

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

In the Matter of the Accusation Against:

Case No. 3343

JUDITH L. ROSENZWEIG
4060 Fourth Avenue, Suite 110
San Diego, CA 92103

Pharmacist License No. RPH 47399

Respondent.

DECISION AND ORDER

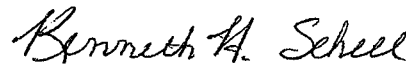
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on January 28, 2010.

It is so ORDERED on December 29, 2009.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



KENNETH H. SCHELL
Board President

1. EDMUND G. BROWN JR.
Attorney General 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:

Case No. 3343

12 **JUDITH LENA ROSENZWEIG**
13 **4060 Fourth Avenue, Suite 110**
14 **San Diego, CA 92103**

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

15 **Pharmacist License No. RPH 47399**

16 Respondent.

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 of the Department of Consumer Affairs,
20 the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will
21 be submitted to the Board for approval and adoption as the final disposition of the Accusation.

22 PARTIES

23 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
24 She brought this action solely in her official capacity and is represented in this matter by Edmund
25 G. Brown Jr., Attorney General of the State of California, by Loretta A. West, Deputy Attorney
26 General.

1 CULPABILITY

2 8. Respondent admits the truth of each and every charge and allegation in Accusation
3 No. 3343.

4 9. Respondent agrees that her Pharmacist License is subject to discipline and she agrees
5 to be bound by the Board of Pharmacy's imposition of discipline as set forth in the Disciplinary
6 Order below.

7 RESERVATION

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

12 CONTINGENCY

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

22 12. The parties understand and agree that facsimile copies of this Stipulated Settlement
23 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
24 effect as the originals.

25 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
26 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
27 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
28 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary

1 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
2 writing executed by an authorized representative of each of the parties.

3 14. In consideration of the foregoing admissions and stipulations, the parties agree that
4 the Board may, without further notice or formal proceeding, issue and enter the following
5 Disciplinary Order:

6 **DISCIPLINARY ORDER**

7 IT IS HEREBY ORDERED that Pharmacist License No. RPH 47399 issued to Respondent
8 Judith Lena Rosenzweig is revoked. However, the revocation is stayed and Respondent is placed
9 on probation for three (3) years on the following terms and conditions.

10 1. **Obey All Laws**

11 Respondent shall obey all state and federal laws and regulations. Respondent shall report
12 any of the following occurrences to the Board, in writing, within seventy-two (72) hours of such
13 occurrence:

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

24 Failure to timely report such occurrence shall be considered a violation of probation.

25 2. **Report to the Board**

26 Respondent shall report to the Board quarterly, on a schedule as directed by the Board or its
27 designee. The report shall be made either in person or in writing, as directed. Among other
28 requirements, Respondent shall state in each report under penalty of perjury whether there has

1 been compliance with all the terms and conditions of probation. Failure to submit timely reports
2 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency
3 in submission of reports as directed may be added to the total period of probation. Moreover, if
4 the final probation report is not made as directed, probation shall be automatically extended until
5 such time as the final report is made and accepted by the Board.

6 **3. Interview with the Board**

7 Upon receipt of reasonable prior notice, Respondent shall appear in person for interviews
8 with the Board or its designee, at such intervals and locations as are determined by the Board or
9 its designee. Failure to appear for any scheduled interview without prior notification to Board
10 staff, or failure to appear for two (2) or more scheduled interviews with the Board or its designee
11 during the period of probation, shall be considered a violation of probation.

12 **4. Cooperate with Board Staff**

13 Respondent shall cooperate with the Board's inspection program and with the Board's
14 monitoring and investigation of Respondent's compliance with the terms and conditions of her
15 probation. Failure to cooperate shall be considered a violation of probation.

16 **5. Continuing Education**

17 Respondent shall provide evidence of efforts to maintain skill and knowledge as a
18 pharmacist as directed by the Board or its designee.

