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

11 In the Matter of the Petition to Revoke
12 Probation Against:

13 **GARY MICHAEL WARNECKE**
14 4005 San Antonio Road
Yorba Linda, CA 92686

15 Pharmacist License No. 38265

16 Respondent.
17

Case No. 3205

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

18 **FINDINGS OF FACT**

19 1. On or about April 16, 2009, Complainant Virginia Herold, in her official capacity as
20 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Petition
21 to Revoke Probation No. 3205 against Gary Michael Warnecke (Respondent) before the Board of
22 Pharmacy.

23 2. On or about November 3, 1983, the Board of Pharmacy (Board) issued Pharmacist
24 License No. 38265 to Respondent. The Pharmacist License expired on December 28, 2007, and
25 has not been renewed.

26 3. On or about April 29, 2009, Mona S. Sebastian, an employee of the Department of
27 Justice, served by Certified and First Class Mail a copy of the Petition to Revoke Probation No.
28 3205, Statement to Respondent, Notice of Defense, Request for Discovery, and Government

1 Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board,
2 which was and is 4005 San Antonio Road, Yorba Linda, CA 92686.

3 A copy of the Petition to Revoke Probation is attached as Exhibit A, and is incorporated
4 herein by reference.

5 4. Service of the Petition to Revoke Probation was effective as a matter of law under the
6 provisions of Government Code section 11505, subdivision (c).

7 5. Business and Professions Code section 118 states, in pertinent part:

8 (b) The suspension, expiration, or forfeiture by operation of law of a license issued by a
9 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by
10 order of a court of law, or its surrender without the written consent of the board, shall not, during
11 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
12 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
13 provided by law or to enter an order suspending or revoking the license or otherwise taking
14 disciplinary action against the license on any such ground.

15 6. Government Code section 11506 states, in pertinent part:

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

20 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
21 of the Petition to Revoke Probation, and therefore waived his right to a hearing on the merits of
22 Petition to Revoke Probation No. 3205.

23 8. California Government Code section 11520 states, in pertinent part:

24 (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the
25 agency may take action based upon the respondent's express admissions or upon other evidence
26 and affidavits may be used as evidence without any notice to respondent.

27 9. Pursuant to its authority under Government Code section 11520, the Board finds
28 Respondent is in default. The Board will take action without further hearing and, based on the

1 evidence on file herein, finds that the allegations in Petition to Revoke Probation No. 3205 are
2 true.

3 10. The total cost for investigation and enforcement in connection with the Petition to
4 Revoke Probation are \$1,355.25 as of June 8, 2008.

5 **DETERMINATION OF ISSUES**

6 1. Based on the foregoing findings of fact, Respondent Gary Michael Warnecke has
7 subjected his Pharmacist License No. 38265 to discipline.

8 2. A copy of the Petition to Revoke Probation is attached.

9 3. The agency has jurisdiction to adjudicate this case by default.

10 4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacist License
11 based upon the following violations of probation alleged in the Petition to Revoke Probation:

12 a. Failure to report to the Board (Condition No. 3);

13 b. Failure to appear for scheduled interviews with the Board (Condition No. 4);

14 c. Failure to cooperate with Board staff (Condition No. 5);

15 d. Failure to reimburse the Board its costs (Condition No. 9);

16 e. Failure to maintain an active license (Condition No. 11); and

17 f. Failure to participate in the Pharmacists Recovery Program (Condition No. 17).

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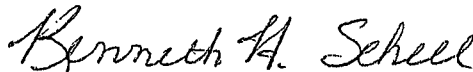
1 **ORDER**

2 IT IS SO ORDERED that Pharmacist License No. 38265, heretofore issued to Respondent
3 Gary Michael Warnecke, is revoked.

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

8 This Decision shall become effective on October 15, 2009.

9 It is so ORDERED September 15, 2009.

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13 KENNETH H. SCHELL, BOARD PRESIDENT
14 FOR THE BOARD OF PHARMACY
15 DEPARTMENT OF CONSUMER AFFAIRS

16
17 Attachment:

18 Exhibit A: Petition to Revoke Probation No.3205

19
20 DOJ docket number:SD2008802236

Exhibit A

Petition to Revoke Probation No. 3205

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 KATHLEEN B.Y. LAM, State Bar No. 95379
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8 Attorneys for Complainant

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

12 In the Matter of the Petition to Revoke Probation
Against:

Case No. 3205

13 GARY MICHAEL WARNECKE
14 4005 San Antonio Road
Yorba Linda, CA 92686

**PETITION TO REVOKE
PROBATION**

15 Pharmacist License No. 38265.

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

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

23 **LICENSE HISTORY**

24 2. On or about November 3, 1983, the Board of Pharmacy issued Pharmacist
25 License Number 38265 to Gary Michael Warnecke (Respondent).

