

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

In the Matter of the Accusation Against:

RICHARD ALLAN HART,

Pharmacist License No. RPH 26251,

Respondent

Agency Case No. 6814; OAH No. 2020020297

DECISION AND ORDER

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

This Decision shall become effective at 5:00 p.m. on August 26, 2020.

It is so ORDERED on July 27, 2020.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Greg Lippe
Board President

1 XAVIER BECERRA
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 STANTON W. LEE
Deputy Attorney General
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Attorneys for Complainant
8

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

12 In the Matter of the Accusation Against:

13 **RICHARD ALLAN HART**
14 **P.O. Box 141**
Wheatland, CA 95692
15 **Pharmacist License No. RPH 26251**

16 Respondent.
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Case No. 6814

OAH No. 2020020297

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

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

21 **PARTIES**

22 1. Anne Sodergren (Complainant) is the Interim Executive Officer of the Board of
23 Pharmacy (Board). She brought this action solely in her official capacity and is represented in
24 this matter by Xavier Becerra, Attorney General of the State of California, by Stanton W. Lee,
25 Deputy Attorney General.

26 2. Richard Allan Hart (Respondent) is represented in this proceeding by attorney Robert
27 Gould, whose address is: Gould & Hahn, 2550 9th Street, Suite 101, Berkeley, CA 94710.

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1 3. On or about August 5, 1969, the Board issued Pharmacist License No. RPH 26251 to
2 Respondent. The Pharmacist License was in full force and effect at all times relevant to the
3 charges brought in Accusation No. 6814 and will expire on August 31, 2020, unless renewed.

4 **JURISDICTION**

5 4. Accusation No. 6814 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 December 5, 2019. Respondent timely filed his Notice of Defense contesting
8 the Accusation. A copy of Accusation No. 6814 is attached as Exhibit A and incorporated by
9 reference.

10 **ADVISEMENT AND WAIVERS**

11 5. Respondent has carefully read, fully discussed with counsel, and understands the
12 charges and allegations in Accusation No. 6814. Respondent also has carefully read, fully
13 discussed with counsel, and understands the effects of this Stipulated Surrender of License and
14 Order.

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

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

23 **CULPABILITY**

24 8. Respondent understands that the charges and allegations in Accusation No. 6814, if
25 proven at a hearing, constitute cause for imposing discipline upon his Pharmacist License.

26 9. For the purpose of resolving the Accusation without the expense and uncertainty of
27 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual
28 basis for the charges in the Accusation and that those charges constitute cause for discipline.

1 Respondent hereby gives up his right to contest that cause for discipline exists based on those
2 charges.

3 10. Respondent understands that by signing this stipulation he enables the Board to issue
4 an order accepting the surrender of his Pharmacist License without further process.

5 **RESERVATION**

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

10 **CONTINGENCY**

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

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

23 14. This Stipulated Surrender of License and 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 Surrender of License and Order
27 may not be altered, amended, modified, supplemented, or otherwise changed except by a writing
28 executed by an authorized representative of each of the parties.

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

3 **ORDER**

4 IT IS HEREBY ORDERED that Pharmacist License No. RPH 26251, issued to Respondent
5 Richard Allan Hart, is surrendered and accepted by the Board.

6 1. The surrender of Respondent's license and the acceptance of the surrendered license
7 by the Board shall constitute the imposition of discipline against respondent. This decision
8 constitutes a record of discipline and shall become a part of respondent's license history with the
9 Board.

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

12 3. Respondent shall cause to be delivered to the Board his pocket license and, if one was
13 issued, his wall certificate on or before the effective date of the Decision and Order.

14 4. If Respondent ever applies for licensure or petitions for reinstatement in the State of
15 California, the Board shall treat it as a new application for licensure. Respondent must comply
16 with all the laws, regulations and procedures for licensure in effect at the time the application or
17 petition is filed.

18 5. Respondent stipulates that should he apply for any license from the Board on or after
19 the effective date of this decision, all allegations set forth in Accusation No. 6814 shall be deemed
20 to be true, correct and admitted by Respondent when the Board determines whether to grant or
21 deny the application.

