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

12 In the Matter of the Accusation Against:

Case No. 5286

13 **WENDY RE BRODY**
14 **6207 Lake Ariana Ave.**
San Diego, CA 92119

A C C U S A T I O N

15 **Pharmacist License No. RPH 42050**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about August 10, 1988, the Board of Pharmacy issued Pharmacist License
23 Number RPH 42050 to Wendy Re Brody (Respondent). The Pharmacist License was in full force
24 and effect at all times relevant to the charges brought herein and will expire on August 31, 2016,
25 unless renewed.

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1 **JURISDICTION**

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

5 4. Section 4300 of the Code states:

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

7 5. Section 4300.1 of the Code states:

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

12 **STATUTORY PROVISIONS**

13 6. Section 4301 of the Code states:

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

18

19 (o) Violating or attempting to violate, directly or indirectly, . . . any
20 provision or term of this chapter or of the applicable federal and state laws and
21 regulations governing pharmacy, including regulations established by the board or
22 by any other state or federal regulatory agency.

23 7. Section 4060 of the Code states:

24 No person shall possess any controlled substance, except that furnished to a
25 person upon the prescription of a physician, dentist, podiatrist, optometrist,
26 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
27 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
28 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant
pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a
pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv)
of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This
section shall not apply to the possession of any controlled substance by a
manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
practitioner, or physician assistant, when in stock in containers correctly labeled
with the name and address of the supplier or producer.

1 Nothing in this section authorizes a certified nurse-midwife, a nurse
2 practitioner, a physician assistant, or a naturopathic doctor, to order his or her own
3 stock of dangerous drugs and devices.

4 **REGULATIONS**

5 8. California Code of Regulations, title 16, section 1770, states:

6 For the purpose of denial, suspension, or revocation of a personal or facility
7 license pursuant to Division 1.5 (commencing with Section 475) of the Business
8 and Professions Code, a crime or act shall be considered substantially related to
9 the qualifications, functions or duties of a licensee or registrant if to a substantial
10 degree it evidences present or potential unfitness of a licensee or registrant to
11 perform the functions authorized by his license or registration in a manner
12 consistent with the public health, safety, or welfare.

13 **COSTS**

14 9. Section 125.3 of the Code states, in pertinent part, that the Board may request the
15 administrative law judge to direct a licentiate found to have committed a violation or violations of
16 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
17 enforcement of the case.

18 **DRUGS**

19 10. Marijuana is a Schedule I controlled substance pursuant to Health and Safety Code
20 section 11054, subdivision (d) and a dangerous drug as designated by Business and Professions
21 Code section 4022.

22 **FACTS**

23 11. On June 2, 2014, the Drug Enforcement Administration (DEA), San Diego Field
24 Division, executed a Federal search warrant at Respondent's residence. The DEA found 64
25 marijuana plants that were being cultivated inside and outside Respondent's residence and
26 5,106.9 gross grams of processed marijuana. The processed marijuana was found in various
27 locations throughout Respondent's residence, including the freezer, kitchen counter, spare
28 bedroom and master bedroom. An active Tetrahydrocannabinol (THC) extraction operation was
discovered in which butane gas was being utilized to manufacture concentrated cannabis. The
THC extraction operation was maintained in the attached garage and on the covered patio in the
backyard.

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1 12. Due to the presence of the active butane gas laboratory at Respondent's residence, the
2 San Diego Fire Department and the Hazardous Material Team were called and entered the
3 residence in order to evaluate the area for hazardous material including flammable gas. Using a
4 Combustible Gas Meter, the Fire Department determined that there were two containers of yellow
5 liquid that were actively emitting flammable gas. One container was found in the garage where a
6 gas water heater and gas dryer were located, both of which are potential ignition sources for
7 flammable gas. The Fire Department secured the area and blocked off the street in the
8 immediately vicinity of Respondent's residence. The two containers of yellow liquid were
9 removed from the residence and placed in the street in order to mitigate any damage from a
10 potential explosion due to the flammable gas the yellow liquid was emitting. The Fire
11 Department then ensured the flammable gas evaporated safely.

12 13. Respondent told DEA agents that KM lived with her at her residence and that KM's
13 son had previously lived at the residence with them until he moved out approximately 8-10
14 months ago. Respondent told DEA agents that KM's son was running the THC extraction
15 operation at her residence. Respondent admitted to the DEA agent that she knew about the THC
16 extraction operation and that she had assisted in the marijuana cultivation.

17 14. Respondent was arrested and booked for violation of California Health and Safety
18 Code sections 11366 (maintaining a place for sale of a controlled substance), 11379
19 (manufacturing of a controlled substance) and 11358 (cultivation of marijuana).

20 15. On or about March 30, 2015, Respondent entered into a Deferred Prosecution
21 Agreement in the case of the *United States of America v. Wendy Re Brody*, United States District
22 Court, Southern District of California, Case No. 14cr2059-L, wherein prosecution of Respondent
23 was deferred for a period of 60 months for the charge of managing and controlling a place, and
24 making available for use the place, for the purpose of unlawful manufacturing and storing
25 marijuana plants and tetrahydrocannabinols contained in hashish oil. Respondent agreed to pay a
26 \$25,000 forfeiture and abide by the terms and conditions of her pretrial release for a period of 18
27 months.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 (Unprofessional Conduct)

3 16. Respondent is subject to disciplinary action under Code section 4301 in that she
4 engaged in unprofessional conduct when she made her residence available for use and allowed
5 the unlawful manufacture and storage of marijuana plants and tetrahydrocannabinols at her
6 residence, and for assisting in the cultivation of the marijuana plants. The circumstances are set
7 forth in detail in paragraphs 11 through 15, above, and are incorporated herein by reference.

8 **SECOND CAUSE FOR DISCIPLINE**

9 (Unprofessional Conduct: Possession of a Controlled Substance Without a Prescription)

10 17. Respondent is subject to discipline for unprofessional conduct under Code section
11 4301(o) in that on or about June 2, 2014, Respondent possessed a controlled substance without a
12 prescription in violation of Code section 4060, when she kept and stored marijuana plants and
13 tetrahydrocannabinols in her home. The circumstances are set forth in detail in paragraphs 11
14 through 15, above, and are incorporated herein by reference.

15 **PRAYER**

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

- 18 1. Revoking or suspending Pharmacist License Number RPH 42050, issued to Wendy
19 Re Brody;
- 20 2. Ordering Wendy Re Brody to pay the Board of Pharmacy the reasonable costs of the
21 investigation and enforcement of this case, pursuant to Business and Professions Code section
22 125.3; and
- 23 3. Taking such other and further action as deemed necessary and proper.

24
25 DATED: _____

5/3/16

Virginia Herold

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