26 3. In a prior disciplinary action entitled "*In the Matter of Accusation Against*
27 *Gary Michael Warnecke*," Case No. 2851, the Board of Pharmacy issued a decision, effective
28 July 11, 2007, in which Respondent's Pharmacist License was revoked. However, the revocation

1 was stayed. Respondent's license was suspended for ninety (90) days and placed on probation for
2 a period of five (5) years with certain terms and conditions, including successful participation in
3 the Pharmacists Recovery Program. A copy of that decision is attached as Exhibit A and is
4 incorporated by reference.

5 4. Respondent's Pharmacist License expired on or about November 30, 2007
6 and was not renewed. Said license was suspended by the Board on or about December 28, 2007.

7 **JURISDICTION**

8 5. This Petition to Revoke Probation is brought before the Board of
9 Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws.
10 All section references are to the Business and Professions Code unless otherwise indicated.

11 6. Section 4300 of the Code states:

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

13
14 (d) The board may initiate disciplinary proceedings to revoke or suspend
15 any probationary certificate of licensure for any violation of the terms and
16 conditions of probation. Upon satisfactory completion of probation, the board
shall convert the probationary certificate to a regular certificate, free of conditions.

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

20 7. Section 118, subdivision (b), of the Code provides that the suspension,
21 expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to
22 proceed with a disciplinary action during the period within which the license may be renewed,
23 restored, reissued or reinstated.

24 8. California Code of Regulations, title 16, section 1773 states:

25 (a) Unless otherwise directed by the Board in its sole discretion, any
26 pharmacist who is serving a period of probation shall comply with the following
conditions:

27 (1) Obey all laws and regulations substantially related to the
28 practice of Pharmacy;

1 (2) Report to the Board or its designee quarterly either in person or
2 in writing as directed; the report shall include the name and address of the
3 probationer's employer. If the final probation report is not made as directed, the
4 period of probation shall be extended until such time as the final report is made;

5 (3) Submit to peer review if deemed necessary by the Board;

6 (4) Provide evidence of efforts to maintain skill and knowledge as
7 a pharmacist as directed by the Board;

8 (5) Inform all present and prospective employers of license
9 restrictions and terms of probation. Probationers employed by placement agencies
10 must inform all permittees in whose premises they work of license restrictions and
11 terms of probation.

12 (6) Not supervise any registered interns nor perform any of the
13 duties of a preceptor;

14 (7) The period of probation shall not run during such time that the
15 probationer is engaged in the practice of pharmacy in a jurisdiction other than
16 California.

17 (b) If ordered by the Board in an administrative action or agreed upon in
18 the stipulated settlement of an administrative action, any registered pharmacist
19 who is serving a period of probation shall comply with any or all of the following
20 conditions;

21 (1) Take and pass all or any sections of the pharmacist licensure
22 examination and/or attend continuing education courses in excess of the required
23 number in specific areas of practice if directed by the Board;

24 (2) Provide evidence of medical or psychiatric care if the need for
25 such care is indicated by the circumstances leading to the violation and is directed
26 by the Board;

27 (3) Allow the Board to obtain samples of blood or urine (at the
28 pharmacist's option) for analysis at the pharmacist's expense, if the need for such a
procedure is indicated by the circumstances leading to the violation and is directed
by the Board;

(4) If and as directed by the Board, practice only under the
supervision of a pharmacist not on probation to the Board. The supervision
directed may be continuous supervision, substantial supervision, partial
supervision, or supervision by daily review as deemed necessary by the Board for
supervision, partial supervision, or supervision by daily review as deemed
necessary by the Board for the protection of the public health and safety.

(c) When the circumstances of the case so require, the Board may impose
conditions of probation in addition to those enumerated herein by the terms of its
decision in an administrative case or by stipulation of the parties.

