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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. 5709

**PLUMAS DISTRICT HOSPITAL,
dba PLUMAS DISTRICT HOSPITAL
PHARMACY
DOUGLAS LAFFERTY,
ADMINISTRATOR
DAN CARL LEGRADY, PHARMACIST-
IN-CHARGE
1065 Bucks Lake Road
Quincy, California 95971**

**DEFAULT DECISION AND ORDER
AS TO CHERYL ANN MUSSELL ONLY**

[Gov. Code, §11520]

**Hospital Pharmacy Permit No. HPE 32553
(Eff. 1/9/86-2/9/16)**

**Drug Room Permit No. DRE 32553 (Eff.
2/9/16)**

**DARLENE DANO
7112 Regard Way
Sacramento, California 95842**

Pharmacist License No. RPH 35371,

**CHERYL ANN MUSSELL
P.O. Box 982
Quincy, California 95971**

**Pharmacy Technician Registration No. TCH
135012,**

and

**RAYMOND MIRANDA DURO
3218 Diamond Ridge Drive
Reno, Nevada 89523**

Pharmacist License No. RPH 61786

Respondents.

FINDINGS OF FACT

1. On or about December 4, 2016, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,

1 filed Accusation No. 5709 against Cheryl Ann Mussell (Respondent) before the Board of
2 Pharmacy. (Accusation attached as Exhibit A.)

3 2. On or about January 9, 1986, the Board of Pharmacy (Board) issued Pharmacy
4 Technician No. TCH 135012 to Respondent. The Pharmacy Technician was in full force and
5 effect at all times relevant to the charges brought in Accusation No. 5709 and expired on October
6 31, 2016, and has not yet been renewed. This lapse in licensure, however, pursuant to Business
7 and Professions Code sections 118(b) and 4300.1 does not deprive the Board of its authority to
8 institute or continue this disciplinary proceeding.

9 3. On or about December 13, 2016, Respondent was served by Certified and First Class
10 Mail copies of the Accusation No. 5709, Statement to Respondent, Notice of Defense, Request
11 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
12 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
13 section 4100, is required to be reported and maintained with the Board. Respondent's address of
14 record was and is: P.O. Box 982, Quincy, CA 95971.

15 4. Service of the Accusation was effective as a matter of law under the provisions of
16 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
17 124.

18 5. On or about December 21, 2016, the aforementioned documents were returned by the
19 U.S. Postal Service marked "Forwarding Address Expired." The address on the documents was
20 the same as the address on file with the Board. Respondent failed to maintain an updated address
21 with the Board and the Board has made attempts to serve the Respondent at the address on file.
22 Respondent has not made herself available for service and therefore, has not availed herself of her
23 right to file a notice of defense and appear at hearing.

24 6. Government Code section 11506(c) states, in pertinent part:

25 (c) The respondent shall be entitled to a hearing on the merits if the respondent
26 files a notice of defense . . . and the notice shall be deemed a specific denial of all
27 parts of the accusation . . . not expressly admitted. Failure to file a notice of defense
28 . . . shall constitute a waiver of respondent's right to a hearing, but the agency in its
discretion may nevertheless grant a hearing.

1 c. Section 4301(g), in that Respondent knowingly made or signed documents that
2 falsely represented the existence or nonexistence of a state of fact by signing delivery logs
3 indicating that she was a licensed pharmacist.

4 **ORDER**

5 IT IS SO ORDERED that Pharmacy Technician No. TCH 135012, heretofore issued to
6 Respondent Cheryl Ann Mussell, is revoked.

7 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
8 written motion requesting that the Decision be vacated and stating the grounds relied on within
9 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
10 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

11
12 This Decision shall become effective at 5:00 p.m. on June 7, 2017.

13 It is so ORDERED on May 8, 2017.

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15 BOARD OF PHARMACY
16 DEPARTMENT OF CONSUMER AFFAIRS
17 STATE OF CALIFORNIA
18

19
20 

21
22 By _____

23 Amy Gutierrez, Pharm.D.
24 Board President

25
26 12573739.DOC
27 DOJ Matter ID:SA2016100121

28 Attachment:
Exhibit A: Accusation

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

In the Matter of the Accusation Against:

**PLUMAS DISTRICT HOSPITAL,
dba PLUMAS DISTRICT HOSPITAL
PHARMACY
DOUGLAS LAFFERTY,
ADMINISTRATOR
DAN CARL LEGRADY, PHARMACIST-
IN-CHARGE
1065 Bucks Lake Road
Quincy, California 95971**

**Hospital Pharmacy Permit No. HPE 32553
(Eff. 1/9/86-2/9/16)
Drug Room Permit No. DRE 32553 (Eff.
2/9/16)**

**DARLENE DANO
7112 Regard Way
Sacramento, California 95842**

Pharmacist License No. RPH 35371,

**CHERYL ANN MUSSELL
P.O. Box 982
Quincy, California 95971**

**Pharmacy Technician Registration No. TCH
135012,**

and

**RAYMOND MIRANDA DURO
3218 Diamond Ridge Drive
Reno, Nevada 89523**

Pharmacist License No. RPH 61786

Respondents

Respondents.

