14. Violation of Probation**

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

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

17 **15. Completion of Probation**

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

20 **16. Community Service Program**

21 Within sixty (60) days of the effective date of this decision, respondent shall submit to the  
22 board or its designee, for prior approval, a community service program in which respondent shall  
23 provide free health-care related services on a regular basis to a community or charitable facility or  
24 agency for at least 20 hours per year during each year of probation. Within thirty (30) days of  
25 board approval thereof, respondent shall submit documentation to the board demonstrating  
26 commencement of the community service program. A record of this notification must be provided  
27 to the board upon request. Respondent shall report on progress with the community service  
28 ///

1 program in the quarterly reports. Failure to timely submit, commence, or comply with the  
2 program shall be considered a violation of probation.

3 **17. Remedial Education**

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

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

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

21 **18. No Ownership of Licensed Premises**

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

1 19. **Ethics Course**

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

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

8 **ACCEPTANCE**

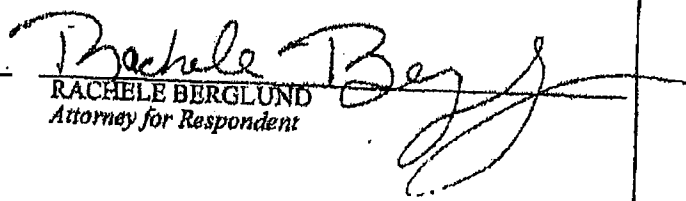
9 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
10 discussed it with my attorney, Rachele Berglund. I understand the stipulation and the effect it  
11 will have on my Pharmacist License. I enter into this Stipulated Settlement and Disciplinary  
12 Order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

14 DATED: 9-25-17

  
MIMI N. CLAYTON  
Respondent

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

19 DATED: 9-25-17

  
RACHELE BERGLUND  
Attorney for Respondent

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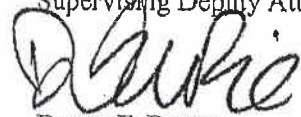
ENDORSEMENT

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



DAVID E. BRICE  
Deputy Attorney General  
*Attorneys for Complainant*

SA2016101615  
12825606.docx

**Exhibit A**

**Accusation No. 5810**

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1 KAMALA D. HARRIS  
Attorney General of California  
2 KENT D. HARRIS  
Supervising Deputy Attorney General  
3 DAVID E. BRICE  
Deputy Attorney General  
4 State Bar No. 269443  
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Facsimile: (916) 327-8643  
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5810

12 **MIMI N. CLAYTON**  
18300 Avenue 296  
13 Exeter, CA 93221

**A C C U S A T I O N**

14 **Pharmacist License No. RPH 46784**

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about October 15, 1993, the Board issued Pharmacist License Number RPH  
22 46784 to Mimi N. Clayton ("Respondent"). On or about January 31, 2015, Respondent became  
23 the pharmacist-in-charge of Emanuel Medical Center ("EMC") located in Turlock, California.  
24 The pharmacist license was in full force and effect at all times relevant to the charges brought  
25 herein and will expire on April 30, 2017, unless renewed.

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1 **JURISDICTION**

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

5 4. Code section 4300 states, in pertinent part:

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

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

9 (1) Suspending judgment.

10 (2) Placing him or her upon probation.

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

13 (4) Revoking his or her license.

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

15 5. Code section 4300.1 states:

16 The expiration, cancellation, forfeiture, or suspension of a board-issued  
17 license by operation of law or by order or decision of the board or a court of law, the  
18 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  
19 investigation of, or action or disciplinary proceeding against, the licensee or to render  
a decision suspending or revoking the license.

20 **STATUTORY AND REGULATORY PROVISIONS**

21 6. Code section 4301 states, in pertinent part:

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

25 . . . .

26 (c) Gross negligence.

27 . . . .

28 (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.

///

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

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

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

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

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

22 . . . .

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

- 25 (1) Active ingredients to be used.
- 26 (2) Equipment to be used.
- 27 (3) Expiration dating requirements.
- 28 (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

///

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
2 enforcement of the case.

### 3 DRUG CLASSIFICATIONS

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

### 6 STATEMENT OF FACTS

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

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

19 14. That same day (March 10, 2015), the inspector received various emails from L. L.,  
20 which she had sent to Respondent, including an email dated March 8, 2015. L. L. stated in the  
21 email that she had discovered her medication error that day. L. L. explained that she had used a  
22 stock vial containing 5 gm of vancomycin instead of 10 gm of vancomycin and that the  
23 compounded vancomycin IV bags had contained one-half of the labeled strength of the drug.  
24 L. L. found that 51 vancomycin IV bags had been prepared incorrectly on March 6 and 7, 2015,  
25 and that 29 doses had been administered to patients. Once L. L. discovered the error, she  
26 immediately pulled all of the incorrect doses from all areas of EMC. L. L. identified 14 patients,  
27 who might have received the reduced doses of vancomycin, and contacted almost all of the  
28 patients' physicians. On or about March 8, 2015, Respondent sent L. L. an email asking her to

1 see if patients needed to be notified of the medication error, and instructing her to review the  
2 current policy. Respondent also instructed L. L. to create a new storage bin for the vancomycin 5  
3 gm dose and to contact "Thao" (pharmacist T. L., EMC's Clinical Pharmacy Coordinator) to  
4 create a new compound worksheet.

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

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

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

22 18. On or about March 13, 2015, the inspector went to EMC to conduct an inspection of  
23 the pharmacy. The inspector met with T. L. and obtained copies of T. L.'s email communications  
24 with Respondent and EMC's medication error policies and procedures. T. L. told the inspector  
25 that as Clinical Coordinator, she had always been in charge of investigations of medication errors  
26 and of entering the errors into EMC's "Verge" system. T. L. stated that she had come a long way  
27 in the investigation of the vancomycin error before Respondent told her to stop. The inspector  
28 reviewed the emails and found as follows:

1       a.     T. L. told Respondent in an email dated March 9, 2015, that she was completing the  
2     Verge incident reports and investigation of patients affected by the vancomycin medication error.  
3     Respondent sent T. L. a reply, asking T. L. to keep her in the loop of any updates.

4       b.     On March 11, 2015, T. L. sent Respondent an email containing a summary of her  
5     vancomycin medication error findings, including the following: 1) 25 vials of vancomycin 5 gm  
6     had been delivered to EMC on February 26, 2015, and 15 vials had been delivered on March 9,  
7     2015; 2) T. L. identified the 2 lot numbers involved; 3) potentially 130 bags of IV vancomycin  
8     were compounded incorrectly, starting on February 26, 2015; 4) it was unknown how many bags  
9     had reached the patients because the pharmacy department did not track which lot was dispensed  
10    to which patients; and 5) T. L. ran a Meditech report, which showed that a total of approximately  
11    87 patients received IV vancomycin between February 19, 2015 and March 8, 2015.

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

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

28    ///

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

10                                   **FIRST CAUSE FOR DISCIPLINE**

11                                   **(Failure to Comply with Quality Assurance Program)**

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

- 15       a. On or about March 13, 2015, Respondent failed to immediately retrieve or provide to  
16 Board Inspector D. P. EMC pharmacy's quality assurance policy and procedure.
- 17       b. Respondent provided Board Inspector D. P. with a copy of only one quality assurance  
18 report relating to the pharmacy's vancomycin medication error when, in fact, there were a total of  
19 approximately 87 patients who could have been affected by the medication error.

20                                   **SECOND CAUSE FOR DISCIPLINE**

21                                   **(Gross Negligence)**

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

- 25       a. Respondent failed to identify the patients who received the wrong dose of the  
26 vancomycin within 2 business days from the date the medication error was discovered.

27       ///

28       ///



1       b.     Respondent made an assessment that no patient had been harmed by the pharmacy's  
2 vancomycin medication error prior to identifying all of the patients who were possibly affected by  
3 the medication error.

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

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

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

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

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

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

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

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

25      k.     Respondent subverted, or attempted to subvert, a thorough investigation of the  
26 vancomycin medication error.

27     ///

28     ///

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Failure to Prepare Master Formulas Prior to Compounding)**

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

8 **PRAYER**

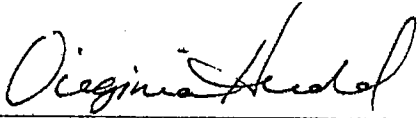
9 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,  
10 and that following the hearing, the Board of Pharmacy issue a decision:

11 1. Revoking or suspending Pharmacist License Number RPH 46784, issued to Mimi N.  
12 Clayton;

13 2. Ordering Mimi N. Clayton to pay the Board of Pharmacy the reasonable costs of the  
14 investigation and enforcement of this case, pursuant to Business and Professions Code section  
15 125.3; and

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

17  
18 DATED: 10/10/16

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

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25  
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27  
28



DO NOT FOLD OR STAPLE ABOVE THIS LINE

## 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: (Please fill in completely)

Yes No

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?..... ☐ Yes ☒ No
2. Been the subject of a board citation or an administrative action whether completed or pending in any state?..... ☒ Yes ☐ No
3. Had your license subjected to any discipline for violation of pharmacy or drug laws in any state?..... ☒ Yes ☐ No

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

Board Administrative Action:	State: <u>CA</u>	Date: <u>01/30/2017</u>	Case #: <u>5534</u>
Criminal Action:	State: <u>/</u>	Date: <u>/</u>	Case #: <u>/</u>
	County: <u>/</u>	Court: <u>/</u>	

### 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?..... ☐ Yes ☐ No

### 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 you 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 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: Kristen Gorski

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 SEIWERT, 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**

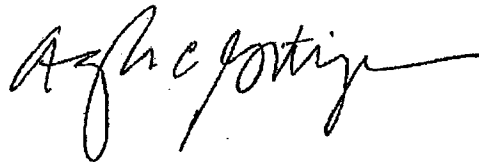
**DECISION AND ORDER**

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**



By

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

1 KAMALA D. HARRIS  
Attorney General of California  
2 JANICE K. LACHMAN  
Supervising Deputy Attorney General  
3 ANAHITA S. CRAWFORD  
Deputy Attorney General  
4 State Bar No. 209545  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 322-8311  
Facsimile: (916) 327-8643  
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5534

12 **SIERRA COMPOUNDING PHARMACY**  
13 **ROBERT HILBERT SEIWERT, OWNER**  
14 **ANGALINE MARIE WUSSTIG, PIC**  
1101 Maidu Drive, #200  
Auburn, CA 95603

OAH No. 2016061130

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

15 Pharmacy Permit No. PHY 49228,

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

18 Pharmacist License No. RPH 69944,

19 and

20 **KRISTEN R. GORSKI**  
Colfax Highway  
21 Grass Valley, CA 95945

22 Pharmacist License No. RPH 67057

23 Respondents.  
24

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

28 //

1 PARTIES

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

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

9 3. On or about April 19, 2012, the Board issued Pharmacist License Number RPH  
10 67057 to Kristen R. Gorski ("Respondent Gorski"). The pharmacist license was in full force and  
11 effect at all times relevant to the charges brought herein and will expire on September 30, 2017,  
12 unless renewed.