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1 FIRST CAUSE TO REVOKE PROBATION

2 (Reporting to the Board)

3 9. At all times after the effective date of Respondent's probation, Condition 3
4 stated:

5 Respondent shall report to the Board quarterly. The report shall be made
6 either in person or in writing, as directed. Respondent shall state under penalty of
7 perjury whether there has been compliance with all the terms and conditions of
8 probation. If the final probation report is not made as directed, probation shall be
9 extended automatically until such time as the final report is made and accepted by
10 the Board.

11 10. Respondent's probation is subject to revocation because he failed to
12 submit quarterly reports that were due on October 10, 2007 and January 10, 2008 in violation of
13 Probation Condition 3, referenced above.

14 SECOND CAUSE TO REVOKE PROBATION

15 (Interview With the Board)

16 11. At all times after the effective date of Respondent's probation, Condition 4
17 stated:

18 Upon receipt of reasonable notice, Respondent shall appear in person for
19 interviews with the Board upon request at various intervals at a location to be
20 determined by the Board. Failure to appear for a scheduled interview without
21 prior notification to Board staff shall be considered a violation of probation.

22 12. Respondent's probation is subject to revocation because he failed to
23 appear for scheduled interviews with the Board on November 20, 2007 and January 22, 2008, in
24 violation of Probation Condition 3, referenced above. Respondent was informed of the
25 scheduled interviews in writing and did not contact the Board to reschedule the interviews.

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1 THIRD CAUSE TO REVOKE PROBATION

2 (Cooperation With Board Staff)

3 13. At all times after the effective date of Respondent's probation, Condition 5
4 stated:

5 Respondent shall cooperate with the Board's inspectional program and in
6 the Board's monitoring and investigation of Respondent's compliance with the
7 terms and conditions of his probation. Failure to comply shall be considered a
8 violation of probation.

9 14. Respondent's probation is subject to revocation because he failed to
10 cooperate with the Board's staff in that Respondent did not return numerous telephone calls left
11 at two contact numbers for Respondent, and failed to respond to correspondence, in violation of
12 Probation Condition 5, referenced above.

13 FOURTH CAUSE TO REVOKE PROBATION

14 (Reimbursement of Board Costs)

15 15. At all times after the effective date of Respondent's probation, Condition 9
16 stated:

17 Respondent shall pay to the Board its costs of investigation and
18 prosecution in the amount of \$8,000. Respondent shall make quarterly payments
19 until the costs are paid in full.

20 The filing of bankruptcy by Respondent shall not relieve Respondent of
21 his responsibility to reimburse the Board its costs of investigation and
22 prosecution.

23 16. Respondent's probation is subject to revocation because he failed to make
24 any payments towards Board costs in violation of Probation Condition 9, referenced above.

25 FIFTH CAUSE TO REVOKE PROBATION

26 (Status of License)

27 17. At all times after the effective date of Respondent's probation, Condition
28 11 stated:

Respondent shall, at all times while on probation, maintain an active
current license with the Board, including any period during which suspension or
probation is tolled.

///

1 If Respondent's license expires or is canceled by operation of law or
2 otherwise, upon renewal or reapplication, Respondent's license shall be subject to
all terms and conditions of this probation not previously satisfied.

3 18. Respondent's probation is subject to revocation because he failed to renew
4 his license prior to its expiration on November 30, 2007, in violation of Probation Condition 11,
5 referenced above.

6 **SIXTH CAUSE TO REVOKE PROBATION**

7 **(Rehabilitation Program - Pharmacists Recovery Program)**

8 19. At all times after the effective date of Respondent's probation, Condition
9 17 stated:

10 Within 30 days of the effective date of this decision, Respondent shall
11 contact the Pharmacists Recovery Program for evaluation and shall successfully
12 participate in and complete the treatment contract and any subsequent addendums
as recommended and provided by the PRP and as approved by the Board. The
costs for PRP participation shall be borne by the Respondent.

13 If Respondent is currently enrolled in the PRP, said participation is now
14 mandatory and is no longer considered a self-referral under Business and
Professions Code section 4363, as of the effective date of this decision.
15 Respondent shall successfully participate in and complete his current contract and
any subsequent addendums with the PRP. Probation shall be automatically
16 extended until Respondent successfully completes his treatment contract. Any
person terminated from the program shall be automatically suspended upon notice
17 by the Board. Respondent may not resume the practice of pharmacy until notified
by the Board in writing. The Board shall retain jurisdiction to institute action to
18 terminate probation for any violation of this term.