22 6. Respondent may not apply for any license, permit, or registration from the Board for
23 three years from the effective date of this decision.

24 7. If Respondent ever applies for licensure or petitions for reinstatement in the State of
25 California, he shall pay the agency its costs of investigation and enforcement in the amount of
26 \$11,264.50 prior to issuance of a new or reinstated license.

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ACCEPTANCE

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

DATED: _____
RICHARD ALLAN HART
Respondent

I have read and fully discussed with Respondent Richard Allan Hart the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: _____
Robert Hahn,
Gould & Hahn
Attorneys for Respondent

ENDORSEMENT

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


DATED: _____
Respectfully submitted,
XAVIER BECERRA
Attorney General of California
KENT D. HARRIS
Supervising Deputy Attorney General

STANTON W. LEE
Deputy Attorney General
Attorneys for Complainant

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DATED: June 23, 2020 
RICHARD ALLAN HART
Respondent

I have read and fully discussed with Respondent Richard Allan Hart the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: _____
Robert Hahn,
Gould & Hahn
Attorneys for Respondent

ENDORSEMENT

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

DATED: _____ Respectfully submitted,
XAVIER BECERRA
Attorney General of California
KENT D. HARRIS
Supervising Deputy Attorney General

STANTON W. LEE
Deputy Attorney General
Attorneys for Complainant

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DATED: _____
RICHARD ALLAN HART
Respondent

I have read and fully discussed with Respondent Richard Allan Hart the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: June 23, 2020 _____
Robert Hahn,
Gould & Hahn
Attorneys for Respondent

ENDORSEMENT

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

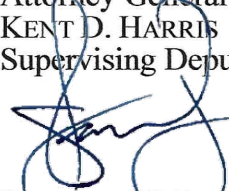
DATED: June 25, 2020 _____
Respectfully submitted,
XAVIER BECERRA
Attorney General of California
KENT D. HARRIS
Supervising Deputy Attorney General

STANTON W. LEE
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 6814

1 XAVIER BECERRA
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 STANTON W. LEE
Deputy Attorney General
4 State Bar No. 203563
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6 Telephone: (916) 210-7872
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7 E-mail: Stanton.Lee@doj.ca.gov
Attorneys for Complainant
8

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

13 In the Matter of the Accusation Against:

Case No. 6814

14 **RICHARD ALLAN HART**
15 **P.O. Box 141**
Wheatland, CA 95692
16 **Pharmacist License No. RPH 26251**

ACCUSATION

17 Respondent.

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20 **PARTIES**

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

24 2. On or about August 5, 1969, the Board issued Original Pharmacist License Number
25 RPH 26251 to Richard Allan Hart (Respondent). The Pharmacist License was in full force and
26 effect at all times relevant to the charges brought herein and will expire on August 31, 2020,
27 unless renewed.

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1 3. On February 26, 1991, the Board issued Pharmacy Permit Number PHY 37030 to
2 Village Pharmacy with Respondent as the sole owner and Pharmacist In Charge (PIC). On April
3 15, 2019, Village Pharmacy was sold and issued new Pharmacy Permit Number PHY 57177.

4 **JURISDICTION**

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

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

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

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

12 (1) Suspending judgment.

13 (2) Placing him or her upon probation.

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

16 (4) Revoking his or her license.

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

18 6. Code section 4300.1 states:

19 The expiration, cancellation, forfeiture, or suspension of a board-issued
20 license by operation of law or by order or decision of the board or a court of law, the
21 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
22 investigation of, or action or disciplinary proceeding against, the licensee or to render
a decision suspending or revoking the license.

23 **STATUTORY PROVISIONS**

24 7. Code section 4301, states in pertinent part:

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

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28 (b) Incompetence.

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(c) Gross negligence.

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

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

....

(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.

(p) Actions or conduct that would have warranted denial of a license.

....

8. Section 4060 states, in pertinent part:

A person shall not possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to Section 4052.1, 4052.2, or 4052.6. . . .