13 JURISDICTION

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

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

20 ADVISEMENT AND WAIVERS

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

25 7. Respondent is fully aware of her legal rights in this matter, including the right to a  
26 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine  
27 the witnesses against her; the right to present evidence and to testify on her own behalf; the right  
28 to the issuance of subpoenas to compel the attendance of witnesses and the production of



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

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

5 CULPABILITY

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

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

10 CONTINGENCY

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

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

23 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an  
24 integrated writing representing the complete, final, and exclusive embodiment of their agreement.  
25 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,  
26 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary  
27 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a  
28 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 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



1 in submission of reports as directed may be added to the total period of probation. Moreover, if  
2 the final probation report is not made as directed, probation shall be automatically extended until  
3 such time as the final report is made and accepted by the board.

4 **3. Interview with the Board**

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

10 **4. Cooperate with Board Staff**

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

14 **5. Continuing Education**

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

17 **6. Notice to Employers**

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

21 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of  
22 respondent undertaking any new employment, respondent shall cause her direct supervisor,  
23 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's  
24 tenure of employment) and owner to report to the board in writing acknowledging that the listed  
25 individual(s) has/have read the decision in case number 5534, and terms and conditions imposed  
26 thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or supervisor(s)  
27 submit timely acknowledgment(s) to the board.

1 If respondent works for or is employed by or through a pharmacy employment service,  
2 respondent must notify her direct supervisor, pharmacist-in-charge, and owner at every entity  
3 licensed by the board of the terms and conditions of the decision in case number 5534 in advance  
4 of the respondent commencing work at each licensed entity. A record of this notification must be  
5 provided to the board upon request.

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

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

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

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

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

25 **8. Probation Monitoring Costs**

26 Respondent shall pay any costs associated with probation monitoring as determined by the  
27 board each and every year of probation. Such costs shall be payable to the board on a schedule as  
28

1 directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall  
2 be considered a violation of probation.

3 **9. Status of License**

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

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

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

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

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

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

27 Respondent shall notify the board in writing within ten (10) days of any change of  
28 employment. Said notification shall include the reasons for leaving, the address of the new

1 employer, the name of the supervisor and owner, and the work schedule if known. Respondent  
2 shall further notify the board in writing within ten (10) days of a change in name, residence  
3 address, mailing address, or phone number.

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

#### 6 12. Tolling of Probation

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

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

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

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

#### 26 13. Violation of Probation

27 If a respondent has not complied with any term or condition of probation, the board shall  
28 have continuing jurisdiction over respondent, and probation shall automatically be extended, until

1 all terms and conditions have been satisfied or the board has taken other action as deemed  
2 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and  
3 to impose the penalty that was stayed.

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

#### 11 14. Completion of Probation

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

#### 14 15. Remedial Education

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

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

25 Following the completion of each course, the board or its designee may require the  
26 respondent, at her own expense, to take an approved examination to test the respondent's  
27 knowledge of the course. If the respondent does not achieve a passing score on the examination,


28 //

1 this failure shall be considered a violation of probation. Any such examination failure shall  
2 require respondent to take another course approved by the board in the same subject area.

3 ACCEPTANCE

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

9  
10 DATED: 11.17.2016

  
KRISTEN R. GORSKI  
Respondent

11  
12 I have read and fully discussed with Respondent Sierra Compounding Pharmacy; Robert  
13 Hilbert Seiwert, Owner; Angaline Marie Wusstig, PIC the terms and conditions and other matters  
14 contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and  
15 content.

16 DATED: Nov. 17, 2016

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

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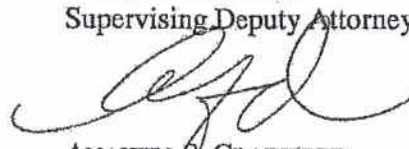
ENDORSEMENT

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*

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**Exhibit A**

**Accusation No. 5534**



1 KAMALA D. HARRIS  
Attorney General of California  
2 JANICE K. LACHMAN  
Supervising Deputy Attorney General  
3 ANAHITA S. CRAWFORD  
Deputy Attorney General  
4 State Bar No. 209545  
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5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 322-8311  
Facsimile: (916) 327-8643  
7 Attorneys for Complainant

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

In the Matter of the Accusation Against:

Case No. 5534

12 SIERRA COMPOUNDING PHARMACY  
13 ROBERT HILBERT SEIWERT, OWNER  
14 ANGALINE MARIE WUSSTIG, PIC  
1101 Maidu Drive, #200  
15 Auburn, CA 95603

ACCUSATION

16 Pharmacy Permit No. PHY 49228,

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

19 Pharmacist License No. RPH 69944,

and

20 KRISTEN R. GORSKI  
Colfax Highway  
21 Grass Valley, CA 95945

22 Pharmacist License No. RPH 67057

23 Respondents.

24  
25 Complainant alleges:

26 PARTIES

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

1  
(SIERRA COMPOUNDING PHARMACY) ACCUSATION

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

5           3.    On or about October 3, 2013, the Board issued Pharmacist License Number RPH  
6    69944 to Angaline Marie Wustig ("Respondent Wustig"). The pharmacist license was in full  
7    force and effect at all times relevant to the charges brought herein and will expire on July 31,  
8    2017, unless renewed.

9           4.    On or about April 19, 2012, the Board issued Pharmacist License Number RPH  
10   67057 to Kristen R. Gorski ("Respondent Gorski"). The pharmacist license was in full force and  
11   effect at all times relevant to the charges brought herein and will expire on September 30, 2017,  
12   unless renewed.

### 13                                   JURISDICTION

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

17           6.    Code section 4300.1 states:

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

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

27           8.    Code section 4300 states, in pertinent part:

28           (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 . . .

### 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:

....

(j) 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.

....

(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. 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 --

....

(f) 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 "[i]t 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.

...

1  
2 (i) The pharmacist performing or supervising compounding is responsible  
3 for the proper preparation, labeling, storage, and delivery of the compounded drug  
4 product.

#### 5 COST RECOVERY

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

#### 10 DRUG

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

#### 17 FACTUAL BACKGROUND

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

22 24. On June 7, 2004, the U.S. Food and Drug Administration ("FDA") issued a talk  
23 paper titled, "FDA Warns Against Women Using Unapproved Drug, Domperidone, to Increase  
24 Milk Production." The paper stated in pertinent part that domperidone is an "unapproved drug,"  
25 and that it is not approved in the US for human use. It also warned breast-feeding women not to  
26 use the product because of safety concerns, and that FDA field personnel were alerted to be on  
27 the lookout for attempts to import domperidone so it could be detained. The talk paper indicated  
28 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

1 violate the Federal Food, Drug, and Cosmetic Act (the Act)<sup>1</sup> because they are unapproved new  
2 drugs and misbranded. In addition, distribution within the U.S., or importation of domperidone-  
3 containing products, violates the law." Over the next several years, the FDA continued to issue  
4 and publish warning letters to laboratories and pharmacies that it identified were distributing and  
5 compounding domperidone for human use, in violation of the Act.

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

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

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

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

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

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

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28 <sup>1</sup> 21 U.S.C. § 301 et seq.

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**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 Wusstig'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 Wusstig'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 Wusstig'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.



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**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 Seiwert and Gorski, if any, Complainant alleges as follows:

**Respondent Seiwert/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 self); 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 (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

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

8 **Respondent Gorski**

9 c. On or about March 24, 2014, the Board issued Citation and Fine No. CI 2013  
10 60613 against Respondent Gorski for violating Title 21, CFR, section 1304.04, subdivisions  
11 (h)(1) and (2) (inventories and records of all controlled substances listed in Schedules I and II  
12 shall be maintained separately from all other records of the pharmacy/Schedules III, IV, and V  
13 shall be maintained either separately from all other records of the pharmacy); Title 21, CFR,  
14 section 1301.75, subdivision (b) (controlled substances listed in Schedules II, III, IV, and V shall  
15 be stored in a securely locked, substantially constructed cabinet); and CCR, title 16, section  
16 1707.5, subdivision (d) (patient-centered labels for prescription drug containers; requirements;  
17 pharmacy shall have policies and procedures in place to help patients with limited or no English  
18 proficiency understand the information on the label) The Board ordered Respondent to pay fines  
19 totaling \$1,250 by April 23, 2014. The citation has been paid in full and is final.