19 **6. Notice to Employers**

20 During the period of probation, Respondent shall notify all present and prospective
21 employers of the Board's Decision and Order in case number 3343 and the terms, conditions and
22 restrictions imposed on Respondent by the decision, as follows:

23 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
24 Respondent undertaking any new employment, Respondent shall cause her direct supervisor,
25 pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's
26 tenure of employment) and owner to report to the Board in writing acknowledging that the listed
27 individual(s) has/have read the decision in case number 3343, and terms and conditions imposed
28

1 thereby. It shall be Respondent's responsibility to ensure that her employer(s) and/or
2 supervisor(s) submit timely acknowledgment(s) to the Board.

3 If Respondent works for or is employed by or through a pharmacy employment service,
4 Respondent must notify her direct supervisor, pharmacist-in-charge, and owner at every entity
5 licensed by the Board of the terms and conditions of the decision in case number 3343 in advance
6 of the Respondent commencing work at each licensed entity. A record of this notification must
7 be provided to the Board upon request.

8 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
9 (15) days of Respondent undertaking any new employment by or through a pharmacy
10 employment service, Respondent shall cause her direct supervisor with the pharmacy
11 employment service to report to the Board in writing acknowledging that she has read the Board's
12 Decision and Order in case number 3343 and the terms and conditions imposed thereby. It shall
13 be Respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely
14 acknowledgment(s) to the Board.

15 Failure to timely notify present or prospective employer(s) or to cause that/those
16 employer(s) to submit timely acknowledgments to the Board shall be considered a violation of
17 probation.

18 "Employment" within the meaning of this provision shall include any full-time,
19 part-time, temporary, relief or pharmacy management service as a pharmacist or any
20 position for which a pharmacist license is a requirement or criterion for employment,
21 whether the Respondent is an employee, independent contractor or volunteer.

22 **7. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as**
23 **Designated Representative-in-Charge, or Serving as a Consultant**

24 During the period of probation, Respondent shall not supervise any intern pharmacist, be
25 the pharmacist-in-charge or designated representative-in-charge of any entity licensed by the
26 Board nor serve as a consultant unless otherwise specified in this order. Assumption of any such
27 unauthorized supervision responsibilities shall be considered a violation of probation.

28 ///

1 **8. Reimbursement of Board Costs**

2 As a condition precedent to successful completion of probation, Respondent shall pay to the
3 Board its costs of investigation and prosecution in the amount of \$4,133.00 (four thousand one
4 hundred thirty three dollars). Respondent may make payments as provided by Respondent's
5 probation monitor.

6 There shall be no deviation from this schedule absent prior written approval by the Board or
7 its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of
8 probation.

9 The filing of bankruptcy by Respondent shall not relieve Respondent of her responsibility
10 to reimburse the Board its costs of investigation and prosecution.

11 **9. Probation Monitoring Costs**

12 Respondent shall pay any costs associated with probation monitoring as determined by the
13 Board each and every year of probation. Such costs shall be payable to the Board on a schedule
14 as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as directed
15 shall be considered a violation of probation.

16 **10. Status of License**

17 Respondent shall, at all times while on probation, maintain an active, current license with
18 the Board, including any period during which suspension or probation is tolled. Failure to
19 maintain an active, current license shall be considered a violation of probation.

20 If Respondent's license expires or is cancelled by operation of law or otherwise at any time
21 during the period of probation, including any extensions thereof due to tolling or otherwise, upon
22 renewal or reapplication Respondent's license shall be subject to all terms and conditions of this
23 probation not previously satisfied.

24 **11. License Surrender While on Probation/Suspension**

25 Following the effective date of this decision, should Respondent cease practice due to
26 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
27 Respondent may tender her license to the Board for surrender. The Board or its designee shall
28 have the discretion whether to grant the request for surrender or take any other action it deems

1 appropriate and reasonable. Upon formal acceptance of the surrender of the license, Respondent
2 will no longer be subject to the terms and conditions of probation. This surrender constitutes a
3 record of discipline and shall become a part of the Respondent's license history with the Board.