19 20. Respondent's probation is subject to revocation because he failed to
20 successfully complete the Pharmacists Recovery Program (PRP) in violation of Probation
21 Condition 17, referenced above. The facts and circumstances regarding this violation are as
22 follows:

23 a. On or about September 23, 2007, Respondent stopped calling
24 Compass Vision for Random Body Fluid Testing (RBFT), and missed RBFT's scheduled for
25 September 25, 2007 and October 20, 2007.

26 b. Respondent failed to return the PRP recovery contract that was due
27 on October 29, 2007.

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c. Respondent failed to return telephone calls to either Compass Vision or Maximus, the entity who oversees the Board's PRP program;

d. On or about October 31, 2007, Respondent stated in a telephone conversation with his PRP case manager that he was withdrawing from the Maximus program to pursue teaching.

e. Respondent failed to submit a letter to Maximus with regards to his withdrawal from the PRP as directed by his case manager.

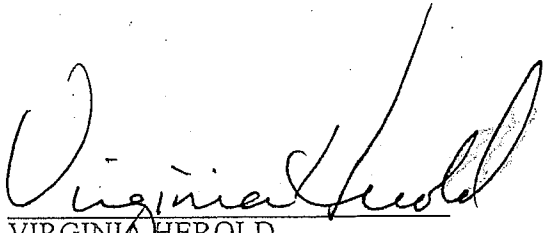
f. On or about November 13, 2007, Respondent was terminated from the PRP with Maximus for non-compliance.

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 the probation that was granted by the Board of Pharmacy in Case No. 2851 and imposing the disciplinary order that was stayed thereby revoking Pharmacist License No. 38265 issued to Gary Michael Warnecke;
2. Revoking Pharmacist License No. 38265, issued to Gary Michael Warnecke;
3. Taking such other and further action as deemed necessary and proper.

DATED: 4/16/09



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

Exhibit A
Decision and Order
Board of Pharmacy Case No. 3205

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of the State of California
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9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

12 GARY WARNECKE
13 4005 San Antonio Road
Yorba Linda, CA 92686

14 Pharmacist License No. 38265

15 Respondent.

Case No. 2851
OAH No. L-2005110117

16 **STIPULATED SETTLEMENT AND**
DISCIPLINARY ORDER

17
18 In the interest of a prompt and speedy settlement of this matter, consistent with the public
19 interest and the responsibility of the Board of Pharmacy, the parties hereby agree to the following
20 Stipulated Settlement and Disciplinary Order which will be submitted to the Board for approval
21 and adoption as the final disposition of the Accusation.

22 PARTIES

23 1. At the time the Accusation was filed, Patricia F. Harris "Complainant"
24 was the Executive Officer of the Board of Pharmacy. She brought this action solely in her
25 official capacity and is represented in this matter by Bill Lockyer, Attorney General of the
26 of California, by Kathleen B.Y. Lam, Deputy Attorney General.

27 2. Respondent Gary Warnecke ("Respondent") is represented in this
28 proceeding by attorney Michael F. Burns, whose address is 3842 Myers Street, Riverside, CA

1 92503.

2 3. On or about November 3, 1983, the Board of Pharmacy issued Pharmacist License
3 No. 38265 to Respondent Gary Warnecke. The license was in full force and effect at all times
4 relevant to the charges brought in Accusation No. 2851, and will expire on November 30, 2007,
5 unless renewed.

6 JURISDICTION

7 4. Accusation No. 2851 was filed before the Board of Pharmacy, and is
8 currently pending against Respondent. The Accusation and all other statutorily required
9 documents were properly served on Respondent on October 14, 2005. Respondent timely filed
10 his Notice of Defense contesting the Accusation. A copy of Accusation No. 2851 is attached as
11 Exhibit A and incorporated herein by reference.

12 ADVISEMENT AND WAIVERS

13 5. Respondent has carefully read, fully discussed with counsel, and
14 understands the charges and allegations in Accusation No. 2851. Respondent has also carefully
15 read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and
16 Disciplinary Order.