20 **PRAYER**

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

- 23 1. Revoking or suspending Pharmacy Permit No. PHY 49228, issued to Robert Hilbert  
24 Seiwert, owner of Sierra Compounding Pharmacy;
- 25 2. Revoking or suspending Pharmacist License No. RPH 69944, issued to Angeline  
26 Marie Wusstig;
- 27 3. Revoking or suspending Pharmacist License No. RPH 67057, issued to Kristen R.  
28 Gorski;

1 4. Ordering Robert Hilbert Seiwert, owner of Sierra Compounding Pharmacy, Angeline  
2 Marie Wusstig, and Kristen R. Gorski to pay the Board of Pharmacy the reasonable costs of the  
3 investigation and enforcement of this case; pursuant to Business and Professions Code section  
4 125.3; and

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

6  
7 DATED:

5/4/16

*Virginia Herold*

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

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DO NOT FOLD OR STAPLE ABOVE THIS LINE.....

## 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)  
\$180.00 (postmarked on or before 10/31/2015) **OR** \$320.00 (postmarked after 10/31/2015)

LICENSE: 15622

Iroegbu Clifford Esomonu

KINGSMILL TER,

Dublin, CA 94568

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 <http://bop.nv.gov>
2. Click "Applications" then, "License Renewal", FOLLOW instructions
3. Use: **USER ID: CLIFFESOMONU@AOL.COM**  
**PASSWORD: \*\*\*\*\***

**\*New Users: once logged in, when asked for OLD password, use the above password, then change**

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

Yes No

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?..... ☐ ☒

1. Been charged, arrested or convicted of a felony or misdemeanor in any state?..... ☐ ☐
2. Been the subject of a board citation or an administrative action whether completed or pending in any state?..... ☒ ☐
3. 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:	State	Date:	Case #:
	CA	04/08/2015	4579
Criminal Action:	State	Date:	Case #:
	/	/	
	County	Court	

### 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 15/17 Renewal period.  
(Dated from Nov. 1, 13 – Oct. 31, 15; 1.25hrs 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 639.219). 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 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: 10/30/2017



Isaiah Clifford Esomonu  
Kingsmill Terrace  
Dublin, CA 94568  
NV Licence 15622

## The Nevada State Board of Pharmacy

### Explanation 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 PH# 50064. We were located on Fruitvale Avenue in Oakland and catered to Alameda County mental health department. We also filled prescriptions 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 darling 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 from pain physicians in 2012, as well as stopped accepting cash for any prescriptions. We instead became a County 340B pharmacy for HIV and Hep C. The administrative mediation went on for two years and in April 2015, I accepted to surrender my licence for a period of three years.

P.T.O.



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 diversion and the drug epidemic. I can no longer be fooled by any one as far as controlled substances go.

I am ready to become a model pharmacist in the state of Nevada.

Sincerely,  
Ikegbu C. Esomona  
#15622  
10.30.2017.

NB.

Case has been emailed  
to Pharmacy@pharmacy.nv.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

1 KAMALA D. HARRIS  
Attorney General of California  
2 DIANN SOKOLOFF  
Supervising Deputy Attorney General  
3 TIMOTHY J. McDONOUGH  
Deputy Attorney General  
4 State Bar No. 235850  
1515 Clay Street, 20th Floor  
5 P.O. Box 70550  
Oakland, CA 94612-0550  
6 Telephone: (510) 622-2134  
Facsimile: (510) 622-2270  
7 E-mail: Tim.McDonough@doj.ca.gov  
*Attorneys for Complainant*

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

11  
12 In the Matter of the Second Amended  
Accusation Against:

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

15 Pharmacy License No. PHY 50064,

16 **IJEOMA NWAYIOCHA ESOMONU**  
**FRUITVALE AVENUE PHARMACY INC.**  
17 16 Minaret Road  
Oakley, CA 94561

18 Pharmacist License No. RPH 53516,  
19

20 and

21 **IROEGBU CLIFFORD ESOMONU**  
**FRUITVALE AVENUE PHARMACY INC.**  
22 6726 Corte Santa Maria  
Pleasanton, CA 94566

23 Pharmacist License No. RPH 53445

24 Respondents.  
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Case No. 4579

OAH No. 2014061007

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



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

3 PARTIES

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

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

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

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

19 JURISDICTION

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

25 ADVISEMENT AND WAIVERS

26 6. Respondents have carefully read, fully discussed with counsel, and understand the  
27 charges and allegations in Second Amended Accusation No. 4579. Respondents also have  
28

1 carefully read, fully discussed with counsel, and understands the effects of this Stipulated  
2 Surrender of License and Order.

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

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

#### 12 CULPABILITY

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

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

#### 20 RESERVATION

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

#### 25 CONTINGENCY

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

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

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

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

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

18 **ORDER**

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

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

28

- 1           2.     In the event that Fruitvale Avenue Pharmacy, Inc. is sold and an application for a new  
2 permit is submitted to the Board, the Board shall expedite the processing of that application.
- 3           3.     Respondent Fruitvale shall lose all rights and privileges as a pharmacy in California  
4 as of the effective date of the Board's Decision and Order.
- 5           4.     Respondent Esomonu shall lose all rights and privileges as a pharmacist in California  
6 as of the effective date of the Board's Decision and Order.
- 7           5.     Respondent Esomonu shall cause to be delivered to the Board its pocket license and,  
8 if one was issued, its wall certificate, on or before the effective date of the Decision and Order.
- 9           6.     If Respondent ever applies for licensure or petitions for reinstatement in the State of  
10 California, the Board shall treat it as a new application for licensure. Respondent must comply  
11 with all the laws, regulations, and procedures for licensure in effect at the time the application or  
12 petition is filed, and all of the charges and allegations contained in Second Amended Accusation  
13 No. 4579 shall be deemed to be true, correct and admitted by Respondent when the Board  
14 determines whether to grant or deny the application or petition.
- 15          7.     Respondent shall pay the agency its costs of investigation and enforcement in the  
16 amount of \$50,973.50 prior to issuance of a new or reinstated license.
- 17          8.     If Respondent should ever apply or reapply for a new license or certification, or  
18 petition for reinstatement of a license, by any other health care licensing agency in the State of  
19 California, all of the charges and allegations contained in Second Amended Accusation, No. 4579  
20 shall be deemed to be true, correct, and admitted by Respondents for the purpose of any  
21 Statement of Issues or any other proceeding seeking to deny or restrict licensure.
- 22          9.     In the event that Fruitvale Avenue Pharmacy, Inc. is not sold by July 8, 2015,  
23 Respondent Fruitvale shall, within ten (10) days of the stayed effective date of the Board's order,  
24 arrange for the destruction of, the transfer to, sale of or storage in a facility licensed by the Board  
25 of all controlled substances and dangerous drugs and devices. Respondent Fruitvale shall further  
26 provide written proof of such disposition and submit a completed Discontinuance of Business  
27 form according to Board guidelines.
- 28

1        Respondent owner shall also, by the effective date of this decision, arrange for the  
2 continuation of care for ongoing patients of the pharmacy by, at minimum, providing a written  
3 notice to ongoing patients that specifies the anticipated closing date of the pharmacy and that  
4 identifies one or more area pharmacies capable of taking up the patients' care, and by cooperating  
5 as may be necessary in the transfer of records or prescriptions for ongoing patients. Within five  
6 days of its provision to the pharmacy's ongoing patients, Respondent owner shall provide a copy  
7 of the written notice to the board. For the purposes of this provision, "ongoing patients" means  
8 those patients for whom the pharmacy has on file a prescription with one or more refills  
9 outstanding, or for whom the pharmacy has filled a prescription within the preceding sixty (60)  
10 days.

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

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DATED: 06.19.15

DATED: 06.19.15

DATED: 6-22-15

**JOHN FLEER**  
Attorney for Respondent

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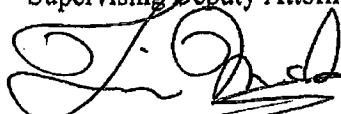
ENDORSEMENT

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

Dated: 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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1 ACCEPTANCE

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

7  
8 DATED: \_\_\_\_\_

9 IROEGBU CLIFFORD ESOMONU  
10 FRUITVALE AVENUE PHARMACY, INC.  
Respondent

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

16  
17 DATED: \_\_\_\_\_

18 IROEGBU CLIFFORD ESOMONU  
19 Respondent

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

23 DATED: \_\_\_\_\_

24 JOHN FLEER  
25 Attorney for Respondent  
26  
27  
28



**Exhibit A**

**Second Amended Accusation No. 4579**

1 KAMALA D. HARRIS  
Attorney General of California  
2 DIANN SOKOLOFF  
Supervising Deputy Attorney General  
3 TIMOTHY J. McDONOUGH  
Deputy Attorney General  
4 State Bar No. 235850  
1515 Clay Street, 20th Floor  
5 P.O. Box 70550  
Oakland, CA 94612-0550  
6 Telephone: (510) 622-2134  
Facsimile: (510) 622-2270  
7 E-mail: Tim.McDonough@doj.ca.gov  
*Attorneys for Complainant*

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

11 In the Matter of the Second Amended  
12 Accusation Against:

Case No. 4579

13 **FRUITVALE AVENUE PHARMACY INC.**  
14 **2693 Fruitvale Avenue**  
**Oakland, CA 94601**

**SECOND AMENDED ACCUSATION**

15 **Pharmacy License No. PHY 50064,**

16 **IJEOMA NWAYIOCHA ESOMONU**  
17 **FRUITVALE AVENUE PHARMACY INC.**  
18 **16 Minaret Road**  
**Oakley, CA 94561**

19 **Pharmacist License No. RPH 53516,**

20 **and**

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

23 **Pharmacist No. RPH 53445**

24 **Respondents.**

1 Complainant alleges:

2 PARTIES

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

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

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

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

18 JURISDICTION

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

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

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

26 "(a) Every license issued may be suspended or revoked.  
27  
28

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

4       “(1) Suspending judgment.

5       “(2) Placing him or her upon probation.

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

7       “(4) Revoking his or her license.

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

10       ...