4 Upon acceptance of the surrender, Respondent shall relinquish her pocket and wall license
5 to the Board within ten (10) days of notification by the Board that the surrender is accepted.
6 Respondent may not reapply for any license from the Board for three (3) years from the effective
7 date of the surrender. Respondent shall meet all requirements applicable to the license sought as
8 of the date the application for that license is submitted to the Board, including any outstanding
9 costs.

10 **12. Notification of a Change in Name, Residence Address, Mailing Address or**
11 **Employment**

12 Respondent shall notify the Board in writing within ten (10) days of any change of
13 employment. Said notification shall include the reasons for leaving, the address of the new
14 employer, the name of the supervisor and owner, and the work schedule if known. Respondent
15 shall further notify the Board in writing within ten (10) days of a change in name, residence
16 address, mailing address, or phone number.

17 Failure to timely notify the Board of any change in employer(s), name(s), address(es), or
18 phone number(s) shall be considered a violation of probation.

19 **13. Tolling of Probation**

20 Except during periods of suspension, Respondent shall, at all times while on probation, be
21 employed as a pharmacist in California for a minimum of forty (40) hours per calendar month.
22 Any month during which this minimum is not met shall toll the period of probation, i.e., the
23 period of probation shall be extended by one month for each month during which this minimum is
24 not met. During any such period of tolling of probation, Respondent must nonetheless comply
25 with all terms and conditions of probation.

26 Should Respondent, regardless of residency, for any reason (including vacation) cease
27 practicing as a pharmacist for a minimum of forty (40) hours per calendar month in California,
28 Respondent must notify the Board in writing within ten (10) days of the cessation of practice, and

1 must further notify the Board in writing within ten (10) days of the resumption of practice. Any
2 failure to provide such notification(s) shall be considered a violation of probation.

3 It is a violation of probation for Respondent's probation to remain tolled pursuant to the
4 provisions of this condition for a total period, counting consecutive and non-consecutive months,
5 exceeding thirty-six (36) months.

6 "Cessation of practice" means any calendar month during which Respondent is
7 not practicing as a pharmacist for at least forty (40) hours, as defined by Business and
8 Professions Code section 4000 et seq. "Resumption of practice" means any calendar
9 month during which Respondent is practicing as a pharmacist for at least forty (40)
10 hours as a pharmacist as defined by Business and Professions Code section 4000
11 et seq.

12 14. Violation of Probation

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

18 If Respondent violates probation in any respect, the Board, after giving Respondent notice
19 and an opportunity to be heard, the Board may revoke probation and carry out the disciplinary
20 order (revocation) that was stayed. Notice and opportunity to be heard are not required for those
21 provisions stating that a violation thereof may lead to automatic termination of the stay and/or
22 revocation of the license. If a petition to revoke probation or an accusation is filed against
23 Respondent during probation, the Board shall have continuing jurisdiction and the period of
24 probation shall be automatically extended until the petition to revoke probation or accusation is
25 heard and decided.

26 15. Completion of Probation

27 Upon written notice by the Board or its designee indicating successful completion of
28 probation, Respondent's license will be fully restored.

1 **16. Medical Evaluation**

2 Within thirty (30) days of the effective date of this decision, and on a periodic basis
3 thereafter as may be required by the Board or its designee, Respondent shall undergo a medical
4 evaluation, at Respondent's own expense, by a Board-appointed or Board-approved physician
5 who shall furnish a medical report to the Board. The approved physician shall be provided with a
6 copy of the Board's Accusation and decision. A record of this notification must be provided to the
7 Board upon request. Respondent shall sign a release authorizing the physician to furnish the
8 Board with a current diagnosis and a written report regarding the Respondent's ability to function
9 independently as a pharmacist with safety to the public. Respondent shall comply with all the
10 recommendations of the physician if directed by the Board or its designee.