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

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

26 CULPABILITY

27 8. Respondent admits the truth of each and every charge and allegation in
28 Accusation No. 2851.

1 pharmacy. Respondent shall not perform the duties of a pharmacy technician or an exemptee for
2 any entity licensed by the Board. Subject to the above restrictions, Respondent may continue to
3 own or hold an interest in any pharmacy in which he holds an interest at the time this decision
4 becomes effective unless otherwise specified in this order.

5 2. Obey All Laws. Respondent shall obey all state and federal laws and
6 regulations substantially related to or governing the practice of pharmacy.

7 Respondent shall report any of the following occurrences to the Board, in writing,
8 within 72 hours of such occurrence:

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

19 3. Reporting to the Board. Respondent shall report to the Board
20 quarterly. The report shall be made either in person or in writing, as directed. Respondent
21 shall state under penalty of perjury whether there has been compliance with all the terms and
22 conditions of probation. If the final probation report is not made as directed, probation shall
23 be extended automatically until such time as the final report is made and accepted by the
24 Board.

25 4. Interview with the Board. Upon receipt of reasonable notice,
26 Respondent shall appear in person for interviews with the Board upon request at various
27 intervals at a location to be determined by the Board. Failure to appear for a scheduled
28 interview without prior notification to Board staff shall be considered a violation of probation.

1 5. **Cooperation with Board Staff.** Respondent shall cooperate with the
2 Board's inspectional program and in the Board's monitoring and investigation of Respondent's
3 compliance with the terms and conditions of his probation. Failure to comply shall be
4 considered a violation of probation.

5 6. **Continuing Education.** Respondent shall provide evidence of efforts
6 to maintain skill and knowledge as a pharmacist as directed by the Board.

7 7. **Notice to Employers.** Respondent shall notify all present and
8 prospective employers of the decision in case number 2851 and the terms, conditions and
9 restrictions imposed on Respondent by the decision. Within 30 days of the effective date of
10 this decision, and within 15 days of Respondent undertaking new employment, Respondent
11 shall cause his direct supervisor, pharmacist-in-charge and/or owner to report to the Board in
12 writing acknowledging the employer has read the decision in case number 2851.

13 If Respondent works for or is employed by or through a pharmacy employment
14 service, Respondent must notify the direct supervisor, pharmacist-in-charge, and/or owner at
15 every pharmacy of the and terms conditions of the decision in case number 2851 in advance of
16 the Respondent commencing work at each pharmacy.

17 "Employment" within the meaning of this provision shall include any full-time, part-
18 time, temporary, relief or pharmacy management service as a pharmacist, whether the
19 Respondent is considered an employee or independent contractor.

20 8. **No Preceptorships, Supervision of Interns, Being Pharmacist-in-
21 Charge (PIC), or Serving as a Consultant.** Respondent shall not supervise any intern
22 pharmacist or perform any of the duties of a preceptor, nor shall Respondent be the
23 pharmacist-in-charge of any entity licensed by the Board unless otherwise specified in this
24 order.

25 9. **Reimbursement of Board Costs.** Respondent shall pay to the Board
26 its costs of investigation and prosecution in the amount of \$8,000. Respondent shall make
27 quarterly payments until the costs are paid in full.

28 The filing of bankruptcy by Respondent shall not relieve Respondent of his

1 responsibility to reimburse the Board its costs of investigation and prosecution.

2 10. **Probation Monitoring Costs.** Respondent shall pay the costs
3 associated with probation monitoring as determined by the Board each and every year of
4 probation. Such costs shall be payable to the Board at the end of each year of probation.
5 Failure to pay such costs shall be considered a violation of probation.

6 11. **Status of License.** Respondent shall, at all times while on probation,
7 maintain an active current license with the Board, including any period during which
8 suspension or probation is tolled.

9 If Respondent's license expires or is cancelled by operation of law or otherwise,
10 upon renewal or reapplication, Respondent's license shall be subject to all terms and
11 conditions of this probation not previously satisfied.

12 12. **License Surrender while on Probation/Suspension.** Following
13 the effective date of this decision, should Respondent cease practice due to retirement or
14 health, or be otherwise unable to satisfy the terms and conditions of probation, Respondent
15 may tender his license to the Board for surrender. The Board shall have the discretion whether
16 to grant the request for surrender or take any other action it deems appropriate and reasonable.
17 Upon formal acceptance of the surrender of the license, Respondent will no longer be subject
18 to the terms and conditions of probation.