9. Code section 4081, states in pertinent part:

(a) All records of . . . sale, acquisition, receipt, shipment, or disposition of dangerous drugs or dangerous devices shall be . . . preserved for at least three years from the date of the making. A current inventory shall be kept by every . . . pharmacy . . . holding a currently valid and unrevoked certificate, license, permit, registration . . . who maintains a stock of dangerous drugs or dangerous devices.

(b) The owner, officer, and partner of a pharmacy . . . shall be jointly responsible, with the pharmacist-in-charge, responsible manager, or designated representative-in-charge, for maintaining the records and inventory described in this section.

....

10. Code Section 4022 states:

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

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

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

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

6 11. Section 4113 of the Code states in pertinent part:

7 (c) The pharmacist-in-charge shall be responsible for a pharmacy's
8 compliance with all state and federal laws and regulations pertaining to the practice of
pharmacy.

9 12. Health and Safety Code Section 11007 states:

10 'Controlled substance,' unless otherwise specified, means a drug, substance, or
11 immediate precursor which is listed in any schedule in Section 11054, 11055, 11056,
11057, or 11058.

12 13. Section 11170 states that "No person shall prescribe, administer, or furnish a
13 controlled substance for himself."

14 14. Section 11173(a) states:

15 No person shall obtain or attempt to obtain controlled substances, or procure or
16 attempt to procure the administration of or prescription for controlled substances,
(1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a
17 material fact.

18 **REGULATORY PROVISIONS**

19 15. California Code of Regulations, title 16 (Regulation), section 1714, states in pertinent
20 part:

21

22 (d) Each pharmacist while on duty shall be responsible for the security of
23 the prescription department, including provisions for effective control against theft
or diversion of dangerous drugs and devices, and records for such drugs and devices
24 . . .

25 16. Regulation, section 1718, states in pertinent part that "'Current Inventory' as used in
26 Section 4081 and 4332 of the Business and Professions Code shall be considered to include
27 complete accountability for all dangerous drugs handled by every licensee enumerated in Section
28 4081 and 4332."

1 **COST RECOVERY**

2 17. Business and Professions Code section 125.3 provides, in pertinent part, that a board
3 may request the administrative law judge to direct a licentiate found to have committed a
4 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
5 investigation and enforcement of the case.

6 **DEFINITIONS**

7 18. *Hydrocodone/Acetaminophen*: a dangerous drug under Business and Professions
8 Code, section 4022 and a Scheduled II Controlled Substance under Health and Safety Code,
9 section 11055(b)(1)(I)(ii). Sometimes known by its brand name “Norco,” and used for pain
10 control.

11 19. *Methadone*: a dangerous drug under Business and Professions Code, section 4022 and
12 a Scheduled II Controlled Substance under Health and Safety Code, section 11055(c)(14).
13 Sometimes known by its brand name “Dolophine,” and used for pain control.

14 20. *Oxycodone*: a dangerous drug under Business and Professions Code, section 4022 and
15 a Scheduled II Controlled Substance under Health and Safety Code, section 11055(b)(1)(M).
16 Sometimes known by its brand name “Percolone/Roxicodone,” and used for pain control.

17 **FACTUAL ALLEGATIONS**

18 21. Respondent opened Village Pharmacy in 1991, and was the sole owner and PIC until
19 it was sold to TH and MT on April 15, 2019. At that time, TH became the PIC and Respondent
20 continued working at Village Pharmacy as a part time pharmacist.

21 22. On or about June 5, 2019, the Board received a report of loss/theft of controlled
22 substances from PIC TH. PIC TH reported a loss/theft of 208 tablets of oxycodone 30 mg and
23 indicated employee theft as the suspected cause.

24 23. On or about June 13, 2019, the Board received a statement and internal audit
25 summary from PIC TH regarding the loss. The statement and internal audit summary indicated
26 that an investigation into the missing drugs revealed that Village Pharmacy had received two
27 bottles of oxycodone 30 mg on April 18, 2019 and two bottles on April 30, 2019, but Respondent

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1 had only documented receiving one bottle on each day. When confronted by PIC TH,
2 Respondent admitted, "I created the problem."