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

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

#### 22                               STATUTORY/REGULATORY PROVISIONS

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

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

27       “(a) Gross immorality.

28       ...

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

3       ...

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

6       ...

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

11       10. Section 4081 of the Code states:

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

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

24       "(c) The pharmacist-in-charge or representative-in-charge shall not be criminally  
25 responsible for acts of the owner, officer, partner, or employee that violate this section and of  
26 which the pharmacist-in-charge or representative-in-charge had no knowledge, or in which he or  
27 she did not knowingly participate."

28

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

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

9        13. Health and Safety Code section 11165, subdivision (d), states:  
10 "For each prescription for a Schedule II, Schedule III, or Schedule IV controlled substance, as  
11 defined in the controlled substances schedules in federal law and regulations, specifically  
12 Sections 1308.12, 1308.13, and 1308.14, respectively, of Title 21 of the Code of Federal  
13 Regulations, the dispensing pharmacy or clinic shall provide the following information to the  
14 Department of Justice on a weekly basis and in a format specified by the Department of Justice:

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

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

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

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

24        "(5) Quantity of the controlled substance dispensed.

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

26        "(7) Number of refills ordered.

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

28        "(9) Date of origin of the prescription.

1           “(10) Date of dispensing of the prescription.”

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

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

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

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

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

12           ...

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

- 16                     ▪ 1-24
- 17                     ▪ 25-49
- 18                     ▪ 50-74
- 19                     ▪ 75-100
- 20                     ▪ 101-150
- 21                     ▪ 151 and over.

22           ...

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

25           ...

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

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

30           “A prescription for a controlled substance shall only be issued for a legitimate medical  
31           purpose by an individual practitioner acting in the usual course of his or her professional

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

9 17. Health and Safety Code section 111295 states:

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

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

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

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

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

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

23 "(1) upon request; or

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

26 "(b)(1) In addition to the obligation to consult set forth in subsection (a), a pharmacist shall  
27 provide oral consultation to his or her patient or the patient's agent in any care setting in which the  
28 patient or agent is present:



1       “(A) whenever the prescription drug has not previously been dispensed to a patient; or

2       “(B) whenever a prescription drug not previously dispensed to a patient in the same dosage  
3 form, strength or with the same written directions, is dispensed by the pharmacy.”

4       20.       California Code of Regulations, title 16, section 1716, states:

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

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

10       21.       California Code of Regulations, title 16, section 1718, states:

11       ““Current Inventory”” as used in Sections 4081 and 4332 of the Business and Professions  
12 Code shall be considered to include complete accountability for all dangerous drugs handled by  
13 every licensee enumerated in Sections 4081 and 4332.

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

16       22.       Code section 4306.5, states:

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

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

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

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

28       “(d) Acts or omissions that involve, in whole or in part, the failure to fully maintain and

1 retain appropriate patient-specific information pertaining to the performance of any pharmacy  
2 function."

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

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

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

15 "(2) Where the license is denied or revoked, the prohibition shall continue until the license  
16 is issued or reinstated."

17 24. Code section 4022, states:

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

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

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

25 "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on  
26 prescription or furnished pursuant to Section 4006."

27 ///

28 ///

1 CONTROLLED SUBSTANCES

2 25. Section 4021 of the Code states:

3 "‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section  
4 11053) of Division 10 of the Health and Safety Code."

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

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

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

11 COST RECOVERY

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

18 FACTUAL BACKGROUND

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

25 May 17, 2011 Inspection

26 31. On May 17, 2011, a Board inspector (Inspector 1) conducted an inspection at FAP  
27 because the Board identified FAP as a pharmacy that failed to report any Controlled Substances  
28 Utilization Review and Evaluation System (CURES) data to the Department of Justice (DOJ).

1 During the inspection, Inspector 1 observed several pharmacy law violations, including, but not  
2 limited to, never transmitting any CURES data to the DOJ.

3 32. While at FAP, Inspector 1 reviewed prescription documents from Bay Internal  
4 Medicine (BIM). The prescriptions appeared legitimate but, upon further investigation, Inspector  
5 1 found that none of the prescribers' contact information on the prescriptions contained a valid  
6 working phone number. Inspector 1 asked Respondent ICE to verify the BIM prescribers on the  
7 Medical Board of California's website. The web search revealed that none of the BIM  
8 prescribers' listed addresses on the Medical Board's website matched the addresses on the  
9 prescriptions. Significantly, Respondent ICE admitted to Inspector 1 that he had never before  
10 verified a prescriber using the Medical Board's website. In addition, Inspector 1 observed  
11 numerous other violations of pharmacy laws. During his inspection, Inspector 1 obtained several  
12 materials including prescription documents, dispensing detail reports, and Cardinal Health  
13 Narcotic Sales Reports. Inspector 1 also requested FAP to provide additional documents and  
14 explanations regarding pharmacy law violations indicated in the report. At the conclusion of the  
15 inspection, Inspector 1 prepared an inspection report documenting various pharmacy law  
16 violations. Inspector 1 gave a copy of the report to Respondent ICE, and then had Respondent  
17 ICE review and sign off on it.

18 33. On or about May 30, 2011, Inspector 1 received and reviewed faxed responses from  
19 FAP. Subsequently, Inspector 1 contacted 15 different prescribers listed as the supposed  
20 prescriber on the prescription documents. Inspector 1 sent each prescriber a list of prescriptions  
21 from FAP to verify the legitimacy of the prescriptions. Each of the prescribers responded with a  
22 written statement that they did not authorize the prescriptions from FAP. In fact, one prescriber  
23 from Kaiser stated he did not authorize any of the prescriptions and that they were written on  
24 prescriptions that were stolen from his locker at the hospital. Additionally, one prescriber from  
25 BIM stated BIM's practice had been closed since June 2009. All the BIM prescription documents  
26 that Inspector 1 sent to the BIM prescribers to review were dated and filled by FAP in 2011.

34. Physician Assistant G. P.<sup>1</sup> (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

<sup>1</sup> G.P. is used in this document rather than the actual name of the Physician Assistant.

1 prescribers, Dr. Hai Nguyen, Dr. Collin Leong, Dr. Tan Nguyen, and Dr. Daniel Shin (the  
2 Prescribers).

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

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

16 39. During the inspection, Inspector 2 interviewed the Pharmacist-in-Charge (PIC),  
17 Respondent ICE, and asked about prescription dispensing and filling processes in general, and  
18 specifically regarding the Prescribers. Inspector 2 requested additional documents including,  
19 multiple dispensing histories for various prescribers, some drug usage reports, on-hand quantity  
20 of selected drugs, the DEA biennial inventory, total prescriptions dispensed from September 17,  
21 2011, to September 17, 2014, prescription hard copies for Dr. Tan Nguyen, purchase history for  
22 selected drugs, policy and procedure for theft/diversion, interpretive services and quality  
23 assurance, and patient centered labeling corrections (font and clustering information). FAP failed  
24 to provide the current DEA biennial inventory for inspection.

25 40. On October 21, 2014, Inspector 2 sent survey letters to numerous patients listed on  
26 FAP's dispensing records for prescriptions written by the Prescribers. The surveys were sent to  
27 gather information from the patients who used FAP to have their prescriptions filled.

28

1           41. The evaluation of dispensing practices of FAP demonstrates that the Prescribers aided  
2 the medically illegitimate dispensing of controlled substances, and that FAP and Respondent ICE  
3 filled and dispensed medically illegitimate prescriptions. The data showed that FAP dispensed  
4 excessive amounts of controlled substances for irregular or uncertain prescriptions and ignored  
5 key objective factors suggesting the medical illegitimacy of the prescriptions. Some of these  
6 objective factors were: (1) payment methods for controlled substances were in excess of normal  
7 distribution between cash and insurance; (2) there was an irregular pattern of patients willing to  
8 pay cash for expensive medication (100% cash payment method for 2 of the 4 Prescribers); (3)  
9 there was an irregular pattern of patients willing to drive well over 50 miles to obtain controlled  
10 substance prescriptions from the Prescribers and to fill prescriptions at FAP (average distance  
11 travelled was 165.55 miles); (4) sequential or near sequential numbering of prescriptions filled for  
12 patients of the Prescribers; (5) excessive filling of controlled substances in comparison to  
13 competitor pharmacies in proximity to FAP; (6) failing to assess "narcotic naïve" patients to  
14 determine if large doses of highly abused drugs were written for a legitimate medical purpose; (7)  
15 failing to exercise professional judgment when filling prescriptions for large quantities of  
16 controlled substances for highly abused drugs; and (8) failing to exercise education, training and  
17 experience as a pharmacist when assessing prescriptions written for highly abused controlled  
18 substances. Additionally, FAP and its PIC (Respondent ICE) did not assume their corresponding  
19 responsibility when they failed to appropriately scrutinize patients' drug therapy with readily  
20 available tools such as CURES reports and industry "red flags" to verify prescriptions, so they  
21 repeatedly prescribed controlled substances to pharmacy and doctor shoppers. Some of the "red  
22 flags" that existed but were not heeded were: prescribers and patients from outside the pharmacy  
23 service area, prescriptions for highly abused drugs, prescriptions paid for in cash (or debit or  
24 credit card), large quantities outside the normal scope of dispensing, early dispensing, and  
25 sequential filling of prescriptions from a single prescriber for multiple patients for "drug  
26 cocktails"<sup>2</sup>

27           <sup>2</sup> "Drug cocktails" are typically a combination of hydrocodone/APAP 10/325 mg,  
28 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<sup>3</sup> 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.<sup>4</sup> 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.<sup>3</sup> The CURES PDMP program allows the pharmacist to look up a patient's prescription fill history.

<sup>4</sup> 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."



1 prescribers and without confirming the prescriptions and that the quantities of narcotics  
2 prescribed were for a legitimate medical purpose.