11 If the physician recommends, and the Board or its designee directs, that Respondent
12 undergo medical treatment, Respondent shall, within thirty (30) days of written notice from the
13 Board, submit to the Board or its designee, for prior approval, the name and qualifications of a
14 licensed physician of Respondent's choice. Within thirty (30) days of approval thereof,
15 Respondent shall submit documentation to the Board demonstrating the commencement of
16 treatment with the approved physician. Should Respondent, for any reason, cease treatment with
17 the approved physician, Respondent shall notify the Board immediately and, within thirty (30)
18 days of ceasing treatment, submit the name of a replacement physician of Respondent's choice to
19 the Board or its designee for prior approval. Within thirty (30) days of approval thereof,
20 Respondent shall submit documentation to the Board demonstrating the commencement of
21 treatment with the approved replacement. Failure to comply with any deadline stated by this
22 paragraph shall be considered a violation of probation.

23 Upon approval of the initial or any subsequent physician, Respondent shall undergo and
24 continue treatment with that physician, at Respondent's own expense, until the treating physician
25 recommends in writing to the Board, and the Board or its designee agrees by way of a written
26 notification to Respondent, that no further treatment is necessary. Upon receipt of such
27 recommendation from the treating physician, and before determining whether to accept or reject
28 said recommendation, the Board or its designee may require Respondent to undergo, at

1 Respondent's own expense, a medical evaluation by a separate Board-appointed or Board-
2 approved physician. If the approved evaluating physician recommends that Respondent continue
3 treatment, the Board or its designee may require Respondent to continue treatment.

4 Respondent shall take all necessary steps to ensure that any treating physician submits
5 written quarterly reports to the Board concerning Respondent's fitness to practice, progress in
6 treatment, and other such information as may be required by the Board or its designee.

7 If at any time an approved evaluating physician or Respondent's approved treating
8 physician determines that Respondent is unable to practice safely or independently as a
9 pharmacist, the evaluating or treating physician shall notify the Board immediately by telephone
10 and follow up by written letter within three (3) working days. Upon notification from the Board
11 or its designee of this determination, Respondent shall be automatically suspended and shall not
12 resume practice until notified by the Board that practice may be resumed.

13 During suspension, Respondent shall not enter any pharmacy area or any portion of the
14 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
15 drugs which is licensed by the Board, or any manufacturer, or where dangerous drugs and devices
16 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
17 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
18 consultation; nor shall Respondent manage, administer, or be a consultant to any licensee of the
19 Board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
20 and controlled substances. Respondent shall not resume practice until notified by the Board.

21 During suspension, Respondent shall not engage in any activity that requires the
22 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
23 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
24 designated representative for any entity licensed by the Board.

25 Subject to the above restrictions, Respondent may continue to own or hold an interest in
26 any licensed premises in which she holds an interest at the time this decision becomes effective
27 unless otherwise specified in this order.

28 Failure to comply with this suspension shall be considered a violation of probation.

1 **17. Pharmacists Recovery Program (PRP)**

2 Within thirty (30) days of the effective date of this decision, Respondent shall contact the
3 Pharmacists Recovery Program (PRP) for evaluation, and shall immediately thereafter enroll,
4 successfully participate in, and complete the treatment contract and any subsequent addendums as
5 recommended and provided by the PRP and as approved by the Board or its designee. The costs
6 for PRP participation shall be borne by the Respondent.

7 If Respondent is currently enrolled in the PRP, said participation is now mandatory and as
8 of the effective date of this decision is no longer considered a self-referral under Business and
9 Professions Code section 4362(c) (2). Respondent shall successfully participate in and complete
10 her current contract and any subsequent addendums with the PRP.

11 Failure to timely contact or enroll in the PRP, or successfully participate in and complete
12 the treatment contract and/or any addendums, shall be considered a violation of probation.

13 Probation shall be automatically extended until Respondent successfully completes the
14 PRP. Any person terminated from the PRP program shall be automatically suspended by the
15 Board. Respondent may not resume the practice of pharmacy until notified by the Board in
16 writing.