Case No. 5709

**DEFAULT DECISION INVESTIGATORY
EVIDENCE PACKET**

[Gov. Code §11520]

The Default Decision Investigatory Evidence Packet in support of the Default Decision and Order in the above entitled matter consists of the following.

Exhibit 1: Pleadings offered for jurisdictional purposes: Accusation No. 5709 Statement to Respondent, Notice of Defense (two blank copies), Request for Discovery and Discovery Statutes (Government Code sections 11507.5, 11507.6 and 11507.7), proof of service; and if applicable, mail receipt or copy of returned mail envelopes;

Exhibit 2: License History Certification for Cheryl Mussell Pharmacy Technician No. TCH 135012; and

Exhibit 3: Investigative Report (without attachments) for case number 2013 60061 by Patricia Peterson.

Dated: January 31, 2017

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JANICE K. LACHMAN
Supervising Deputy Attorney General

KRISTINA T. JARVIS
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation

(CHERYL MUSSELL)

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 KRISTINA T. JARVIS
Deputy Attorney General
4 State Bar No. 258229
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5403
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. 5709

12 **PLUMAS DISTRICT HOSPITAL,**
13 **dba PLUMAS DISTRICT HOSPITAL PHARMACY**
14 **DOUGLAS LAFFERTY, ADMINISTRATOR**
15 **DAN CARL LEGRADY, PHARMACIST-IN-CHARGE**
16 **1065 Bucks Lake Road**
17 **Quincy, California 95971**

A C C U S A T I O N

18 Hospital Pharmacy Permit No. HPE 32553 (Eff. 1/9/86-
19 2/9/16)
20 Drug Room Permit No. DRE 32553 (Eff. 2/9/16)

21 **DARLENE DANO**
22 **7112 Regard Way**
23 **Sacramento, California 95842**

24 **Pharmacist License No. RPH 35371,**

25 **CHERYL ANN MUSSELL**
26 **P.O. Box 982**
27 **Quincy, California 95971**

28 **Pharmacy Technician Registration No. TCH 135012,**

and

RAYMOND MIRANDA DURO
3218 Diamond Ridge Drive
Reno, Nevada 89523

Pharmacist License No. RPH 61786

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 ("Board"), Department of Consumer Affairs.

5 2. On or about January 9, 1986, the Board issued Hospital Pharmacy Permit Number
6 HPE 32553 to Plumas District Hospital ("Respondent PDH"), doing business as Plumas District
7 Hospital Pharmacy. On or about July 18, 2011, Douglas Lafferty became the administrator. The
8 hospital pharmacy permit was in full force and effect at all times relevant to the charges brought
9 herein and was cancelled on or about February 9, 2016. On or about February 9, 2016, the Board
10 issued Drug Room Permit Number DRE 32553 to Respondent PDH, doing business as Plumas
11 District Hospital Pharmacy. On or about February 9, 2016, Jeffrey Monaghan became the
12 consultant pharmacist for the Drug Room Permit. The following licensed pharmacists were the
13 pharmacists-in-charge of record for Respondent PDH during the time periods indicated below.

<u>Pharmacist-in-Charge</u>	<u>Date Associated</u>	<u>Date Disassociated</u>
14 Mark LeRoy	November 9, 2012	September 30, 2013
15 Darlene Dano	October 25, 2013	November 27, 2013
16 Viktoria Zaita	February 11, 2014	June 24, 2014
17 Karen L. Schad	September 24, 2014	July 9, 2015
Michael Demetrius Farros	July 9, 2015	October 12, 2015
18 Douglas Milton McLaskey	October 12, 2015	October 30, 2015
Dan Carl LeGrady	October 30, 2015	November 9, 2015
19 Andrew Diesh	November 9, 2015	November 29, 2016
20 Richard Foster	November 29, 2016	February 9, 2016

21 3. On or about August 11, 1980, the Board issued Pharmacist License Number RPH
22 35371 to Darlene Dano ("Respondent Dano"). The pharmacist license was in full force and effect
23 at all times relevant to the charges brought herein and will expire on February 28, 2018, unless
24 renewed.

25 4. On or about September 5, 2013, the Board issued Pharmacy Technician Registration
26 Number TCH 135012 to Cheryl Ann Mussell ("Respondent Mussell"). The pharmacy technician
27 registration was in full force and effect at all times relevant to the charges brought herein and will
28 expire on October 31, 2016, unless renewed.

1 5. On or about October 15, 2008, the Board issued Pharmacist License Number RPH
2 61786 to Raymond Miranda Duro ("Respondent Duro"). The pharmacist license was in full force
3 and effect at all times relevant to the charges brought herein and will expire on May 31, 2018,
4 unless renewed.

5 **JURISDICTION/STATUTORY AND REGULATORY PROVISIONS**

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

9 7. Code section 4300 states, in pertinent part:

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

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

13 (1) Suspending judgment.

14 (2) Placing him or her upon probation.

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

17 (4) Revoking his or her license.

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

19 8. Code section 4300.1 states:

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

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

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

....

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

....

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

....

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

....

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

10. Code section 4059.5, subdivision (a), states:

Except as otherwise provided in this chapter, dangerous drugs or dangerous devices may only be ordered by an entity licensed by the board and shall be delivered to the licensed premises and signed for and received by a pharmacist. Where a licensee is permitted to operate through a designated representative, the designated representative shall sign for and receive the delivery.

11. Code section 4113 states, in pertinent part:

(a) Every pharmacy shall designate a pharmacist-in-charge and, within 30 days thereof, shall notify the board in writing of the identity and license number of that pharmacist and the date he or she was designated.

....

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

(d) Every pharmacy shall notify the board in writing, on a form designed by the board, within 30 days of the date when a pharmacist-in-charge ceases to act as the pharmacist-in-charge, and shall on the same form propose another pharmacist to take over as the pharmacist-in-charge. The proposed replacement pharmacist-in-charge shall be subject to approval by the board. If disapproved, the pharmacy shall propose another replacement within 15 days of the date of disapproval and shall continue to name proposed replacements until a pharmacist-in-charge is approved by the board . . .

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12. Code section 4115 states, in pertinent part:

(a) A pharmacy technician may perform packaging, manipulative, repetitive, or other nondiscretionary tasks only while assisting, and while under the direct supervision and control of, a pharmacist. The pharmacist shall be responsible for the duties performed under his or her supervision by a technician.

(b) This section does not authorize the performance of any tasks specified in subdivision (a) by a pharmacy technician without a pharmacist on duty.

(c) This section does not authorize a pharmacy technician to perform any act requiring the exercise of professional judgment by a pharmacist . . .

13. Code section 4329 states:

Any nonpharmacist who takes charge of or acts as supervisor, manager, or pharmacist-in-charge of any pharmacy, or who compounds or dispenses a prescription or furnishes dangerous drugs except as otherwise provided in this chapter, is guilty of a misdemeanor.

14. Code section 4322 states, in pertinent part:

Any person who . . . fraudulently represents himself or herself to be registered, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars (\$5,000), or by imprisonment not exceeding 50 days, or by both that fine and imprisonment.

15. Title 21, Code of Federal Regulations ("CFR"), section 1304.11, subdivision (c), states:

Biennial inventory date. After the initial inventory is taken, the registrant shall take a new inventory of all stocks of controlled substances on hand at least every two years. The biennial inventory may be taken on any date which is within two years of the previous biennial inventory date.

16. Title 21, CFR, section 1305.05, subdivision (a), states:

A registrant may authorize one or more individuals, whether or not located at his or her registered location, to issue orders for Schedule I and II controlled substances on the registrant's behalf by executing a power of attorney for each such individual, if the power of attorney is retained in the files, with executed Forms 222 where applicable, for the same period as any order bearing the signature of the attorney. The power of attorney must be available for inspection together with other order records.

17. Title 21, CFR, section 1305.12, subdivision (d), states:

Each DEA Form 222 must be signed and dated by a person authorized to sign an application for registration or a person granted power of attorney to sign a Form 222 under §1305.05. The name of the purchaser, if different from the individual

1 signing the DEA Form 222, must also be inserted in the signature space.

2 18. Title 16, Code of California Regulations ("CCR"), section 1714, subdivision (b),
3 states:

4 Each pharmacy licensed by the board shall maintain its facilities, space,
5 fixtures, and equipment so that drugs are safely and properly prepared, maintained,
6 secured and distributed. The pharmacy shall be of sufficient size and unobstructed
7 area to accommodate the safe practice of pharmacy.

8 19. Title 16, CCR, section 1718 states:

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

12 The controlled substances inventories required by Title 21, CFR, Section
13 1304 shall be available for inspection upon request for at least 3 years after the date of
14 the inventory.

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

16 (i) The pharmacist performing or supervising compounding is responsible
17 for the proper preparation, labeling, storage, and delivery of the compounded drug
18 product.

19 (j) Prior to allowing any drug product to be compounded in a pharmacy,
20 the pharmacist-in-charge shall complete a self-assessment for compounding
21 pharmacies developed by the board. (Incorporated by reference is "Community
22 Pharmacy & Hospital Outpatient Pharmacy Compounding Self-Assessment" Form
23 17M-39 Rev. 02/12.) That form contains a first section applicable to all
24 compounding, and a second section applicable to sterile injectable compounding. The
25 first section must be completed by the pharmacist-in-charge before any compounding
26 is performed in the pharmacy. The second section must be completed by the
27 pharmacist-in-charge before any sterile injectable compounding is performed in the
28 pharmacy. The applicable sections of the self-assessment shall subsequently be
completed before July 1 of each odd-numbered year, within 30 days of the start of a
new pharmacist-in-charge, and within 30 days of the issuance of a new pharmacy
license. The primary purpose of the self-assessment is to promote compliance through
self-examination and education.

29 21. Title 16, CCR, section 1735.3 states, in pertinent part:

30 (a) For each compounded drug product, the pharmacy records shall
31 include:

32 (4) The identity of the pharmacist reviewing the final drug product.

1 22. Title 22, CCR, section 70263, states, in pertinent part:

2 (a) All hospitals having a licensed bed capacity of 100 or more beds shall
3 have a pharmacy on the premises licensed by the California Board of Pharmacy.
4 Those hospitals having fewer than 100 licensed beds shall have a pharmacy license
5 issued by the Board of Pharmacy pursuant to Section 4029 or 4056 of the Business
6 and Professions Code.

7

8 (c) A pharmacy and therapeutics committee, or a committee of equivalent
9 composition, shall be established. The committee shall consist of at least one
10 physician, one pharmacist, the director of nursing service or his or her representative
11 and the administrator or his or her representative.

12

13 (f) Supplies of drugs for use in medical emergencies only shall be
14 immediately available at each nursing unit or service area as required.

15

16 (3) The supply shall be inspected by a pharmacist at periodic intervals
17 specified in written policies. Such inspections shall occur no less frequently than
18 every 30 days. Records of such inspections shall be kept for at least three years.

19

20 (n) The hospital shall establish a supply of medications which is
21 accessible without entering either the pharmacy or drug storage room during hours
22 when the pharmacist is not available. Access to the supply shall be limited to
23 designated registered nurses. Records of drugs taken from the supply shall be
24 maintained and the pharmacist shall be notified of such use. The records shall include
25 the name and strength of the drug, the amount taken, the date and time, the name of
26 the patient to whom the drug was administered and the signature of the registered
27 nurse. The pharmacist shall be responsible for maintenance of the supply and assuring
28 that all drugs are properly labeled and stored. The drug supply shall contain that type
and quantity of drugs necessary to meet the immediate needs of patients as
determined by the pharmacy and therapeutics committee.

21 COST RECOVERY

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

26 DRUG CLASSIFICATIONS

27 24. "Remicade" is a brand name for infliximab, and is indicated for the treatment of
28 rheumatoid arthritis. Infliximab is a dangerous drug pursuant to Code section 4022.

1 FACTUAL ALLEGATIONS

2 **Inspection of January 14, 2014**

3 25. On or about January 14, 2014, Board inspectors H. and P. went to Plumas District
4 Hospital ("PDH") to conduct an inspection of the pharmacy. The inspectors knocked on the
5 pharmacy door and were greeted by Respondent Mussell ("Mussell"). The inspectors asked for
6 the pharmacist-in-charge ("PIC"). Mussell stated that the pharmacist would be back in a couple
7 of minutes. Inspector P. asked Mussell where the pharmacist was, and she indicated that he was
8 at another hospital inspecting their drug room. Mussell identified the pharmacist as Raymond
9 Duro (Respondent Duro; "Duro").

10 26. The inspectors observed Mussell checking in a drug order from Cardinal Health, and
11 saw liquid lorazepam, a Schedule III controlled substance, on the counter. The inspectors asked
12 Mussell if she had signed for the order and she said yes.

13 27. Mussell stated she needed to make a call, and shortly thereafter Chief Nursing Officer
14 Dan Schuessler ("Schuessler") arrived at the pharmacy. The inspectors asked him when a
15 pharmacist was last in the pharmacy. Schuessler stated that Douglas Lafferty ("Lafferty") would
16 know, and called him. When Lafferty arrived, he stated he did not think they needed a
17 pharmacist in the pharmacy all of the time because PDH had applied for a drug room license.
18 Mussell said she had called Duro and he would be there soon.

19 28. The inspectors requested and obtained copies of various pharmacy records, including
20 compounding worksheets/logs and a written policy and procedure for controlled substances. The
21 compounding worksheets showed that Mussell had compounded the drug Remicade without
22 pharmacist supervision.

23 29. Inspector P. asked for a copy of the biennial inventory for controlled substances. No
24 biennial inventory was available at the pharmacy. The inspectors then asked for the
25 compounding self-assessments for PIC's Mark LeRoy ("LeRoy") and Respondent Dano
26 ("Dano"). Mussell could not find the documents.

27 ///

28 ///

1 30. Duro arrived at the pharmacy approximately two hours after the inspection began.
2 Duro told the inspectors that he was not a staff pharmacist, but "remotely verified" the
3 prescriptions sent to him by the hospital when there was no pharmacist on duty.

4 31. PDH's timesheets for Dano from September 20, 2013 to November 27, 2013, and for
5 Mussell from October 1, 2013 to January 3, 2014 showed that Mussell worked in the pharmacy
6 when there was no pharmacist on duty approximately 11 times in October 2013, 7 times in
7 November 2013, and 22 times in December 2013; and from January 2, 2014 to January 14, 2014.
8 Mussell also worked in the pharmacy approximately 11 times in October 2013 and 12 times in
9 November 2013, when Dano was present for only part of the day.

10 32. The inspectors issued an inspection report and provided a copy to Duro. The report
11 stated that "[u]nder no circumstances is the pharmacy to be operated without a licensed
12 pharmacist. No keys in possession of anyone other than by security - for access of the Pharmacist
13 only." Inspector P. asked Mussell if she understood she could never work in the pharmacy
14 without the supervision of a licensed pharmacist. Mussell stated that she understood.

15 33. Respondent Dano was contacted about the inspection, and stated that she quit
16 working in the pharmacy in late November 2013, but had failed to notify the Board of her
17 disassociation.

18 **Inspection of September 23, 2014**

19 34. On or about September 23, 2014, Inspector P. returned to the pharmacy to conduct an
20 inspection and found Mussell working without pharmacist supervision. Schuessler came to the
21 pharmacy, and said Karen Schad ("Schad") would be the new PIC and that she had been filling in
22 at the pharmacy working half days.

23 35. Copies of the pharmacy's perpetual inventory log for hydromorphone 2 mg/ml
24 showed that on September 22, 2014, 50 vials of the drug had been sent to the medical/surgical
25 unit. Mussell stated that the nurses had access to the pharmacy after hours. PDH's policies and
26 procedures state that entry into the narcotics cabinet is restricted to registered pharmacists and
27 that Schedule III, IV, and V controlled substances were stored in a locked cabinet in the
28 pharmacy.

1 36. Schuessler asked Mussell if she had the keys to the narcotics cabinet. Mussell took
2 keys off of a wall hook and handed them to the inspector. The inspector asked Mussell if the
3 keys on her wrist ring were to the pharmacy. Mussell said yes. The inspector had Mussell give
4 her the keys.

5 37. DEA 222 forms (order form for schedule I and II controlled substances) had been
6 signed by pharmacists Michael Shimoide ("Shimoide"), Viktoria Zaita ("Zaita"), and Duro.
7 Mussell had signed the delivery logs on the line indicated for a pharmacist to sign and had left the
8 pre printed "RPH" on that line intact without indicating that she was not in fact a pharmacist. It is
9 the pharmacist's responsibility to receive the drugs from the delivery driver and to sign the DEA
10 forms and invoices. Mussell claimed that these duties had been delegated to her. However, PDH
11 had no Power of Attorney ("POA") forms.

12 38. The nurses employed at PDH had access to a night locker to obtain needed
13 medications, as well as access to the pharmacy. PDH maintained a Pharmacy Entry Log as well
14 as a night locker list showing the medications stored in the locker. In and between August 2014
15 and September 2014, nursing staff had entered the pharmacy approximately 21 times to obtain
16 medications that were available in the night locker as well as candy and chocolate.

17 39. The nurses employed at PDH had access to the pharmacy because the key to the
18 pharmacy is locked in the medication cart, to which all nurses have access.

19 40. On or about September 25, 2014, Inspector P. requested documents from Cardinal
20 Health for the time period from January 1, 2014 through September 24, 2014, including power of
21 attorney forms for any pharmacists who were granted authority by the hospital's DBA registrant
22 to order Schedule II controlled substances on behalf of the pharmacy, and all signed delivery logs
23 for deliveries made to PDH. Schuessler was the registrant for PDH, and there were no power of
24 attorney forms.

25 41. On or about September 30, 2014, Inspector P. returned to PDH with a consultant from
26 the California Department of Public Health. The consultant conducted an inspection of the
27 pharmacy. The consultant and the inspector interviewed nurse M. M. who stated that she had
28 access to the pharmacy and that the pharmacy keys were stored in the Emergency Department

1 (ED). Floor surveys were obtained that had been conducted between May 28, 2014, and August
2 28, 2014. The surveys had been completed by Mussell who sometimes had a nurse sign off on
3 them. Floor surveys are required to be conducted by a pharmacist.

4 42. On or about August 20, 2015, Duro was interviewed and he stated that he had never
5 worked for or in the pharmacy except for the day of the first inspection on January 14, 2014.

6 43. PDH submitted a change of PIC on August 11, 2014, to remove Zaita and add
7 Shimoide. This change was not approved because the form was signed by unauthorized person.
8 On September 30, 2014, the Board received a change of PIC from PDH to remove Shimoide and
9 add Schad. The change was approved on October 15, 2014. PDH had gaps in PIC coverage from
10 November 28, 2013 to February 10, 2014, and from June 25, 2014 to September 23, 2014.

