

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

In the Matter of the Accusation Against:

Case No. 3797

**FOUR FIFTY SUTTER PHARMACY**

Elaine Chan Owner  
450 Sutter Pharmacy, #710  
San Francisco, CA 94108  
Pharmacy License No. PHY 94108

**BRANDON BRODT**

450 Sutter Pharmacy, #712 7<sup>th</sup> Floor  
San Francisco, CA 94108  
Pharmacist License No. RPH 43082

**ELAINE CHAN**

450 Sutter Pharmacy, #710  
San Francisco, CA 94108  
Pharmacy Technician License No. TCH 36761

Respondents.

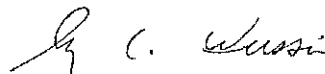
**DECISION AND ORDER**

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 June 20, 2013.

It is so ORDERED on May 21, 2013.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
STANLEY C. WEISSER  
Board President

1 KAMALA D. HARRIS  
Attorney General of California  
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Supervising Deputy Attorney General  
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*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. 3797

12 **FOUR FIFTY SUTTER PHARMACY**  
13 **Elaine Chan Owner**  
14 **450 Sutter Pharmacy, # 710**  
**San Francisco, CA 94108**  
15 **Pharmacy License No. PHY 45225,**

OAH No. 2012020427  
**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER**

16 **BRANDON BRODT**  
17 **450 Sutter Street, #712 7th Floor**  
**San Francisco, California 94108**  
18 **Pharmacist No. RPH 43082,**  
**and**

19 **ELAINE CHAN**  
20 **875 Payne Street**  
**Sunnyvale, CA 94087**  
21 **Pharmacy Technician No. TCH 36761**

22 Respondents.

23  
24 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
25 entitled proceedings that the following matters are true:

26 PARTIES

27 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy  
28 (Board). She brought this action solely in her official capacity and is represented in this matter by

1 Kamala D. Harris, Attorney General of the State of California, by Timothy J. McDonough,  
2 Deputy Attorney General.

3 2. On or about March 7, 2001, the Board issued Pharmacy License No. 45225 to Four  
4 Fifty Sutter Pharmacy (Respondent FFSP). Four Fifty Sutter Pharmacy is owned by Pharmacy  
5 Technician Elaine Chan. The Pharmacy License was in full force and effect at all times relevant  
6 to the charges brought in Accusation No. 3797 and will expire on March 1, 2013, unless renewed.

7 3. On or about March 1, 1990, the Board issued Pharmacist License No. 43082 to  
8 Brandon Brodt (Respondent Brodt). The Pharmacist License was in full force and effect at all  
9 times relevant to the charges brought in Accusation No. 3797 and will expire on January 31,  
10 2014, unless renewed.

11 4. On or about January 2, 2002, the Board of Pharmacy issued Pharmacy Technician  
12 License No. 36761 to Elaine Chan (Respondent Chan). The Pharmacist License was in full force  
13 and effect at all times relevant to the charges brought in Accusation No. 3797 and will expire on  
14 July 31, 2013, unless renewed.

15 All three Respondents are represented in this proceeding by attorney Sandra McIntosh,  
16 whose address is:

17 Trepel, Greenfield, Sullivan & Draa LLP  
18 55 South Market Street  
19 15th Floor  
20 San Jose, CA 95113

20 JURISDICTION

21 5. Accusation No. 3797 was filed before the Board of Pharmacy (Board), Department of  
22 Consumer Affairs, and is currently pending against all Respondents. The Accusation and all  
23 other statutorily required documents were properly served on Respondents on August 22, 2011.  
24 Respondents timely filed a Notice of Defense contesting the Accusation.

25 6. A copy of Accusation No. 3797 is attached as exhibit A and incorporated by  
26 reference.

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1 ADVISEMENT AND WAIVERS

2 7. Respondents have carefully read, fully discussed with counsel, and understand the  
3 charges and allegations in Accusation No. 3797. Respondents have also carefully read, fully  
4 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary  
5 Order.

6 8. Respondents are fully aware of their legal rights in this matter, including the right to a  
7 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at  
8 their own expense; the right to confront and cross-examine the witnesses against them, the right  
9 to present evidence and to testify on their own behalf; the right to the issuance of subpoenas to  
10 compel the attendance of witnesses and the production of documents; the right to reconsideration  
11 and court review of an adverse decision; and all other rights accorded by the California  
12 Administrative Procedure Act and other applicable laws.

13 9. Respondents voluntarily, knowingly, and intelligently waives and gives up each and  
14 every right set forth above.

15 CULPABILITY

16 10. Respondents understand that the charges and allegations in Accusation No. 3797, if  
17 proven at a hearing, constitute cause for imposing discipline upon their Pharmacist, Pharmacy,  
18 and Pharmacy Technician Licenses. For the purpose of resolving the Accusation without the  
19 expense and uncertainty of further proceedings, Respondents agree that, at a hearing,  
20 Complainant could establish a factual basis for the charges in the Accusation and that those  
21 charges constitute cause for discipline. Respondents give up their right to contest that cause for  
22 discipline exists based on those charges.

23 11. Respondent FFSP agrees that its Pharmacy License is subject to discipline and agrees  
24 to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

25 12. Respondent Brodt agrees that his Pharmacist License is subject to discipline and he  
26 agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

27  
28

1 13. Respondent Chan agrees to settle the Accusation against her Pharmacy Technician  
2 License by accepting the issuance of a citation for violating Business and Professions Code  
3 section 4301, subdivision (q).

4 CONTINGENCY

5 14. This stipulation shall be subject to approval by the Board. Respondents understand  
6 and agree that counsel for Complainant and the staff of the Board may communicate directly with  
7 the Board regarding this stipulation and settlement, without notice to or participation by  
8 Respondents or their counsel. By signing the stipulation, Respondents understand and agree that  
9 they may not withdraw their agreement or seek to rescind the stipulation prior to the time the  
10 Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and  
11 Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for  
12 this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall  
13 not be disqualified from further action by having considered this matter.

14 15. The parties understand and agree that facsimile copies of this Stipulated Settlement  
15 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and  
16 effect as the originals.

17 16. This Stipulated Settlement and Disciplinary Order are intended by the parties to be an  
18 integrated writing representing the complete, final, and exclusive embodiment of their agreement.  
19 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,  
20 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary  
21 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a  
22 writing executed by an authorized representative of each of the parties.

23 17. In consideration of the foregoing admissions and stipulations, the parties agree that  
24 the Board may, without further notice or formal proceeding, issue and enter the following  
25 Disciplinary Order:

26 CITATION IN SETTLEMENT FOR RESPONDENT CHAN

27 1. Respondent Chan agrees to settle the Accusation against her Pharmacy Technician  
28 License by accepting the issuance of a citation and fine for violating Business and Professions

1 Code section 4301, subdivision (q). The administrative fine will be \$5,000 and Respondent Chan  
2 will be permitted to make payments on a payment plan approved by the Board to be paid in full  
3 within 24 months of the effective date of this decision. Respondent Chan agrees not to appeal  
4 this citation and fine.

5 **DISCIPLINARY ORDER FOR 450 SUTTER PHARMACY**

6 IT IS HEREBY ORDERED that Pharmacy License No. 45225 issued to Respondent FFSP  
7 is revoked. However, the revocation is stayed and Respondent FFSP is placed on probation for  
8 five (5) years on the following terms and conditions.

9 **1. Obey All Laws**

10 Respondent FFSP shall obey all state and federal laws and regulations.

11 Respondent FFSP's owner shall report any of the following occurrences to the board, in  
12 writing, within seventy-two (72) hours of such occurrence:

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

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

24 **2. Report to the Board**

25 Respondent FFSP's owner shall report to the board quarterly, on a schedule as directed by  
26 the board or its designee. The report shall be made either in person or in writing, as directed.  
27 Among other requirements, Respondent FFSP's owner shall state in each report under penalty of  
28 perjury whether there has been compliance with all the terms and conditions of probation. Failure

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

5 **3. Interview with the Board**

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

11 **4. Cooperate with Board Staff**

12 Respondent FFSP's owner shall cooperate with the board's inspection program and with the  
13 board's monitoring and investigation of respondent's compliance with the terms and conditions of  
14 their probation. Failure to cooperate shall be considered a violation of probation.

15 **5. Reimbursement of Board Costs**

16 As a condition precedent to successful completion of probation, Respondent FFSP's owner  
17 shall pay to the board its costs of investigation and prosecution in the amount of \$14,481.50.  
18 Respondent FFSP shall make payments on a payment plan approved by the Board. There shall be  
19 no deviation from this schedule absent prior written approval by the board or its designee. Failure  
20 to pay costs by the deadline(s) as directed shall be considered a violation of probation.

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

23 **6. Probation Monitoring Costs**

24 Respondent FFSP's owner shall pay any costs associated with probation monitoring as  
25 determined by the Board each and every year of probation. Such costs shall be payable to the  
26 Board on a schedule as directed by the board or its designee. Failure to pay such costs by the  
27 deadline(s) as directed shall be considered a violation of probation.

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1           **7. Status of License**

2           Respondent FFSP shall, at all times while on probation, maintain current licensure with the  
3 Board. If Respondent FFSP's owner submits an application to the Board, and the application is  
4 approved, for a change of location, change of permit or change of ownership, the Board shall  
5 retain continuing jurisdiction over the license, and Respondent FFSP shall remain on probation as  
6 determined by the Board. Failure to maintain current licensure shall be considered a violation of  
7 probation.

8           If Respondent FFSP's license expires or is cancelled by operation of law or otherwise at  
9 any time during the period of probation, including any extensions thereof or otherwise, upon  
10 renewal or reapplication Respondent FFSP license shall be subject to all terms and conditions of  
11 this probation not previously satisfied.

12           **8. License Surrender While on Probation/Suspension**

13           Following the effective date of this decision, should Respondent FFSP's owner discontinue  
14 business, Respondent FFSP's owner may tender the premises license to the Board for surrender.  
15 The Board or its designee shall have the discretion whether to grant the request for surrender or  
16 take any other action it deems appropriate and reasonable. Upon formal acceptance of the  
17 surrender of the license, Respondent FFSP will no longer be subject to the terms and conditions  
18 of probation.

19           Upon acceptance of the surrender, Respondent FFSP's owner shall relinquish the premises  
20 wall and renewal license to the board within ten (10) days of notification by the Board that the  
21 surrender is accepted. Respondent FFSP's owner shall further submit a completed  
22 Discontinuance of Business form according to Board guidelines and shall notify the Board of the  
23 records inventory transfer.

24           Respondent FFSP's owner shall also, by the effective date of this decision, arrange for the  
25 continuation of care for ongoing patients of the pharmacy by, at minimum, providing a written  
26 notice to ongoing patients that specifies the anticipated closing date of the pharmacy and that  
27 identifies one or more area pharmacies capable of taking up the patients' care, and by cooperating  
28 as may be necessary in the transfer of records or prescriptions for ongoing patients. Within five



1 days of its provision to the pharmacy's ongoing patients, Respondent FFSP's owner shall provide  
2 a copy of the written notice to the Board. For the purposes of this provision, "ongoing patients"  
3 means those patients for whom the pharmacy has on file a prescription with one or more refills  
4 outstanding, or for whom the pharmacy has filled a prescription within the preceding sixty (60)  
5 days.

6 Respondent FFSP's owner may not apply for any new licensure from the board for three (3)  
7 years from the effective date of the surrender. Respondent FFSP's owner shall meet all  
8 requirements applicable to the license sought as of the date the application for that license is  
9 submitted to the Board.

10 Respondent FFSP's owner further stipulates that he or she shall reimburse the Board for its  
11 costs of investigation and prosecution prior to the acceptance of the surrender.

#### 12 **9. Notice to Employees**

13 Respondent FFSP's owner shall, upon or before the effective date of this decision, ensure  
14 that all employees involved in permit operations are made aware of all the terms and conditions  
15 of probation, either by posting a notice of the terms and conditions, circulating such notice, or  
16 both. If the notice required by this provision is posted, it shall be posted in a prominent place and  
17 shall remain posted throughout the probation period. Respondent FFSP's owner shall ensure that  
18 any employees hired or used after the effective date of this decision are made aware of the terms  
19 and conditions of probation by posting a notice, circulating a notice, or both. