

SAN FRANCISCO | 333 Market Street  
Los Angeles | Suite 3150  
New York | San Francisco, CA 94105  
Redwood City | Telephone (415) 543-4800  
San Jose | Facsimile (415) 274-6301  
www.ropers.com



Thomas H. Clarke, Jr.  
(415) 274-6387

tclarke@ropers.com

October 14, 2005

**SIXTY-DAY NOTICE OF VIOLATION**

Dr. J. Frederic J. Vagnini  
1600 Stewart Avenue  
Westbury, NY 11590

Dear Dr. Vagnini:

California's Proposition 65 (which can be found at Sections 25249.6 et seq. of the Health & Safety Code) is designed to promote awareness of potential exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products or produced by industrial activities. Attached to this letter is a copy of "Proposition 65: A Summary", which has been prepared by the State of California, Office of Environmental Health Hazard Assessment ("OEHHA"). OEHHA may be contacted at 916-445-6900. OEHHA's web site pertaining to Proposition 65 may be found at: <http://www.oehha.ca.gov/prop65.html>.

Ropers, Majeski, Kohn & Bentley ("RMKB") and Ms. Julie Choi and Ms. Kit Lau ("Plaintiff") hereby give you notice that Vagnini.com has been, is currently, and threatens to be in violation of California Health & Safety Code § 25249.6; this sixty-day notice is sent to you in compliance with § 25249.7(d) California Health & Safety Code. Both RMKB and Plaintiffs are private enforcers of Proposition 65, as provided by California Health & Safety Code § 25249.7(d). You may contact both RMKB and Plaintiffs at the above listed address and telephone number; I am counsel for and represent Plaintiffs in this matter.

The above-referenced violations occur when California consumers purchase and ingest your Biocalth® Calcium L-threonate® Dietary Supplement ("Tablets"). The Tablets contain lead and lead compounds ("lead"), chemicals known to the State of California to cause reproductive toxicity. California residents are exposed to lead when they ingest the Tablets. This lead is then absorbed into the body through the gastrointestinal tract wherein it causes the harm noted.

Your business did not and does not provide California consumers with clear and reasonable warnings before it exposes them to lead, as required by Health & Safety Code § 25249.6. These violations have occurred every day for at least the last four years, and will continue every day until the lead is removed from the Tablets or until clear and reasonable warnings are given. The Proposition 65 violations noted herein occur in each of California's 58 counties, or in such Counties as your Tablets are sold or consumed.

**ATTORNEY GENERAL COPY CONTAINS OFFICIAL INFORMATION  
PURSUANT TO EVIDENT CODE § 1040**

Sincerely,



Thomas H. Clarke, Jr.

THC/njl

Office of Environmental Health  
Hazard Assessment  
California Environmental Protection Agency

The Safe Drinking Water and Toxic  
Enforcement Act of 1986  
(Proposition 65): A Summary

The following summary has been prepared by the Office of Environmental Health Hazard Assessment, the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and its implementing regulations (see citations below) for further information.

Proposition 65 appears in California law as Health & Safety Code Sections 25249.5 through 25249.13. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 22 of the California Code of Regulations, Sections 12000 through 14000.

*WHAT DOES PROPOSITION 65 REQUIRE?*

*The "Governor's List."* Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 735 chemical listings have been included as of November 16, 2001. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving those chemicals must comply with the following:

*Clear and reasonable warnings.* A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of listing of the chemical.

*Prohibition from discharges into drinking water.* A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Discharges are exempt from this requirement if they occur less than twenty months after the date of listing of the chemical.

#### *DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?*

Yes. The law exempts:

*Governmental agencies and public water utilities.* All agencies of the federal, State or local government, as well as entities operating public water systems, are exempt.

*Businesses with nine or fewer employees.* Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees.

*Exposures that pose no significant risk of cancer.* For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "no significant risk" levels for more than 250 listed carcinogens.

*Exposures that will produce no observable reproductive effect at 1,000 times the level in question.* For chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicants"), a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level (NOEL)," divided by a 1,000-fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect.

*Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water.* The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not enter any drinking water source, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" or "no observable effect" test if an individual were exposed to such an amount in drinking water.

### *HOW IS PROPOSITION 65 ENFORCED?*

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys (those in cities with a population exceeding 750,000). Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. A notice must comply with the information and procedural requirements specified in regulations (Title 22, California Code of Regulations, Section 12903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$ 2,500 per day for each violation. In addition, the business may be ordered by a court of law to stop committing the violation.