3 44. Inspector 2's review of the prescription hard copies revealed: 39 prescription hard  
4 copies were not provided; 18 prescriptions were in scanned image form, not hard copies; and  
5 several prescriptions were processed with the wrong prescriber. Also, FAP could not account for  
6 140.8 pints of promethazine with codeine syrup that it purchased between September 17, 2011  
7 and September 17, 2014.

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

13 Prescriber Information

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

19 47. On October 3, 2014, Dr. Tan Nguyen surrendered his California Medical License.  
20 Dr. Tan Nguyen's surrender of his license was a disciplinary resolution to Accusation No.  
21 5002014000107 brought against his medical license.

22 48. On March 20, 2014, the Medical Board of California filed Accusation No. 12 2011  
23 216564 against Dr. Hai Van Nguyen' medical license. The Accusation alleges numerous causes  
24 for discipline including several causes for discipline for prescribing dangerous drugs without  
25 appropriate prior examination and indication. The Accusation is currently pending against Dr.  
26 Hai Van Nguyen.

27 49. On March 25, 2014, Judge Longoria of the Los Angeles County Superior Court  
28 issued an order in the case of *State of California v. Daniel Shin*, Case No. BA421892, that as a

1 condition of his bail, Dr. Daniel Shin shall cease and desist from the practice of medicine, and  
2 immediately surrender any and all controlled substance prescription forms. Previously, on  
3 January 13, 2012, the Medical Board of California filed Accusation No. 19-2010-208332 against  
4 Dr. Daniel Shin's medical license. On August 31, 2012, the Medical Board of California placed  
5 Dr. Shinn's medical license on probation for 5 years.

6 **CAUSES OF DISCIPLINE AGAINST RESPONDENT FAP**

7 **FIRST CAUSE FOR DISCIPLINE**

8 **(Unprofessional Conduct-Failure to Transmit Dispensing Data to CURES)**  
9 **(Bus. & Prof. § 4301, subd. (j), & Health and Safety Code § 11165, subd. (d))**

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

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Unprofessional Conduct-Filled Prescriptions with Significant Irregularity)**  
19 **(Bus. & Prof. § 4301, subd. (o) and 16 CCR § 1761, subd. (a))**

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

26 **THIRD CAUSE FOR DISCIPLINE**

27 **(Unprofessional Conduct-Failure to Verify Legitimacy of Prescriptions for Controlled Substances)**  
28 **(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

1 responsibility of verifying the patient's legitimate medical purposes for controlled substances.  
2 The pharmacists and staff at FAP breached their corresponding responsibility by furnishing  
3 unusually large quantities of controlled substances to patients without confirming the legitimacy  
4 of the prescriptions with the supposed prescribers. In fact, the pharmacists and staff at FAP filled  
5 approximately 350 fraudulent prescriptions, many of which were for unusually large quantities of  
6 controlled substances. The circumstances are further explained in paragraphs 30-35, above.

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

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

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

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

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

30 55. Respondent FAP's Pharmacy License is subject to disciplinary action under Code  
31 sections 4301, subd. (j), in that FAP violated Health and Safety Code section 111295, in that the

1 pharmacists and staff at FAP possessed dangerous drugs that had been adulterated. Specifically,  
2 on September 17, 2014, during an inspection at FAP, a board inspector discovered a large box fill  
3 with approximately 80 prescription vials returned by patients for destruction in the pharmacy.

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

7 56. Respondent FAP's Pharmacy License is subject to disciplinary action under Code  
8 section 4301, subdivision (o), because it failed to comply with title 16 section 1718 of the  
9 California Code of Regulations. Specifically, on September 17, 2104, during an inspection, a  
10 Board inspector requested the record of the DEA biennial inventory for inspection. Respondent  
11 FAP failed to provide the record for inspection.<sup>5</sup>

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

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

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

22 58. Respondent FAP's Pharmacy License is subject to disciplinary action under Code  
23 section 4301, subdivision (d), because FAP engaged in the excessive furnishing of controlled  
24 substances in violation of Health and Safety Code section 11153, subdivision (a), in that  
25 pharmacists and staff at FAP failed to uphold their corresponding responsibility of verifying the  
26 patient's legitimate medical purposes for controlled substances. Specifically, the pharmacists and  
27 staff at FAP breached their corresponding responsibility by furnishing unusually large quantities  
28

<sup>5</sup> 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.

1 of controlled substances to patients from September 17, 2011 to September 17, 2014. The  
2 circumstances are further explained in paragraphs 36-49, above.

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

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

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

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

22 **CAUSES OF DISCIPLINE AGAINST RESPONDENT INE**

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

26 61. Respondent Ijeoma Nwanyiocha Esomonu (INE), as Pharmacist-in-Charge of FAP,  
27 has subjected her Pharmacist License to disciplinary action under Code section 4301, subdivision  
28 (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

1 substances on a weekly basis. The circumstances are further explained in paragraphs 30-35,  
2 above.

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

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

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

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

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

28 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.



1 Specifically, during May 2011, FAP filled five prescription documents that lacked several  
2 required security measures. The circumstances are further explained in paragraph 34, above.

3 **CAUSES OF DISCIPLINE AGAINST RESPONDENT ICE**

4 **SIXTEENTH CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct-Filled Prescriptions with Significant Irregularity)**  
6 **(Bus. & Prof. § 4301, subd. (o), & 16 CCR § 1761, subd. (a))**

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

13 **SEVENTEENTH CAUSE FOR DISCIPLINE**

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

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

22 **EIGHTEENTH CAUSE FOR DISCIPLINE**

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

24 67. Respondent ICE has subjected his Pharmacist License to disciplinary action under  
25 Code section 4301, subdivision (j), in that Respondent ICE dispensed controlled substances based  
26 on invalid prescription documents. Specifically, Respondent ICE's initials were on the pharmacy  
27 dispensing printouts for five invalid prescription documents. The circumstances are further  
28 explained in paragraph 34, above.

1                                    **NINETEENTH CAUSE FOR DISCIPLINE**  
2                                    **(Unprofessional Conduct-Failure to Maintain Records of Disposition)**  
3                                    **(Bus. & Prof. §§ 4301, subd. (j), & 4081)**

4            68. Respondent ICE, as the pharmacist-in-charge of FAP<sup>6</sup>, has subjected his Pharmacist  
5 License to disciplinary action under Code section 4301, subd. (j), because he violated Code  
6 section 4081, in that he did not maintain on FAP's premises and have available for inspection all  
7 records of disposition for inspection for 3 years. Specifically, on September 17, 2014, inspector 2  
8 obtained prescription hard copies and requested additional documents after the inspection.  
9 During the inspection, 39 prescription hard copies—which were filled between September 17,  
10 2011 and September 17, 2014—were missing and FAP provided scan images of 18 prescriptions  
11 filled by the pharmacy during this three year period for patients of Dr. Tan Nguyen.

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

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

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

24            70. Respondent ICE, as pharmacist-in-charge of FAP, has subjected his Pharmacist  
25 License to disciplinary action under Code Section 4301, subdivision (o), because he failed to  
26 comply with title 16 section 1718 of the California Code of Regulations. Specifically, on  
27 September 17, 2104, during an inspection, a Board inspector requested the record of the DEA  
28 biennial inventory for inspection. Respondent FAP failed to provide the record for inspection.<sup>7</sup>

<sup>6</sup> On or about September 19, 2011, Respondent ICE became the PIC at Fruitvale Avenue Pharmacy.

<sup>7</sup> 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.



1 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

2 (Unprofessional Conduct-Failure to Consult with Patient)  
3 (Bus. & Prof. § 4301, subd. (o) and 16 CCR § 1707.2, subd. (b)(1)(A))

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

8 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

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

11 72. Respondent ICE, as pharmacist-in-charge of FAP, has subjected his Pharmacist  
12 License to disciplinary action under Code section 4301, subdivision (d), because FAP engaged in  
13 the excessive furnishing of controlled substances in violation of Health and Safety Code section  
14 11153, subdivision (a), in that pharmacists and staff at FAP failed to uphold their corresponding  
15 responsibility of verifying the patient's legitimate medical purposes for controlled substances.  
16 Specifically, the pharmacists and staff at FAP breached their corresponding responsibility by  
17 furnishing unusually large quantities of controlled substances to patients from September 17,  
18 2011 to September 17, 2014. The circumstances are further explained in paragraphs 36-49,  
19 above.

19 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

20 (Unprofessional Conduct-Variation from Prescription)  
21 (Bus. & Prof. § 4301, subd. (o), & 16 CCR § 1716)

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

///

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

4            74. Respondent ICE, as the pharmacist-in-charge of FAP, has subjected his Pharmacist  
5 License to disciplinary action under Code section 4301, subdivision (o), because FAP violated  
6 Code section 4081, in that Respondent FAP did not have all records of manufacturer and of sale,  
7 acquisition, or disposition of dangerous drugs or dangerous devices at all times during business  
8 hours open to inspection by an authorized officer of the law, for at least three years. Specifically,  
9 between the dates of September 17, 2011 and September 17, 2014, FAP could not account for  
10 140.8 pints of promethazine and codeine syrup. The circumstances are further explained in  
11 paragraphs 36 through 44, above.

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

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

22                                    **OTHER MATTERS**

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

28            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

1 conduct for which the licensee was disciplined, Respondent Iroegbu Clifford Esomonu shall be  
2 prohibited from serving as a manager, administrator, owner, member, officer, director, associate,  
3 or partner of a licensee for five years if Pharmacy Permit Number PHY 50064 are placed on  
4 probation or until Pharmacy Permit Number PHY 50064 are reinstated if they are revoked.