17 Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a
18 licensed practitioner as part of a documented medical treatment shall result in the automatic
19 suspension of practice by Respondent and shall be considered a violation of probation.
20 Respondent may not resume the practice of pharmacy until notified by the Board in writing.

21 During suspension, Respondent shall not enter any pharmacy area or any portion of the
22 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
23 drugs which is licensed by the Board, or any manufacturer, or where dangerous drugs and devices
24 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
25 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
26 consultation; nor shall Respondent manage, administer, or be a consultant to any licensee of the
27 Board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
28 and controlled substances. Respondent shall not resume practice until notified by the Board.

1 During suspension, Respondent shall not engage in any activity that requires the
2 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
3 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
4 designated representative for any entity licensed by the Board.

5 Subject to the above restrictions, Respondent may continue to own or hold an interest in
6 any licensed premises in which she holds an interest at the time this decision becomes effective
7 unless otherwise specified in this order.

8 Failure to comply with this suspension shall be considered a violation of probation.

9 Respondent shall pay administrative fees as invoiced by the PRP or its designee. Fees not
10 timely paid to the PRP shall constitute a violation for probation. The Board will collect unpaid
11 administrative fees as part of the annual probation monitoring costs if not submitted to the PRP.

12 18. Random Drug Screening

13 Respondent, at her own expense, shall participate in random testing, including but not
14 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug
15 screening program as directed by the Board or its designee. Respondent may be required to
16 participate in testing for the entire probation period and the frequency of testing will be
17 determined by the Board or its designee. At all times, Respondent shall fully cooperate with the
18 Board or its designee, and shall, when directed, submit to such tests and samples for the detection
19 of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the Board or
20 its designee may direct. Failure to timely submit to testing as directed shall be considered a
21 violation of probation. Upon request of the Board or its designee, Respondent shall provide
22 documentation from a licensed practitioner that the prescription for a detected drug was
23 legitimately issued and is a necessary part of the treatment of the Respondent. Failure to timely
24 provide such documentation shall be considered a violation of probation. Any confirmed positive
25 test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a
26 documented medical treatment shall be considered a violation of probation and shall result in the
27 automatic suspension of practice of pharmacy by Respondent. Respondent may not resume the
28 practice of pharmacy until notified by the Board in writing.

1 During suspension, Respondent shall not enter any pharmacy area or any portion of the
2 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
3 drugs which is licensed by the Board, or any manufacturer, or where dangerous drugs and devices
4 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
5 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
6 consultation; nor shall Respondent manage, administer, or be a consultant to any licensee of the
7 Board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
8 and controlled substances. Respondent shall not resume practice until notified by the Board.

9 During suspension, Respondent shall not engage in any activity that requires the
10 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
11 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
12 designated representative for any entity licensed by the Board.

13 Subject to the above restrictions, Respondent may continue to own or hold an interest in
14 any licensed premises in which she holds an interest at the time this decision becomes effective
15 unless otherwise specified in this order.

16 Failure to comply with this suspension shall be considered a violation of probation.

17 **19. Abstain from Drugs and Alcohol Use**

18 Respondent shall completely abstain from the possession or use of alcohol, controlled
19 substances, dangerous drugs and their associated paraphernalia except when the drugs are
20 lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon
21 request of the Board or its designee, Respondent shall provide documentation from the licensed
22 practitioner that the prescription for the drug was legitimately issued and is a necessary part of the
23 treatment of the Respondent. Failure to timely provide such documentation shall be considered a
24 violation of probation. Respondent shall ensure that she is not in the same physical location as
25 individuals who are using illicit substances even if Respondent is not personally ingesting the
26 drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia
27 not supported by the documentation timely provided, and/or any physical proximity to persons
28 using illicit substances, shall be considered a violation of probation.