19 Upon acceptance of the surrender, Respondent shall relinquish his pocket
20 license to the Board within 10 days of notification by the Board that the surrender is accepted.
21 Respondent may not reapply for any license from the Board for three years from the effective
22 date of the surrender. Respondent shall meet all requirements applicable to the license sought
23 as of the date the application for that license is submitted to the Board.

24 13. **Notification of Employment/Mailing Address Change.** Respondent
25 shall notify the Board in writing within 10 days of any change of employment. Said
26 notification shall include the reasons for leaving and/or the address of the new employer,
27 supervisor or owner and work schedule if known. Respondent shall notify the Board in
28 writing within 10 days of a change in name, mailing address or phone number.

1 14. **Tolling of Probation.** Should Respondent, regardless of residency, for
2 any reason cease practicing pharmacy for a minimum of 40 hours per calendar month in
3 California, Respondent must notify the Board in writing within 10 days of cessation of the
4 practice of pharmacy or the resumption of the practice of pharmacy. Such periods of time
5 shall not apply to the reduction of the probation period. It is a violation of probation for
6 Respondent's probation to remain tolled pursuant to the provisions of this condition for a
7 period exceeding three years.

8 "Cessation of practice" means any period of time exceeding 30 days in which
9 Respondent is not engaged in the practice of pharmacy as defined in Section
10 4052 of the Business and Professions Code."

11 15. **Violation of Probation.** If Respondent violates probation in any
12 respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke
13 probation and carry out the disciplinary order which was stayed. If a petition to revoke
14 probation or an accusation is filed against Respondent during probation, the Board shall have
15 continuing jurisdiction and the period of probation shall be extended, until the petition to
16 revoke probation or accusation is heard and decided.

17 - If Respondent has not complied with any term or condition of probation, the
18 Board shall have continuing jurisdiction over Respondent, and probation shall automatically
19 be extended until all terms and conditions have been satisfied or the Board has taken other
20 action as deemed appropriate to treat the failure to comply as a violation of probation, to
21 terminate probation, and to impose the penalty which was stayed.

22 16. **Completion of Probation.** Upon successful completion of probation,
23 Respondent's license will be fully restored.

24 17. **Rehabilitation Program - Pharmacists Recovery Program (PRP).**
25 Within 30 days of the effective date of this decision, Respondent shall contact the Pharmacists
26 Recovery Program for evaluation and shall successfully participate in and complete the
27 treatment contract and any subsequent addendums as recommended and provided by the PRP
28 and as approved by the Board. The costs for PRP participation shall be borne by the

1 Respondent.

2 If Respondent is currently enrolled in the PRP, said participation is now
3 mandatory and is no longer considered a self-referral under Business and Professions Code
4 section 4363, as of the effective date of this decision. Respondent shall successfully
5 participate in and complete his current contract and any subsequent addendums with the PRP.
6 Probation shall be automatically extended until Respondent successfully completes his
7 treatment contract. Any person terminated from the program shall be automatically suspended
8 upon notice by the Board. Respondent may not resume the practice of pharmacy until notified
9 by the Board in writing. The Board shall retain jurisdiction to institute action to terminate
10 probation for any violation of this term.

11 **18. Random Drug Screening.** Respondent, at his own expense, shall
12 participate in random testing, including but not limited to biological fluid testing (urine,
13 blood), breathalyzer, hair follicle testing, or a drug screening program approved by the Board.
14 The length of time shall be for the entire probation period and the frequency of testing will be
15 determined by the Board. At all times Respondent shall fully cooperate with the Board, and
16 shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics,
17 hypnotics, dangerous drugs or other controlled substances. Failure to submit to testing as
18 directed shall constitute a violation of probation. Any confirmed positive drug test shall result
19 in the immediate suspension of practice by Respondent. Respondent may not resume the
20 practice of pharmacy until notified by the Board in writing.

21 **19. Abstain from Drugs and Alcohol Use.** Respondent shall completely
22 abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their
23 associated paraphernalia except when the drugs are lawfully prescribed by a licensed
24 practitioner as part of a documented medical treatment. Upon request of the Board,
25 Respondent shall provide documentation from the licensed practitioner that the prescription
26 was legitimately issued and is a necessary part of the treatment of the Respondent.