5 78. Pursuant to Code section 4307, if discipline is imposed on Pharmacist License No.  
6 RPH 53445 issued to Respondent Iroegbu Clifford Esomonu, Respondent Iroegbu Clifford  
7 Esomonu, shall be prohibited from serving as a manager, administrator, owner, member, officer,  
8 director, associate, or partner of a licensee for five years if Pharmacist License Number RPH  
9 53445 is placed on probation or until Pharmacist License Number RPH 53445 is reinstated if it is  
10 revoked.

#### 11 DISCIPLINE CONSIDERATIONS

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

#### 18 PRAYER

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

- 22 1. Revoking or suspending Pharmacy License Number PHY 50064, issued to  
23 Fruitvale Avenue Pharmacy Inc.;
- 24 2. Revoking or suspending Pharmacist License Number RPH 53516, issued to  
25 Ijeoma Nwanyiocha Esomonu, Fruitvale Avenue Pharmacy Inc.;
- 26 3. Revoking or suspending Pharmacist License Number RPH 53445, issued to  
27 Iroegbu Clifford Esomonu, Fruitvale Avenue Pharmacy Inc.;

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

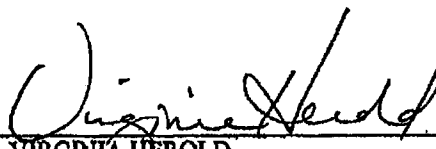
6 5. Prohibiting Respondent Iroegbu Clifford Esomonu from serving as a manager,  
7 administrator, owner, member, officer, director, associate, or partner of a licensee for five years if  
8 Pharmacy Permit Number PHY 50064 is placed on probation or until Pharmacy Permit Numbers  
9 PHY 50064 are reinstated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

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

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

19 8. Taking such other and further action as deemed necessary and proper.  
20  
21

22 DATED: 5/6/15

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

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

11 In the Matter of the Accusation Against:

Case No. 4579

12 **FRUITVALE AVENUE PHARMACY INC.**  
13 2693 Fruitvale Avenue  
Oakland, CA 94601

**AMENDED ACCUSATION**

14 Pharmacy License No. PHY 50064,

15 **IJEOMA NWAYIOCHA ESOMONU**  
16 **FRUITVALE AVENUE PHARMACY INC.**  
17 16 Minaret Road  
Oakley, CA 94561

18 Pharmacist License No. RPH 53516,

19 and

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

22 Pharmacist No. RPH 53445

23 Respondents.  
24  
25  
26  
27  
28

1 Complainant alleges:

2 PARTIES

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

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

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

13 4. On or about March 28, 2002, the Board of Pharmacy issued Pharmacist Number RPH  
14 53445 to Iroegbu Clifford Esomonu (Respondent ICE). The Pharmacist License was in full force  
15 and effect at all times relevant to the charges brought in this Accusation and will expire on  
16 September 30, 2013, unless renewed.

17 JURISDICTION

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

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

24 7. Section 4300 of the Code states:

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

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

1       “(1) Suspending judgment.

2       “(2) Placing him or her upon probation.

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

4       “(4) Revoking his or her license.

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

7       ...

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

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

19                               STATUTORY/REGULATORY PROVISIONS

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

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

24       “(a) Gross immortality.

25       ...

26       “(h) The administering to oneself, of any controlled substance, or the use of any dangerous  
27 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to  
28 oneself, to a person holding a license under this chapter, or to any other person or to the public, or



1 to the extent that the use impairs the ability of the person to conduct with safety to the public the  
2 practice authorized by the license.

3 ...

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

6 ...

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

24 ...

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

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

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

7           12. Section 493 of the Code states:

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

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

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

20           "For each prescription for a Schedule II, Schedule III, or Schedule IV controlled substance, as  
21 defined in the controlled substances schedules in federal law and regulations, specifically

22 Sections 1308.12, 1308.13, and 1308.14, respectively, of Title 21 of the Code of Federal  
23 Regulations, the dispensing pharmacy or clinic shall provide the following information to the  
24 Department of Justice on a weekly basis and in a format specified by the Department of Justice:

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

28

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

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

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

7           “(5) Quantity of the controlled substance dispensed.

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

9           “(7) Number of refills ordered.

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

11          “(9) Date of origin of the prescription.

12          “(10) Date of dispensing of the prescription.”

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

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

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

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

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

22                 ....

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

- 26                         ▪ 1-24
- 27                         ▪ 25-49
- 28                         ▪ 50-74
- 75-100
- 101-150
- 151 and over.

1 ...  
2 "(8) Prescription blanks shall contain a statement printed on the bottom of the  
3 prescription blank that the 'Prescription is void if the number of drugs prescribed is not noted.'"  
4 ...

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

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

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

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

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

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

27 18. California Code of Regulations, title 16, section 1770, states:

28 "For the purpose of denial, suspension, or revocation of a personal or facility license

1 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a  
2 crime or act shall be considered substantially related to the qualifications, functions, or duties of a  
3 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a  
4 licensee or registrant to perform the functions authorized by his license or registration in a manner  
5 consistent with the public health, safety, or welfare."

#### 6 CONTROLLED SUBSTANCES

7 19. Section 4021 of the Code states:

8 "‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section  
9 11053) of Division 10 of the Health and Safety Code."

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

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

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

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

#### 18 COST RECOVERY

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

22 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
23 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
24 included in a stipulated settlement.

#### 25 FACTUAL BACKGROUND

26 25. From about October 21, 2009, to the present, Respondent Fruitvale Avenue Pharmacy  
27 (FAP) has been operating as a pharmacy in Oakland, California. From on or about October 21,  
28 2009, until May 19 2011, Respondent Ijeoma Nwanyiocha Esomonu (INE), the owner of FAP,

1 was also the pharmacist-in-charge (PIC) at FAP. From on or about October 21, 2009, until May  
2 19, 2011, Respondent Iroegbu Clifford Esomonu (ICE) worked as a pharmacist at FAP. From  
3 May 19, 2011, to the present, Respondent ICE took over as the PIC at FAP.

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

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

22 documents, dispensing detail reports, and Cardinal Health Narcotic Sales Reports. The inspector  
23 also requested FAP to provide additional documents and explanations regarding pharmacy law  
24 violations indicated in the report.

25 28. On or about May 30, 2011, the inspector received and reviewed faxed responses from  
26 FAP. Subsequently, the inspector contacted 15 different prescribers listed as the supposed  
27 prescriber on the prescription documents. The inspector sent each prescriber a list of  
28 prescriptions from FAP to verify the legitimacy of the prescriptions. Each of the prescribers

1 responded with a written statement that they did not authorize the prescriptions from FAP. In  
2 fact, one prescriber from Kaiser stated he did not authorize any of the prescriptions and that they  
3 were written on prescriptions that were stolen from his locker at the hospital. Additionally, one  
4 prescriber from BIM stated their practice had been closed since June 2009. All the BIM  
5 prescription documents that the inspector sent to the BIM prescribers to review were dated and  
6 filled by FAP in 2011.

7 29. Physician Assistant G. P.<sup>1</sup> (G. P.) was one of the 15 prescribers that the inspector  
8 contacted to verify the legitimacy of the prescription documents he got from FAP. On or about  
9 June 7, 2011, the inspector received a response from G. P., indicating that he did not authorize the  
10 prescriptions and the documents were forgeries. In addition, G. P. noted that several of the  
11 prescription documents were not written on proper controlled substances prescription forms.  
12 Significantly, during the May 17, 2011 visit to FAP, the inspector had made the same observation  
13 that FAP had improperly dispensed controlled substances on five invalid prescription documents.  
14 These five prescription documents were invalid because they lacked several required security  
15 features such as quantity check off boxes, the required statement of "Prescription is void if the  
16 number of drugs prescribed is not noted," and the prescriptions were not sequentially numbered.

17 30. The inspector's investigation revealed that, from October 2009, to about April 2011,  
18 FAP failed to transmit CURES data to the DOJ. The investigation further showed that, from  
19 about July 2010, to May 2011, Respondent INE, and Respondent ICE had filled over 350  
20 fraudulent prescriptions. Many of these prescription documents contained significant  
21 irregularities that should have prompted Respondent INE and Respondent ICE to verify the

22 legitimacy of the prescription before dispensing the controlled substances. In addition, a review  
23 of FAP's dispensing printouts obtained during the investigation showed Respondent Ice's initials  
24 on most, if not all, of the printouts' "filled by" section. Furthermore, in a written statement,  
25 Respondent ICE admitted that he was the pharmacist on duty everyday since the opening of FAP.

26 ///

27 \_\_\_\_\_  
28 <sup>1</sup> G. P. is used in this document rather than the actual name of the Physician Assistant.



1 CAUSES OF DISCIPLINE AGAINST RESPONDENT FAP

2 FIRST CAUSE FOR DISCIPLINE

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

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

12 SECOND CAUSE FOR DISCIPLINE

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

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

21 THIRD CAUSE FOR DISCIPLINE

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

24 33. Respondent FAP's Pharmacy License is subject to disciplinary action under Code  
25 section 4301, subdivision (j), because FAP violated Health and Safety Code section 11153,  
26 subdivision (a), in that pharmacists and staff at FAP failed to uphold their corresponding  
27 responsibility of verifying the patient's legitimate medical purposes for controlled substances.  
28 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

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

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

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

12 **CAUSES OF DISCIPLINE AGAINST RESPONDENT INE**

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

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

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

26 36. Respondent INE, as Pharmacist-in-Charge of FAP, has subjected her Pharmacist  
27 License to disciplinary action under Code section 4301, subdivision (o), because she violated  
28 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.

1 SEVENTH CAUSE FOR DISCIPLINE

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

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

14 EIGHTH CAUSE FOR DISCIPLINE

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

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

23 CAUSES OF DISCIPLINE AGAINST RESPONDENT ICE

24 NINTH CAUSE FOR DISCIPLINE

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

27 39. Respondent Iroegbu Clifford Esomonu (ICE), as a pharmacist of FAP, has subjected  
28 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

1 acetaminophen, alprazolam and promethazine with codeine. The circumstances are further  
2 explained in paragraphs 25-30, above.