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Gross Negligence)**

13 44. Respondent PDH is subject to disciplinary action for unprofessional conduct pursuant
14 to Code section 4301, subdivision (c), in that Respondent PDH committed acts or omissions
15 constituting gross negligence, as follows:

16 a. On and between October 1, 2013 and January 14, 2014, Respondent PDH authorized
17 or permitted Respondent Mussell, a pharmacy technician, to work in the pharmacy without the
18 direct supervision and control of a pharmacist; to perform the duties of a pharmacist, including
19 signing for deliveries of controlled substances and dangerous drugs and compounding the drug
20 Remicade; and/or to take charge of or act as supervisor, manager and/or pharmacist-in-charge of
21 the pharmacy. Further, on and between May 28, 2014 and August 28, 2014, Respondent PDH
22 authorized or permitted Respondent Mussell to conduct monthly inspections of the floor stock
23 (supplies of drugs for use in medical emergencies) at the nursing units and service areas without a
24 pharmacist's license. In addition, on or about September 23, 2014, Respondent PDH authorized
25 or permitted Respondent Mussell to work in the pharmacy without pharmacist supervision and/or
26 perform the duties of a pharmacist despite being admonished on January 14, 2014, that the
27 pharmacy was not to be operated without a licensed pharmacist.

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1 b. On and between November 28, 2013 and February 10, 2014, and June 25, 2014 and
2 September 23, 2014, Respondent PDH failed to designate a pharmacist-in-charge of the
3 pharmacy.

4 c. In and between January 2014 and September 2014, Respondent PDH authorized or
5 permitted Respondent Mussell to sign for additional deliveries of dangerous drugs and controlled
6 substances when, in fact, Respondent Mussell was not a licensed pharmacist.

7 d. Respondent PDH failed to maintain the pharmacy and its facilities, space, fixtures
8 and/or equipment so that drugs were safely and properly secured in that Respondent Mussell and
9 the nursing staff were allowed access to the pharmacy without a pharmacist present and had
10 access to the keys to the pharmacy. Further, on or about September 23, 2014, Respondent
11 Mussell had access to the keys to the pharmacy and the locked narcotics cabinet.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Failure to Notify Board of Disassociation of PIC)**

14 45. Respondent PDH is subject to disciplinary action for unprofessional conduct pursuant
15 to Code section 4301, subdivision (o), in that Respondent PDH violated Code section 4113,
16 subdivision (d), as follows:

17 a. Respondent PDH failed to notify the Board within 30 days of the disassociation of
18 pharmacist-in-charge Viktoria Zaita in that Zaita left her employment at PDH on approximately
19 June 24, 2014, yet the Board was not notified of the disassociation until August 11, 2014.

20 b. Respondent PDH failed to notify the Board within 30 days of the disassociation of
21 pharmacist-in-charge Dano in that Dano left her employment at PDH on November 27, 2013, yet
22 the Board was not notified of the disassociation until January 16, 2014.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(Receipt of Dangerous Drugs by Unauthorized Person)**

25 46. Respondent PDH is subject to disciplinary action for unprofessional conduct pursuant
26 to Code section 4301, subdivisions (j) and (o), in that Respondent PDH violated Code section
27 4059.5, subdivision (a), as follows: Respondent PDH authorized or permitted Respondent

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1 Mussell to receive and/or sign for dangerous drugs and controlled substances as set forth above
2 when, in fact, Respondent Mussell was not a licensed pharmacist.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Signature of DEA 222 Forms by Unauthorized Persons)**

5 47. Respondent PDH is subject to disciplinary action for unprofessional conduct pursuant
6 to Code section 4301, subdivisions (j) and (o), in that Respondent PDH violated Title 21, CFR,
7 sections 1305.05, subdivision (a), and 1305.12, subdivision (d), as follows: Respondent PDH
8 authorized or permitted pharmacists Shimoide, Zaita, and Duro to sign DEA 222 forms upon
9 delivery or receipt of Schedule II controlled substances when, in fact, none of the pharmacists had
10 been granted power of attorney to sign the DEA forms.

11 **FIFTH CAUSE FOR DISCIPLINE**

12 **(Failure to Complete Biennial Inventory)**

13 48. Respondent PDH is subject to disciplinary action for unprofessional conduct pursuant
14 to Code section 4301, subdivision (o), in that Respondent PDH violated Title 21, CFR, section
15 1304.11, subdivision (c), as follows: On or before January 14, 2014, Respondent PDH failed to
16 complete or have available at the pharmacy a biennial inventory of all stocks of controlled
17 substances on hand at the pharmacy.

18 **SIXTH CAUSE FOR DISCIPLINE**

19 **(Failure to Provide Supervision of Pharmacy Technician)**

20 49. Respondent PDH is subject to disciplinary action for unprofessional conduct pursuant
21 to Code section 4301, subdivision (o), in that on and between October 1, 2013 and January 14,
22 2014, and on or about September 23, 2014, Respondent PDH violated Code section 4115, as
23 follows: Respondent PDH authorized or permitted Respondent Mussell, a pharmacy technician,
24 to work in the pharmacy without the direct supervision and control of a pharmacist and to
25 perform the duties of a pharmacist, as set forth in paragraph 44 above.

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1 SEVENTH CAUSE FOR DISCIPLINE

2 (Failure to Supervise Sterile Compounding Conducted by Pharmacy Technician)

3 50. Respondent PDH is subject to disciplinary action for unprofessional conduct pursuant
4 to Code section 4301, subdivision (o), in that Respondent PDH violated Title 16, CCR, sections
5 1735.2, subdivision (i), and 1735.3, subdivision (a)(4), as follows: Respondent PDH authorized
6 or permitted Respondent Mussell, a pharmacy technician, to compound Remicade for consumer J.
7 G. on January 6, 2014, for consumer S. J. on September 16, 2013, October 30, 2013, and
8 December 20, 2013, and for consumer L. S. on October 18, 2013, and December 27, 2013,
9 without pharmacist supervision.

10 EIGHTH CAUSE FOR DISCIPLINE

11 (Failure to Maintain Pharmacy, Fixtures, and Equipment
12 So that Drugs Were Safely and Properly Secured)

13 51. Respondent PDH is subject to disciplinary action for unprofessional conduct pursuant
14 to Code section 4301, subdivision (o), in that Respondent PDH violated Title 16, CCR, section
15 1714, subdivision (b), by failing to maintain the pharmacy and its facilities, space, fixtures and/or
16 equipment so that drugs were safely and properly secured, as set forth in paragraph 44(d) above.

17 NINTH CAUSE FOR DISCIPLINE

18 (Failure to Perform Monthly Inspections of Floor Stock)

19 52. Respondent PDH is subject to disciplinary action for unprofessional conduct pursuant
20 to Code section 4301, subdivision (o), in that on and between May 28, 2014 and August 28, 2014,
21 in that Respondent PDH violated Title 22, CCR, section 70263, subdivision (f)(3), as follows:
22 Respondent PDH authorized or permitted Respondent Mussell, a pharmacy technician, to conduct
23 monthly inspections of the floor stock at the nursing units and service areas when, in fact,
24 Respondent Mussell was not a licensed pharmacist. Further, on and between June 28, 2013 and
25 March 7, 2014, Respondent PDH failed to ensure that at least one pharmacist took part in or was
26 made a part of the hospital's pharmacy and therapeutics committee.

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1 FOURTEENTH CAUSE FOR DISCIPLINE

2 (Failure to Provide Supervision of Pharmacy Technician)

3 57. Respondent Dano is subject to disciplinary action for unprofessional conduct pursuant
4 to Code section 4301, subdivision (o), in that Respondent Dano violated Code section 4115, as
5 follows: On and between October 25, 2013 and January 14, 2014, Respondent Dano, as
6 pharmacist-in-charge of record for PDH, authorized or permitted Respondent Mussell, a
7 pharmacy technician, to work in the pharmacy without Respondent Dano's direct supervision and
8 control and to perform the duties of a pharmacist, including, but not limited to, signing for
9 deliveries of controlled substances and dangerous drugs from suppliers and compounding the
10 drug Remicade as set forth in paragraph 50, above.

11 FIFTEENTH CAUSE FOR DISCIPLINE

12 (Failure to Supervise Sterile Compounding Conducted by Pharmacy Technician)

13 58. Respondent Dano is subject to disciplinary action for unprofessional conduct pursuant
14 to Code section 4301, subdivision (o), in that Respondent Dano violated Title 16, CCR, sections
15 1735.2, subdivision (i), and 1735.3, subdivision (a)(4), as follows: Respondent Dano, as
16 pharmacist-in-charge of record for PDH, failed to supervise sterile compounding conducted by
17 Respondent Mussell, a pharmacy technician, as set forth in paragraph 50 above.

18 SIXTEENTH CAUSE FOR DISCIPLINE

19 (Failure to Maintain Pharmacy, Fixtures, and Equipment
20 So that Drugs Were Safely and Properly Secured)

21 59. Respondent Dano is subject to disciplinary action for unprofessional conduct pursuant
22 to Code section 4301, subdivision (o), in that Respondent Dano violated Title 16, CCR, section
23 1714, subdivision (b), as follows: On and between October 25, 2013 and January 14, 2014,
24 Respondent Dano, as pharmacist-in-charge of record for PDH, failed to maintain the pharmacy
25 and its facilities, space, fixtures and/or equipment so that drugs were safely and properly secured
26 in that Respondent Dano knew, or should have known, that Respondent Mussell had access to the
27 keys to the pharmacy and the locked narcotics cabinet.

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1 a. Respondent Mussell signed for deliveries of controlled substances and dangerous
2 drugs from suppliers, compounded the drug Remicade without pharmacist supervision, and
3 conducted monthly inspections of the floor stock at the nursing units and service areas, as set
4 forth in paragraph 44(a) above. Further, on or about September 23, 2014, Respondent Mussell
5 worked in the pharmacy without pharmacist supervision and/or performed the duties of a
6 pharmacist despite having been directly admonished prior to that date that Respondent Mussell
7 could never work in the pharmacy without the supervision of a licensed pharmacist

8 b. Respondent Mussell had access to the keys to the pharmacy and the locked narcotics
9 cabinet, as set forth in paragraph 44(d) above.

10 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

11 **(Fraudulent Representation)**

12 64. Respondent Mussell is subject to disciplinary action for unprofessional conduct
13 pursuant to Code section 4301, subdivision (o), in that Respondent Mussell violated Code section
14 4322 by fraudulently representing herself to be a licensed pharmacist, as follows: On and
15 between December 31, 2013 and September 23, 2014, Respondent Mussell signed delivery logs
16 as the "Rph" (pharmacist) upon receipt of dangerous drugs and controlled substances when, in
17 fact, Respondent Mussell was not a licensed pharmacist.

18 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

19 **(Knowingly Signing Documents Containing False Representations)**

20 65. Respondent Mussell is subject to disciplinary action for unprofessional conduct
21 pursuant to Code section 4301, subdivision (g), in that Respondent Mussell knowingly made or
22 signed documents that falsely represented the existence or nonexistence of a state of facts, as set
23 forth in paragraph 64 above.

24 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

25 **(Subverting or Attempting to Subvert an Investigation of the Board)**

26 66. Respondent Duro is subject to disciplinary action for unprofessional conduct pursuant
27 to Code section 4301, subdivision (q), in that Respondent Duro engaged in conduct that subverted
28 or attempted to subvert an investigation of the Board, a follows: On or about August 20, 2015,

1 Respondent Duro stated that he had never worked for or in the pharmacy except for the day of the
2 inspection on January 14, 2014. In fact, Respondent Duro worked in the capacity as pharmacist
3 for PDH when he signed DEA 222 forms on December 31, 2013 and January 28, 2014, to order
4 Schedule II controlled substances on behalf of the pharmacy. Further, Respondent Duro signed a
5 Cardinal Health delivery log on January 2, 2014, showing that he received a delivery of the
6 controlled substances fentanyl, hydromorphone, and morphine.

7 **TWENTH-FOURTH CAUSE FOR DISCIPLINE**

8 **(Aiding or Abetting Violations of the Pharmacy Law**
9 **and State Laws Governing Pharmacy)**

10 67. Respondent Duro is subject to disciplinary action for unprofessional conduct pursuant
11 to Code section 4301, subdivision (o), in that Respondent Duro assisted in or abetted Respondent
12 Mussell, a pharmacy technician, in violating Code section 4115, as follows: On or about
13 December 31, 2013 and January 2, 2014, Respondent Duro was present in the pharmacy, as set
14 forth in paragraph 66 above. Respondent Duro knew, or should have known, that on those dates
15 during times that he was not in the pharmacy, Respondent Mussell was working in the pharmacy
16 alone without the direct supervision and control of a pharmacist.

17 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

18 **(Signature of DEA 222 Forms by Unauthorized Persons)**

19 68. Respondent Duro is subject to disciplinary action for unprofessional conduct pursuant
20 to Code section 4301, subdivisions (j) and (o), in that Respondent Duro violated Title 21, CFR,
21 sections 1305.05, subdivision (a), and 1305.12, subdivision (d), as follows: Respondent Duro
22 signed DEA 222 forms upon delivery or receipt of Schedule II controlled substances when, in
23 fact, he had not been granted power of attorney to sign the DEA forms, as set forth in paragraph
24 47 above.

25 **PRAYER**

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

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1. Revoking or suspending Hospital Pharmacy Permit Number HPE 32553 and Drug Room Permit Number DRE 32553, issued to Plumas District Hospital, doing business as Plumas District Hospital Pharmacy;

2. Revoking or suspending Pharmacist License Number RPH 35371, issued to Darlene Dano;

3. Revoking or suspending Pharmacy Technician Registration Number TCH 135012, issued to Cheryl Ann Mussell;

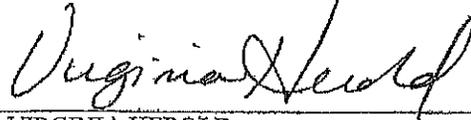
4. Revoking or suspending Pharmacist License Number RPH 61786, issued to Raymond Miranda Duro;

5. Ordering Plumas District Hospital, doing business as Plumas District Hospital Pharmacy, Darlene Dano, Cheryl Ann Mussell, and Raymond Miranda Duro 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

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

DATED:

11/4/16



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

SA2016100121