27 **20. Supervised Practice.** Respondent shall practice only under the
28 supervision of a pharmacist not on probation with the Board. Respondent shall not practice

1 until the supervisor is approved by the Board. The supervision shall be, as required by the
2 Board, either:

3 Continuous - 75% to 100% of a work week

4 Substantial - At least 50% of a work week

5 Partial - At least 25% of a work week

6 Daily Review - Supervisor's review of probationer's daily activities within 24
7 hours

8 Within 30 days of the effective date of this decision, Respondent shall have his supervisor
9 submit notification to the Board in writing stating the supervisor has read the decision in case
10 number 2851 and is familiar with the level of supervision as determined by the Board.

11 If Respondent changes employment, Respondent shall have his new supervisor,
12 within 15 days after employment commences, submit notification to the Board in writing
13 stating the direct supervisor and pharmacist-in-charge have read the decision in case number
14 2851 and is familiar with the level of supervision as determined by the Board.

15 Within 10, days of leaving employment, Respondent shall notify the Board in
16 writing.

17 21. **No Ownership of Premises.** Respondent shall not own, have any legal
18 or beneficial interest in, or serve as a manager, administrator, member, officer, director,
19 associate, or partner of any business, firm, partnership, or corporation currently or hereinafter
20 licensed by the Board. Respondent shall sell or transfer any legal or beneficial interest in any
21 entity licensed by the Board within 90 days following the effective date of this decision and
22 shall immediately thereafter provide written proof thereof to the Board.

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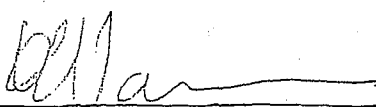
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ACCEPTANCE

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

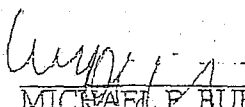
DATED: 7/12/06



GARY WARNECKE
Respondent

I have read and fully discussed with Respondent Gary Warnecke the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 7/13/06



MICHAEL F. BURNS
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy.

DATED: 9/13/06

BILL LOCKYER, Attorney General
of the State of California



KATHLEEN B.Y. LAM
Deputy Attorney General

Attorneys for Complainant

DOJ Matter ID: SD2005700362
70068516.wpd

Exhibit A

Accusation No. 2851

1 BILL LOCKYER, Attorney General
of the State of California
2 RICHARD D. GARSKE, State Bar No. 50569
Supervising Deputy Attorney General
3 California Department of Justice
110 West "A" Street, Suite 1100
4 San Diego, CA 92101

5 P.O. Box 85266
San Diego, CA 92186-5266
6 Telephone: (619) 645-2075
Facsimile: (619) 645-2061

7 Attorneys for Complainant

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

11
12 In the Matter of the Accusation Against:
13 GARY WARNECKE
4005 San Antonio Rd
14 Yorba Linda, CA 92686
15 RPH No. 38265
16 Respondent.

Case No. 2851

ACCUSATION

17
18 Complainant alleges:

19 PARTIES

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

23 2. On or about November 3, 1983, the Board of Pharmacy issued Original
24 Pharmacist License No. RPH 38265 to Gary Warnecke (Respondent). The original pharmacist
25 license was in full force and effect at all times relevant to the charges brought herein and will
26 expire on November 30, 2005, unless renewed.

27 ///

28 ///

1 8. This Accusation is also brought before the Board under the authority of
2 the following sections of the California Health and Safety Code:

3 A. Health and Safety Code section 11170 provides:

4 No person shall prescribe, administer, or furnish a controlled substance for
5 himself.

6 B. Health and Safety Code section 11171 provides:

7 No person shall prescribe, administer, or furnish a controlled substance
8 except under the conditions and in the manner provided by this division.

9 C. Health and Safety Code section 11173 (a) provides:

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

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

18 10. DRUG CLASSIFICATIONS

19 A. Vicodin is a brand name for Hydrocodone/APAP, a pain
20 medication, classified as a Schedule III controlled substance per Health and
21 Safety Code Section 11056(e)(4), and a dangerous drug per Business and
22 Professions Code section 4022.