1 **20. Remedial Education**

2 Within sixty (60) days of the effective date of this decision, Respondent shall submit to the
3 Board or its designee, for prior approval, an appropriate program of remedial education related to
4 the grounds for discipline. The program of remedial education shall consist of at least 20
5 (twenty) hours, which shall be completed within two (2) years at Respondent's own expense. All
6 remedial education shall be in addition to, and shall not be credited toward, continuing education
7 (CE) courses used for license renewal purposes.

8 Failure to timely submit or complete the approved remedial education shall be considered a
9 violation of probation. The period of probation will be automatically extended until such
10 remedial education is successfully completed and written proof, in a form acceptable to the
11 Board, is provided to the Board or its designee.

12 Following the completion of each course, the Board or its designee may require the
13 Respondent, at her own expense, to take an approved examination to test the Respondent's
14 knowledge of the course. If the Respondent does not achieve a passing score on the examination,
15 this failure shall be considered a violation of probation. Any such examination failure shall
16 require Respondent to take another course approved by the Board in the same subject area.

17 **21. Supervised Practice**

18 During the period of probation, Respondent shall practice only under the supervision of a
19 licensed pharmacist not on probation with the Board. Upon and after the effective date of this
20 decision, Respondent shall not practice pharmacy and her license shall be automatically
21 suspended until a supervisor is approved by the Board or its designee. The supervision shall be,
22 as required by the Board or its designee, either:

23 Continuous – At least 75% of a work week

24 Substantial - At least 50% of a work week

25 Partial - At least 25% of a work week

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

27 Within thirty (30) days of the effective date of this decision, Respondent shall have her
28 supervisor submit notification to the Board in writing stating that the supervisor has read the

1 decision in case number 3343 and is familiar with the required level of supervision as determined
2 by the Board or its designee. It shall be the Respondent's responsibility to ensure that her
3 employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the
4 Board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
5 acknowledgements to the Board shall be considered a violation of probation.

6 If Respondent changes employment, it shall be the Respondent's responsibility to ensure
7 that her employer(s), pharmacist-in-charge and/or supervisor(s) submit timely
8 acknowledgement(s) to the Board. Respondent shall have her new supervisor, within fifteen (15)
9 days after employment commences, submit notification to the Board in writing stating the direct
10 supervisor and pharmacist-in-charge have read the Board's Decision and Order in case number
11 3343 and is familiar with the level of supervision as determined by the Board. Respondent shall
12 not practice pharmacy and her license shall be automatically suspended until the Board or its
13 designee approves a new supervisor. Failure to cause the direct supervisor and the pharmacist-in-
14 charge to submit timely acknowledgements to the Board shall be considered a violation of
15 probation.

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

17 During suspension, Respondent shall not enter any pharmacy area or any portion of the
18 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
19 drugs which is licensed by the Board, or any manufacturer, or where dangerous drugs and devices
20 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
21 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
22 consultation; nor shall Respondent manage, administer, or be a consultant to any licensee of the
23 Board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
24 and controlled substances. Respondent shall not resume practice until notified by the Board.

25 During suspension, Respondent shall not engage in any activity that requires the
26 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
27 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
28 designated representative for any entity licensed by the Board.

1 Subject to the above restrictions, Respondent may continue to own or hold an interest in
2 any licensed premises in which she holds an interest at the time this decision becomes effective
3 unless otherwise specified in this order.

4 Failure to comply with this suspension shall be considered a violation of probation.

5 **22. No Ownership of Licensed Premises**

6 Respondent shall not own, have any legal or beneficial interest in, or serve as a manager,
7 administrator, member, officer, director, trustee, associate, or partner of any business, firm,
8 partnership, or corporation currently or hereinafter licensed by the Board. Respondent shall sell
9 or transfer any legal or beneficial interest in any entity licensed by the Board within ninety (90)
10 days following the effective date of this decision and shall immediately thereafter provide written
11 proof thereof to the Board. Failure to timely divest any legal or beneficial interest(s) or provide
12 documentation thereof shall be considered a violation of probation.