3 **TENTH CAUSE FOR DISCIPLINE**

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

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

13 **ELEVENTH CAUSE FOR DISCIPLINE**

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

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

21 **TWELFTH CAUSE FOR DISCIPLINE**

22 (Unprofessional Conduct-Use of Alcohol in a Dangerous Manner)  
23 (Bus. & Prof. § 4301, subd. (h))

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

28 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

1 Respondent's breath and slurred speech. Respondent failed a series of field sobriety tests. Two  
2 breath tests from Respondent at approximately 1:19 a.m. and 1:22 a.m. revealed a blood alcohol  
3 concentration (BAC) of .13.

4 **THIRTEENTH CAUSE FOR DISCIPLINE**  
5 **(Unprofessional Conduct-Conviction)**  
6 **(Bus. & Prof. §§ 490 & 4301, subd. (I))**

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

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

18 **DISCIPLINE CONSIDERATIONS**

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

25 **PRAYER**

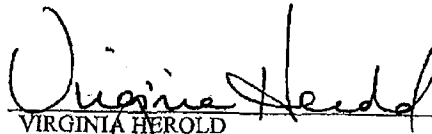
26 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this  
27 Accusation, and that following the hearing, the Board of Pharmacy issue a decision:

- 28 1. Revoking or suspending Pharmacy License Number PHY 50064, issued to  
Fruitvale Avenue Pharmacy Inc.;

- 1           2.    Revoking or suspending Pharmacist License Number RPH 53516, issued to  
2 Ijeoma Nwanyiocha Esomonu, Fruitvale Avenue Pharmacy Inc.;
- 3           3.    Revoking or suspending Pharmacist License Number RPH 53445, issued to  
4 Iroegbu Clifford Esomonu, Fruitvale Avenue Pharmacy Inc.;
- 5           4.    Ordering Fruitvale Avenue Pharmacy Inc., Ijeoma Nwanyiocha Esomonu and  
6 Iroegbu Clifford Esomonu to pay the Board of Pharmacy the reasonable costs of the investigation  
7 and enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 8           5.    Taking such other and further action as deemed necessary and proper.
- 9

10  
11 DATED:

12 12/17/13

13 

14 VIRGINIA HEROLD  
15 Executive Officer  
16 Board of Pharmacy  
17 Department of Consumer Affairs  
18 State of California  
19 Complainant

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21 90331250.docx

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14 Attorneys for Complainant

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

In the Matter of the Accusation Against:

Case No. 4579

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

ACCUSATION

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 No. RPH 53445

Respondents.



1 Complainant alleges:

2 PARTIES

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

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

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

13 4. On or about March 28, 2002, the Board of Pharmacy issued Pharmacist Number RPH  
14 53445 to Iroegbu Clifford Esomonu (Respondent ICE). The Pharmacist License was in full force  
15 and effect at all times relevant to the charges brought in this Accusation and will expire on  
16 September 30, 2013, unless renewed.

17 JURISDICTION

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

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

24 7. Section 4300 of the Code states:

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

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

1       “(1) Suspending judgment.

2       “(2) Placing him or her upon probation.

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

4       “(4) Revoking his or her license.

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

7       ...

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

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

19                   STATUTORY/REGULATORY PROVISIONS

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

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

24       “(a) Gross immortality.

25       ...

26       “(h) The administering to oneself, of any controlled substance, or the use of any dangerous  
27 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to  
28 oneself, to a person holding a license under this chapter, or to any other person or to the public, or

1 to the extent that the use impairs the ability of the person to conduct with safety to the public the  
2 practice authorized by the license.

3 ...

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

6 ...

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

24 ...

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

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

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

7        12. Section 493 of the Code states:

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

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

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

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

25        "(1) Full name, address, and the telephone number of the ultimate user or research subject,  
26 or contact information as determined by the Secretary of the United States Department of Health  
27 and Human Services, and the gender, and date of birth of the ultimate user.  
28

"(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.

1 ...  
2 "(8) Prescription blanks shall contain a statement printed on the bottom of the  
3 prescription blank that the 'Prescription is void if the number of drugs prescribed is not noted,'"  
4 ...

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

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

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

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

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

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

27 18. California Code of Regulations, title 16, section 1770, states:

28 "For the purpose of denial, suspension, or revocation of a personal or facility license

1 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a  
2 crime or act shall be considered substantially related to the qualifications, functions, or duties of a  
3 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a  
4 licensee or registrant to perform the functions authorized by his license or registration in a manner  
5 consistent with the public health, safety, or welfare."

#### 6 CONTROLLED SUBSTANCES

7 19. Section 4021 of the Code states:

8 "Controlled substance" means any substance listed in Chapter 2 (commencing with Section  
9 11053) of Division 10 of the Health and Safety Code."

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

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

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

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

#### 18 COST RECOVERY

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

#### 25 FACTUAL BACKGROUND

26 25. From about October 21, 2009, to the present, Respondent Fruitvale Avenue Pharmacy  
27 (FAP) has been operating as a pharmacy in Oakland, California. From on or about October 21,  
28 2009, until May 19 2011, Respondent Ijeoma Nwanyiocha Esomonu (INE), the owner of FAP,



1 was also the pharmacist-in-charge (PIC) at FAP. From on or about October 21, 2009, until May  
2 19, 2011, Respondent Iroegbu Clifford Esomonu (ICE) worked as a pharmacist at FAP. From  
3 May 19, 2011, to the present, Respondent ICE took over as the PIC at FAP.

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

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

25 28. On or about May 30, 2011, Inspector [REDACTED] received and reviewed faxed responses  
26 from FAP. Subsequently, Inspector [REDACTED] contacted 15 different prescribers listed as the  
27 supposed prescriber on the prescription documents. Inspector [REDACTED] sent each prescriber a list  
28 of prescriptions from FAP to verify the legitimacy of the prescriptions. Each of the prescribers

1 responded with a written statement that they did not authorize the prescriptions from FAP. In  
2 fact, one prescriber from Kaiser stated he did not authorize any of the prescriptions and that they  
3 were written on prescriptions that were stolen from his locker at the hospital. Additionally, one  
4 prescriber from BIM stated their practice had been closed since June 2009. All the BIM  
5 prescription documents that Inspector [REDACTED] sent to the BIM prescribers to review were dated  
6 and filled by FAP in 2011.

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

18 30. Inspector [REDACTED]'s investigation revealed that, from October 2009, to about April  
19 2011, FAP failed to transmit CURES data to the DOJ. The investigation further showed that,  
20 from about July 2010, to May 2011, Respondent INE, and Respondent ICE had filled over 350  
21 fraudulent prescriptions. Many of these prescription documents contained significant  
22 irregularities that should have prompted Respondent INE and Respondent ICE to verify the  
23 legitimacy of the prescription before dispensing the controlled substances. In addition, a review  
24 of FAP's dispensing printouts obtained during the investigation showed Respondent Ice's initials  
25 on most, if not all, of the printouts' "filled by" section. Furthermore, in a written statement,  
26 Respondent ICE admitted that he was the pharmacist on duty everyday since the opening of FAP.

27 ///

28 ///

1 CAUSES OF DISCIPLINE AGAINST RESPONDENT FAP

2 FIRST CAUSE FOR DISCIPLINE

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

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

12 SECOND CAUSE FOR DISCIPLINE

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

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

21 THIRD CAUSE FOR DISCIPLINE

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

24 33. Respondent FAP's Pharmacy License is subject to disciplinary action under Code  
25 section 4301, subdivision (j), because FAP violated Health and Safety Code section 11153,  
26 subdivision (a), in that pharmacists and staff at FAP failed to uphold their corresponding  
27 responsibility of verifying the patient's legitimate medical purposes for controlled substances.  
28 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

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

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

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

12 **CAUSES OF DISCIPLINE AGAINST RESPONDENT INE**

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

16 35. Respondent Ijeoma Nwanyiocha Esomonu (INE), as Pharmacist-in-Charge of FAP,  
17 has subjected her Pharmacist License to disciplinary action under Code section 4301, subdivision  
18 (j), by violating Health and Safety Code sections 11165, subdivision (d), in that from on or about  
19 October 21, 2009, until approximately April 2011, INE failed to insure that FAP transmit to the  
20 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.

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

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

1 SEVENTH CAUSE FOR DISCIPLINE

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

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

14 EIGHTH CAUSE FOR DISCIPLINE

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

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

23 CAUSES OF DISCIPLINE AGAINST RESPONDENT ICE

24 NINTH CAUSE FOR DISCIPLINE

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

27 39. Respondent Iroegbu Clifford Esomonu (ICE), as a pharmacist of FAP, has subjected  
28 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

1 acetaminophen, alprazolam and promethazine with codeine. The circumstances are further  
2 explained in paragraphs 25-30, above.

3 **TENTH CAUSE FOR DISCIPLINE**

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

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

13 **ELEVENTH CAUSE FOR DISCIPLINE**

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

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

21 **TWELFTH CAUSE FOR DISCIPLINE**

22 (Unprofessional Conduct-Use of Alcohol in a Dangerous Manner)  
23 (Bus. & Prof. § 4301, subd. (h))

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

28 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

1 Respondent's breath and slurred speech. Respondent failed a series of field sobriety tests. Two  
2 breath tests from Respondent at approximately 1:19 a.m. and 1:22 a.m. revealed a blood alcohol  
3 concentration (BAC) of .13.