23 B. Fioricet is a brand name for Butalbital/APAP, a pain medication,
24 classified as a Schedule IV controlled substance per Health and Safety Code
25 Section 11057(d)(2), and a dangerous drug per Business and Professions Code
26 section 4022.

27 C. Penicillin is a generic name for oral antibiotics, an anti-infection
28 agent and a dangerous drug per Business and Professions Code section
4022.

1 D. Ibuprofen is a generic name for an anti-inflammatory agent and a
2 dangerous drug per Business and Professions Code section 4022.
3

4 CHARGES AND ALLEGATIONS

5 11. On or about and between February 2004 and May 2004, Respondent
6 served as the Director of Pharmacy at the Coastal Communities Hospital in Santa Ana,
7 California.

8 12. On or about and between February 2004 and May 2004, Pharmacy
9 Director, Respondent, took controlled substances Vicodin and Fioricet, as well as oral
10 antibiotics and anti-inflammatory drugs from his employer Coastal Community Hospital.

11 13. In or about December 2004, pharmacy staff at Coastal Community
12 Hospital noted inventory discrepancies with drugs including hydrocodone, modafinil and
13 butalbital. The staff reported it to Respondent, the Director of Pharmacy.

14 14. On or about May 7, 2004, Respondent placed hydrocodone in his pocket at
15 the pharmacy and left the pharmacy. In the parking lot of the pharmacy Respondent was found by
16 the Coastal Community Hospital Security Operations to have hydrocodone on his person.

17 15. On or about May 7, 2004, Respondent was unable to explain a finding by
18 Respondent's employer of approximately 35 hydrocodone tablets, 52 butalbital tablets, and 5
19 empty packets of hydrocodone in Respondent's desk at the Coastal Community Hospital.

20 16. On or about May 13, 2004, Respondent's employment at Coastal
21 Community Hospital was terminated due to the unexplained drugs found on Respondent's person
22 in the hospital parking lot, and in his desk at the hospital.

23 17. On or about August 6, 2004, the Board Inspector sent a letter to
24 Respondent requesting an explanation of the above incidents which were undergoing an
25 investigation by the Board.

26 18. On or about August 20, 2004, a letter response dated August 15, 2004
27 ending in a signature over Respondent's name, was received by the Board. The letter included, in
28 part, the following statements: "The drugs found in my office were hydrocodone (Vicodin) and

1 Fioricet (butalbital). Those were the only controlled substances that I removed although I had
2 been removing them throughout the course of my employment there." "I had also removed small
3 quantities of oral antibiotics and anti-inflammatory agents over time for personal and family use."
4 "These drugs were taken for personal use."

5
6 FIRST CAUSE FOR DISCIPLINE

7 (Unprofessional Conduct: Moral Turpitude, Dishonesty, Fraud,
8 Deceit, or Corruption - § 4301(f))

9 19. Respondent is subject to disciplinary action under section 4301(f) for
10 moral turpitude, dishonesty, fraud, and deceit in that he created a fraudulent scheme to obtain
11 controlled substances and dangerous drugs, as more particularly alleged above and incorporated
12 herein by reference.

13 SECOND CAUSE FOR DISCIPLINE

14 (Unprofessional Conduct: Violation of Controlled Substance Law -
15 § 4301(j) + H&S §§ 11170, 11171, & 11173(a))

16 20. Respondent is subject to disciplinary action under section 4301(j) in
17 conjunction with Health and Safety Code sections 11170, 11171, and 11173(a) in that he violated
18 Health and Safety Code sections 11170, 11171, and 11173(a) by illegally obtaining controlled
19 substances, as more particularly alleged above and incorporated herein by reference.

20 THIRD CAUSE FOR DISCIPLINE

21 (Unprofessional Conduct: Unauthorized Furnishing -
22 § 4301(o) + § 4059 (a))

23 21. Respondent is subject to disciplinary action under section 4301(o) in
24 conjunction with 4059 (a) in that he furnished¹ dangerous drugs without the prescription of a
25 physician, as more particularly alleged above and incorporated herein by reference.

26
27
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¹ " 'Furnish' means to supply by any means, by sale or otherwise." (Code § 4026.)

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:

A. Revoking or suspending RPH Number 38265, issued to Gary Warnecke;

B. Ordering Gary Warnecke 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;

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

DATED: 9/28/05

P. J. Harris

PATRICIA F. HARRIS
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California

Complainant