13 **23. Ethics Course**

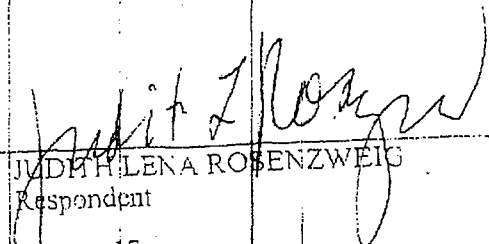
14 Within sixty (60) calendar days of the effective date of this decision, Respondent shall
15 enroll in a course in ethics, at Respondent's expense, approved in advance by the Board or its
16 designee. Failure to initiate the course during the first year of probation, and complete it within
17 the second year of probation, is a violation of probation.

18 Respondent shall submit a certificate of completion to the Board or its designee within five
19 days after completing the course.

20 ACCEPTANCE

21 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
22 discussed it with my attorney, Jonathan A. Klein. I understand the stipulation and the effect it
23 will have on my Pharmacist License. I enter into this Stipulated Settlement and Disciplinary
24 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
25 of the Board of Pharmacy.

26
27 DATED: 10/16/09



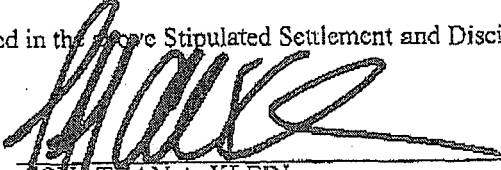
JUDITH LENA ROSENZWEIG
Respondent

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I have read and fully discussed with Respondent Judith Lena Rosenzweig the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.

I approve its form and content.

DATED: 10/13/09



JONATHAN A. KLEIN
Attorney for Respondent

ENDORSEMENT

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

Dated: _____

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General

LORETTA A. WEST
Deputy Attorney General
Attorneys for Complainant

rf

1 I have read and fully discussed with Respondent Judith Lena Rosenzweig the terms and
2 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
3 I approve its form and content.

4 DATED: _____

JONATHAN A. KLEIN
Attorney for Respondent

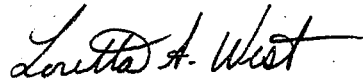
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7 ENDORSEMENT

8 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
9 submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

10 Dated: October 9, 2009

Respectfully Submitted,

11
12 EDMUND G. BROWN JR.
Attorney General of California
13 LINDA K. SCHNEIDER
Supervising Deputy Attorney General

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15 
16 LORETTA A. WEST
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 3343 Against Judith Lena Rosenzweig

1 EDMUND G. BROWN JR.
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 LORETTA A. WEST
Deputy Attorney General
4 State Bar No. 149294
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2107
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 3343

12 **JUDITH LENA ROSENZWEIG**
13 **4060 Fourth Avenue, Suite 110**
14 **San Diego, CA 92103**
Pharmacist License No. RPH 47399

ACCUSATION

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about August 5, 1994, the Board of Pharmacy issued Pharmacist License
22 Number RPH 47399 to Judith Lena Rosenzweig (Respondent). The Pharmacist License was in
23 full force and effect at all times relevant to the charges brought herein and will expire on March 1,
24 2010, unless renewed.

25 **JURISDICTION**

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

1 4. Code section 4300 provides that the Board may discipline the holder of a pharmacist
2 license.

3 5. Code section 118(b) provides that the expiration of a license shall not deprive the
4 Board of jurisdiction to proceed with a disciplinary. Code section 4402 provides that a
5 pharmacist license may be renewed at anytime within three years of its expiration.

6 **STATUTORY PROVISIONS**

7 6. Section 4301 of the Code states:

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

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

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

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

17 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
18 abetting the violation of or conspiring to violate any provision or term of this
19 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
20 federal regulatory agency.

21 7. Code section 4059 provides that a person may not furnish any dangerous drug except
22 upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic
23 doctor pursuant to Section 3640.7.

24 **DANGEROUS DRUGS**

25 8. Code section 4022

26 'Dangerous drug' or 'dangerous device' means any drug or device unsafe for
27 self- use in humans or animals, and includes the following:
28

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

3
4 (c) Any other drug or device that by federal or state law can be lawfully
5 dispensed only on prescription or furnished pursuant to Section 4006.

6 9. Tramadol is a generic drug for the patented drug Ultram. Tramadol is a pain
7 reliever, requires a valid prescription and, is a dangerous drug pursuant to Business and
8 Professions Code section 4022.

9
10 COST RECOVERY

11 10. Code section 125.3 provides that the Board may request the administrative law judge
12 to direct a licentiate found to have committed a violation or violations of the licensing act to pay a
13 sum not to exceed the reasonable costs of the investigation and enforcement of the case.

14 FACTS

15 11. On or about March 28, 2008, and on other unknown occasions during the
16 preceding year, while employed and working as a pharmacist for Longs Drugs,
17 Respondent re-filled a prescription for Tramadol for a patient who was Respondent's co-
18 worker, even though the co-worker had not made any request for a re-fill. After
19 Respondent processed the prescription, Respondent paid for it and kept it for herself,
20 without the knowledge or consent of her co-worker, whose name was indicated on the
21 prescription bottle as the patient. During the processing of the prescription, Respondent
22 initialed the prescription label to verify that the prescription was properly filled for the
23 named patient, pursuant to the request from the named patient. Respondent signed her
24 own name on the pharmacy's dispensing signature log to indicate that she was authorized
25 to, and did receive the prescription for the named patient on the patient's behalf, when in
26 fact, Respondent purchased the prescription for her own personal use without
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1 of the named patient. Respondent then self-administered the Tramadol. Respondent did
2 not have a valid prescription for Tramadol for herself.

3 **FIRST CAUSE FOR DISCIPLINE**
4 **(Unprofessional Conduct: Illegal Possession of Dangerous Drugs)**

5 12. Respondent is subject to disciplinary action under section 4301, subdivision (j), in
6 that she violated Code section 4059 by furnishing the dangerous drug Tramadol to herself without
7 a valid prescription, as described above at paragraph 11.

8 **SECOND CAUSE FOR DISCIPLINE**
9 **(Unprofessional Conduct: Obtain Prescription by False Representation)**

10 13. Respondent is subject to disciplinary action under section 4301, subdivision (g), in
11 that she knowingly made or signed a document that falsely represented that the patient had
12 requested a refill of the prescription drug, Tramadol, and that Respondent was authorized to
13 receive the patient's prescription, when she was not, as described above in paragraph 11.

14 **THIRD CAUSE FOR DISCIPLINE**
15 **(Unprofessional Conduct: Dishonesty, Fraud or Deceit)**

16 14. Respondent's pharmacist license is subject to disciplinary action under section 4301,
17 subdivision (f), in that she committed acts involving moral turpitude, dishonesty, fraud or deceit
18 as follows: while working as a pharmacist, Respondent processed a prescription for her own
19 illegitimate personal use, even though the prescription refill was prescribed for someone other
20 than Respondent, and the prescribed patient had not authorized or consented to the prescription
21 refill. Respondent then obtained the prescription refill without the prescribed patient's
22 authorization or consent. Respondent possessed and self-administered the dangerous drugs
23 without a valid prescription, as described above in paragraph 11.

24 **PRAYER**

25 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
26 and that following the hearing, the Board of Pharmacy issue a decision:
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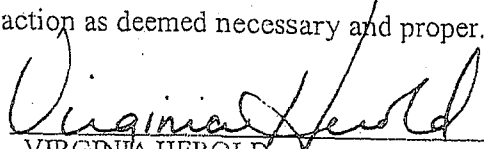
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1. Revoking or suspending Pharmacist License Number RPH 47399, issued to Judith Lena Rosenzweig.

2. Ordering Judith Lena Rosenzweig 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;

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

DATED: 8/17/09



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