4 **THIRTEENTH CAUSE FOR DISCIPLINE**  
5 **(Unprofessional Conduct-Conviction)**  
6 **(Bus. & Prof. §§ 490 & 4301, subd. (I))**

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

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

18 **DISCIPLINE CONSIDERATIONS**

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

25 **PRAYER**

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

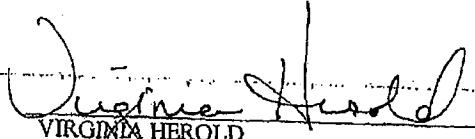
- 28 1. Revoking or suspending Pharmacy License Number PHY 50064, issued to  
Fruitvale Avenue Pharmacy Inc.;



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

11 In the Matter of the Accusation Against:

Case No. 4579

12 **FRUITVALE AVENUE PHARMACY INC.**  
13 2693 Fruitvale Avenue  
14 Oakland, CA 94601

**ACCUSATION**

15 Pharmacy License No. PHY 50064,

16 **IJEOMA NWAYIOCHA ESOMONU**  
**FRUITVALE AVENUE PHARMACY INC.**  
17 16 Minaret Road  
Oakley, CA 94561

18 Pharmacist License No. RPH 53516,

19 and

20 **IROEGBU CLIFFORD ESOMONU**  
**FRUITVALE AVENUE PHARMACY INC.**  
21 6726 Corte Santa Maria  
22 Pleasanton, CA 94566

23 Pharmacist No. RPH 53445

24 Respondents.

1 Complainant alleges:

2 PARTIES

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

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

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

13 4. On or about March 28, 2002, the Board of Pharmacy issued Pharmacist Number RPH  
14 53445 to Iroegbu Clifford Esomonu (Respondent ICE). The Pharmacist License was in full force  
15 and effect at all times relevant to the charges brought in this Accusation and will expire on  
16 September 30, 2013, unless renewed.

17 JURISDICTION

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

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

24 7. Section 4300 of the Code states:

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

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

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

7       ...  
8       “(e) The proceedings under this article shall be conducted in accordance with Chapter 5  
9 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board  
10 shall have all the powers granted therein. The action shall be final, except that the propriety of  
11 the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of  
12 Civil Procedure.”

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

19                   STATUTORY/REGULATORY PROVISIONS

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

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

24       “(a) Gross immorality.

25       ...

26       “(h) The administering to oneself, of any controlled substance, or the use of any dangerous  
27 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to  
28 oneself, to a person holding a license under this chapter, or to any other person or to the public, or

1 to the extent that the use impairs the ability of the person to conduct with safety to the public the  
2 practice authorized by the license.

3 ...

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

6 ...

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

24 ...

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

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

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

7        12. Section 493 of the Code states:

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

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

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

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

25        "(1) Full name, address, and the telephone number of the ultimate user or research subject,  
26 or contact information as determined by the Secretary of the United States Department of Health  
27 and Human Services, and the gender, and date of birth of the ultimate user.  
28

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

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

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

7       “(5) Quantity of the controlled substance dispensed.

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

9       “(7) Number of refills ordered.

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

11       “(9) Date of origin of the prescription.

12       “(10) Date of dispensing of the prescription.”

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

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

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

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

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

22       ...

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

- 26               • 1-24
- 27               • 25-49
- 28               • 50-74
- 75-100
- 101-150
- 151 and over.



1 ...  
2 "(8) Prescription blanks shall contain a statement printed on the bottom of the  
3 prescription blank that the 'Prescription is void if the number of drugs prescribed is not noted.'"  
4 ...

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

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

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

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

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

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

27 18. California Code of Regulations, title 16, section 1770, states:

28 "For the purpose of denial, suspension, or revocation of a personal or facility license

1 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a  
2 crime or act shall be considered substantially related to the qualifications, functions, or duties of a  
3 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a  
4 licensee or registrant to perform the functions authorized by his license or registration in a manner  
5 consistent with the public health, safety, or welfare."

#### 6 CONTROLLED SUBSTANCES

7 19. Section 4021 of the Code states:

8 "Controlled substance' means any substance listed in Chapter 2 (commencing with Section  
9 11053) of Division 10 of the Health and Safety Code."

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

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

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

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

#### 18 COST RECOVERY

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

#### 25 FACTUAL BACKGROUND

26 25. From about October 21, 2009, to the present, Respondent Fruitvale Avenue Pharmacy  
27 (FAP) has been operating as a pharmacy in Oakland, California. From on or about October 21,  
28 2009, until May 19 2011, Respondent Ijeoma Nwanyiocha Esomonu (INE), the owner of FAP,

1 was also the pharmacist-in-charge (PIC) at FAP. From on or about October 21, 2009, until May  
2 19, 2011, Respondent Iroegbu Clifford Esomonu (ICE) worked as a pharmacist at FAP. From  
3 May 19, 2011, to the present, Respondent ICE took over as the PIC at FAP.

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

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

25 28. On or about May 30, 2011, Inspector [REDACTED] received and reviewed faxed responses  
26 from FAP. Subsequently, Inspector [REDACTED] contacted 15 different prescribers listed as the  
27 supposed prescriber on the prescription documents. Inspector [REDACTED] sent each prescriber a list  
28 of prescriptions from FAP to verify the legitimacy of the prescriptions. Each of the prescribers

1 responded with a written statement that they did not authorize the prescriptions from FAP. In  
2 fact, one prescriber from Kaiser stated he did not authorize any of the prescriptions and that they  
3 were written on prescriptions that were stolen from his locker at the hospital. Additionally, one  
4 prescriber from BIM stated their practice had been closed since June 2009. All the BIM  
5 prescription documents that Inspector [REDACTED] sent to the BIM prescribers to review were dated  
6 and filled by FAP in 2011.

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

18 30. Inspector [REDACTED]'s investigation revealed that, from October 2009, to about April  
19 2011, FAP failed to transmit CURES data to the DOJ. The investigation further showed that,  
20 from about July 2010, to May 2011, Respondent INE, and Respondent ICE had filled over 350  
21 fraudulent prescriptions. Many of these prescription documents contained significant  
22 irregularities that should have prompted Respondent INE and Respondent ICE to verify the  
23 legitimacy of the prescription before dispensing the controlled substances. In addition, a review  
24 of FAP's dispensing printouts obtained during the investigation showed Respondent Ice's initials  
25 on most, if not all, of the printouts' "filled by" section. Furthermore, in a written statement,  
26 Respondent ICE admitted that he was the pharmacist on duty everyday since the opening of FAP.

27 ///

28 ///

1                                    **CAUSES OF DISCIPLINE AGAINST RESPONDENT FAP**

2                                    **FIRST CAUSE FOR DISCIPLINE**

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

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

12                                    **SECOND CAUSE FOR DISCIPLINE**

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

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

21                                    **THIRD CAUSE FOR DISCIPLINE**

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

24                                    33. Respondent FAP's Pharmacy License is subject to disciplinary action under Code  
25                                    section 4301, subdivision (j), because FAP violated Health and Safety Code section 11153,  
26                                    subdivision (a), in that pharmacists and staff at FAP failed to uphold their corresponding  
27                                    responsibility of verifying the patient's legitimate medical purposes for controlled substances.  
28                                    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

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

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

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

12 **CAUSES OF DISCIPLINE AGAINST RESPONDENT INE**

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

16 35. Respondent Ijeoma Nwanyiocha Esomonu (INE), as Pharmacist-in-Charge of FAP,  
17 has subjected her Pharmacist License to disciplinary action under Code section 4301, subdivision  
18 (j), by violating Health and Safety Code sections 11165, subdivision (d), in that from on or about  
19 October 21, 2009, until approximately April 2011, INE failed to insure that FAP transmit to the  
20 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.

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

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

1 SEVENTH CAUSE FOR DISCIPLINE

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

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

14 EIGHTH CAUSE FOR DISCIPLINE

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

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

23 CAUSES OF DISCIPLINE AGAINST RESPONDENT ICE

24 NINTH CAUSE FOR DISCIPLINE

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

27 39. Respondent Iroegbu Clifford Esomonu (ICE), as a pharmacist of FAP, has subjected  
28 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



1 acetaminophen, alprazolam and promethazine with codeine. The circumstances are further  
2 explained in paragraphs 25-30, above.

3 **TENTH CAUSE FOR DISCIPLINE**

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

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

13 **ELEVENTH CAUSE FOR DISCIPLINE**

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

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

21 **TWELFTH CAUSE FOR DISCIPLINE**

22 (Unprofessional Conduct-Use of Alcohol in a Dangerous Manner)  
23 (Bus. & Prof. § 4301, subd. (h))

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

28 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

1 Respondent's breath and slurred speech. Respondent failed a series of field sobriety tests. Two  
2 breath tests from Respondent at approximately 1:19 a.m. and 1:22 a.m. revealed a blood alcohol  
3 concentration (BAC) of .13.

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

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

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

18 DISCIPLINE CONSIDERATIONS

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

25 PRAYER

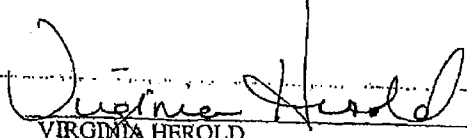
26 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this  
27 Accusation, and that following the hearing, the Board of Pharmacy issue a decision:

- 28 1. Revoking or suspending Pharmacy License Number PHY 50064, issued to  
Fruitvale Avenue Pharmacy Inc.;

- 1           2.   Revoking or suspending Pharmacist License Number RPH 53516, issued to  
2 Ijeoma Nwanyiocha Esomonu, Fruitvale Avenue Pharmacy Inc.;
- 3           3.   Revoking or suspending Pharmacist License Number RPH 53445, issued to  
4 Iroegbu Clifford Esomonu, Fruitvale Avenue Pharmacy Inc.;
- 5           4.   Ordering Fruitvale Avenue Pharmacy Inc., Ijeoma Nwanyiocha Esomonu and  
6 Iroegbu Clifford Esomonu to pay the Board of Pharmacy the reasonable costs of the investigation  
7 and enforcement of this case, pursuant to Business and Professions Code section 125.3;  
8           5.   Taking such other and further action as deemed necessary and proper.  
9

10  
11 DATED:

9/6/13



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

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