3 24. On June 14, 2019, Board Inspector SK conducted an inspection of Village Pharmacy.
4 As a part of the inspection, Inspector SK conducted an audit of selected controlled substances
5 carried in inventory by Village Pharmacy. The audit included the time period from April 1, 2016
6 through April 13, 2019. During this period, Village Pharmacy was owned and operated by
7 Respondent who was also Village Pharmacy's PIC.

8 25. Results of the controlled substances audit during the period from April 1, 2016 and
9 April 13, 2019 revealed the following:

DRUG NAME	AMOUNT THAT SHOULD HAVE BEEN IN INVENTORY ON 4/13/19	ACTUAL AMOUNT IN INVENTORY ON 4/13/19	SHORTAGE AMOUNT
Hydrocodone/APAP 10/325 mg	37,433	583	-36,850
Methadone 10 mg	3,910	220	-3,690
Oxycodone 10 mg	121	87	-34
Oxycodone 20 mg	160	80	-80
Oxycodone 30 mg	14,237	99	-14,138
TOTAL CONTROLLED SUBSTANCES SHORTAGE:			-54,792

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20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Diversion of Controlled Substances)**

22 26. Respondent is subject to disciplinary action under Code section 4301, subsections (f),
23 (o), and (p) and Health and Safety Code, sections 11170 and 11173(a), in that during the course
24 of Respondent's employment at Village Pharmacy after its sale on April 15, 2019, Respondent
25 diverted and stole the controlled substance, oxycodone without a valid prescription as set forth in
26 Paragraphs 21-25.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Possession of Controlled Substances Without a Valid Prescription)**

3 27. Respondent is subject to disciplinary action under Code section 4060 and Health and
4 Safety Code, sections 11170 and 11173(a) in that during the course of Respondent's employment
5 at Village Pharmacy after its sale on April 15, 2019, Respondent possessed, furnished, obtained,
6 or otherwise procured for himself the controlled substance oxycodone, without a valid
7 prescription and in a manner that was beyond the legitimate course and scope of his employment
8 as set forth in Paragraphs 21-25.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Inadequate Security of Controlled Substances)**

11 28. Respondent is subject to disciplinary action under Code sections 4301(b), (c) and
12 4113 in that as PIC for Village Pharmacy, Respondent was responsible for Village Pharmacy's
13 compliance with all state and federal laws and regulations pertaining to the practice of pharmacy
14 between the audited period of April 1, 2016 and April 13, 2019. During that time, Respondent
15 failed to maintain adequate operational standards and security of controlled substances as
16 described in Paragraphs 21, 24-25. Respondent is further subject to disciplinary action under
17 Regulation 1714 in that as an employee pharmacist on duty after the sale of Village Pharmacy on
18 April 15, 2019, Respondent was responsible for the security of the prescription department and
19 failed to maintain adequate security as described in Paragraphs 22-23.

20 **FOURTH CAUSE FOR DISCIPLINE**

21 **(Failure to Maintain Current Inventory)**

22 29. Respondent is subject to disciplinary action under Code section 4081(a) and (b) in
23 that while the PIC of Village Pharmacy, Respondent failed to maintain a current inventory that
24 included complete accountability for all controlled substances and dangerous drugs during the
25 audited period of April 1, 2016 and April 13, 2019, as described in Paragraphs 21, 24-25.

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FIFTH CAUSE FOR DISCIPLINE

(False Statements)

30. Respondent is subject to disciplinary action under Code section 4301(g) in that Respondent knowingly made or signed certificates and/or other documents as an employee of Village Pharmacy after its sale on April 15, 2019, that falsely represented Village Pharmacy’s receipt of, and current inventory of, the controlled substance oxycodone, as described in Paragraphs 21-25.

PRAYER

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

1. Revoking or suspending Pharmacist License Number RPH 26251, issued to Richard Allan Hart;
2. Ordering Richard Allan Hart to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: December 3, 2019



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

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