### *FOR FURTHER INFORMATION. . .*

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900.

**CERTIFICATE OF MERIT**  
**Health & Safety Code Section 25249.7(d)**

I, Thomas H. Clarke, Jr., hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the parties identified in the notices have violated Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing parties.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is the subject of the action.
4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health & Safety Code Section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: October 14, 2005



---

Thomas H. Clarke, Jr.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**

I am a citizen of the United States. My business address is 333 Market Street, Suite 3150, San Francisco, CA 94105. I am employed in the County of San Francisco where this service occurs. I am over the age of 18 years, and not a party to the within cause. I am readily familiar with my employer's normal business practice for collection and processing of correspondence for ailing with the U.S. Postal Service, and that practice is that correspondence is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

On the date set forth below, following ordinary business practice, I served a true copy of the foregoing document(s) described as:

- **Sixty-Day Notice of Violation;**
- **Certificate of Merit;**
- **The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary**

(BY MAIL) I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail at San Francisco, California.

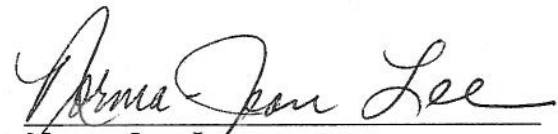
Dr. Frederic J. Vagnini  
1600 Stewart Avenue  
Westbury, NY 11590

Edward G. Weil  
Deputy Attorney General  
Office of the Attorney General  
Oakland, CA 94612-0550

Offices of the City Attorneys and  
Offices of the District Attorneys  
on the attached Service List

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 14, 2005, at San Francisco, California.

  
Norma-Jean Lee

## SERVICE LIST

Edward G. Weil Deputy Attorney General Office of the Attorney General P.O. Box 70550 Oakland, CA 94612-0550	Office of the District Attorney County of Glenn P.O. Box 430 Willows, CA 95988-0430	Office of the District Attorney County of Monterey 240 Church Street P.O. Box 180 Salinas, CA 93902-0180	Office of the District Attorney County of Siskiyou P.O. Box 986 Yreka, CA 96097-0986
Office of the City Attorney City of Oakland 505 14 <sup>th</sup> Street, 12 <sup>th</sup> Floor Oakland, CA 94612-1406	Office of the District Attorney County of Humboldt 825 5 <sup>th</sup> Street Eureka, CA 95501-1107	Office of the District Attorney County of Napa 931 Parkway Mall P.O. Box 720 Napa, CA 94559-0720	Office of the District Attorney County of Solano 600 Union Avenue Fairfield, CA 94533-6326
Office of the City Attorney City of San Francisco City Hall, Room 206 400 Van Ness San Francisco, CA 94102-4630	Office of the District Attorney County of Imperial Courthouse Floor 2 939 West Main Street El Centro, CA 92243-2860	Office of the District Attorney County of Nevada 201 Church St., Ste. 8 Nevada City, CA 95959-2860	Office of the District Attorney County of Sonoma 600 Administration Dr., #212J Santa Rosa, CA 95403-2876
Office of the City Attorney City of Sacramento 980 9 <sup>th</sup> Street, 10 <sup>th</sup> Floor Sacramento, CA 958142736	Office of the District Attorney County of Inyo P.O. Drawer D Independence, CA 93526-0604	Office of the District Attorney County of Orange 700 Civic Center Drive West #A-200 Santa Ana, CA 92701-4405	Office of the District Attorney County of Stanislaus 1100 I Street, #200 Modesto, CA 95354-2325
Office of the City Attorney City of San Jose 151 West Mission Street San Jose, CA 95110-1710	Office of the District Attorney County of Kern 1215 Truxtun Ave., Floor 4 Bakersfield, CA 93301-4619	Office of the District Attorney County of Placer 11562 B Avenue Auburn, CA 95603-2687-2605	Office of the District Attorney County of Sutter 1160 Civic Center Blvd., #A Yuba City, CA 95993-3007
Office of the City Attorney City of Los Angeles 200 North Main Street Los Angeles, CA 90012-4110	Office of the District Attorney County of Kings 1400 West Lacey Boulevard Hanford, CA 93230-5962	Office of the District Attorney County of Plumas 520 Main Street, Room 404 Quincy, CA 95971-9116	Office of the District Attorney County of Tehama P.O. Box 519 Red Bluff, CA 96080-0519
Office of the City Attorney City of San Diego 202 C Street, Floor 3 San Diego, CA 92101-4806	Office the District Attorney County of Lake 255 North Forbes St., #424 Lakeport, CA 95453-4756	Office of the District Attorney County of Sacramento P.O. Box 749 Sacramento, CA 95812-0749	Office of the District Attorney County of Trinity P.O. Box 310 Weaverville, CA 96093-0310
Office of the District Attorney County of Alameda 225 Fallon Street, #9 Oakland, CA 94612-4609	Office of the District Attorney County of Lassen County Administration Bldg. 707 Nevada Street Susanville, CA 96130-3912	Office of the District Attorney County of San Benito 419 4 <sup>th</sup> Street Hollister, CA 95023-3801	Office of the District Attorney County of Tulare County Civic Center 221 So. Mooney Blvd., Rm. 224 Visalia, CA 93291-4547
Office of the District Attorney County of Alpine P.O. Box 248 Markleeville, CA 96120-0248	Office of the District Attorney County of Los Angeles 18000 Criminal Court Bldg. 210 West Temple Street Los Angeles, CA 90012-3210	Office of the District Attorney County of San Bernardino 316 Mt. View Avenue San Bernardino, CA 92408-1415	Office of the District Attorney County of Tuolumne 2 South Green Street Sonora, CA 95370-4618
Office of the District Attorney County of Amador 108 Court Street, Suite 202 Jackson, CA 95642-2308	Office of the District Attorney County of San Diego 101 West Broadway, #1440 San Diego, CA 92101-8215	Office of the District Attorney County of Ventura 4245 Market Street, #205 Ventura, CA 93003-8009	Office of the District Attorney County of Butte 25 County Center Drive Oroville, CA 95965-3375

**ATTORNEY GENERAL COPY CONTAINS OFFICIAL INFORMATION  
PURSUANT TO EVIDENT CODE § 1040**



Office of the District Attorney County of Madera 209 West Yosemite Avenue Madera, CA 93637-3534	Office of the District Attorney County of San Francisco 850 Bryant Street, #322 San Francisco, CA 94103-4600	Office of the District Attorney County of San Joaquin 222 E. Weber Ave, #202 Stockton, CA 95202-2706	Office of the District Attorney County of Yolo 204 4 <sup>th</sup> Street P.O. Box 1247 Woodland, CA 95776-1247
Office of the District Attorney County of Calaveras Government Center 891 Mountain Ranch Road San Andreas, CA 95249-9713	Office of the District Attorney County of Marin 3501 Civil Center Dr., Rm. 130 San Rafael, CA 94903-5207	Office of the District Attorney County of San Luis Obispo County Government Center #450 San Luis Obispo, CA 93408-0002	Office of the District Attorney County of Yuba 215 5 <sup>th</sup> Street Marysville, CA 95901-5737
Office of the District Attorney County of Colusa 547 Market Street Colusa, CA 95932-2452	Office of the District Attorney County of Mariposa P.O. Box 748 Mariposa, CA 95338-0748	Office of the District Attorney County of San Mateo 400 County Center Redwood City, CA 94063-1662	Office of the District Attorney County of Contra Costa P.O. Box 670 Martinez, CA 94553-0670
Office of the District Attorney County of Mendocino 301 South State Street Ukiah, CA 95482-4906	Office of the District Attorney County of Santa Barbara 1105 Santa Barbara Street Santa Barbara, CA 93101-2007	Office of the District Attorney County of Del Norte 450 H Street, #171 Crescent City, CA 95531-4092	Office of the District Attorney County of Merced 2222 M Street Merced, CA 95340-3729
Office of the District Attorney County of Santa Clara 70 West Hedding Street San Jose, CA 95110-1705	Office of the District Attorney County of El Dorado 515 Main Street Placerville, CA 95667-5609	Office of the District Attorney County of Modoc P.O. Box 1171 Alturas, CA 96101-1171	Office of the District Attorney County of Santa Cruz 701 Ocean Street, #200 Santa Cruz, CA 95060-4011
Office of the District Attorney County of Fresno 2220 Tulare Street, #1000 Fresno, CA 93721-2107	Office of the District Attorney County of Mono P.O. Box 617 Bridgeport, CA 93517-0617	Office of the District Attorney County of Shasta 1525 Court Street Redding, CA 96001-1632	Office of the District Attorney County of Sierra P.O. Box 457 Downieville, CA 95936-0457
Office of the District Attorney County of Riverside 4075 Main Street Riverside, CA 92501-3707			

**ATTORNEY GENERAL COPY CONTAINS OFFICIAL INFORMATION  
PURSUANT TO EVIDENT CODE § 1040**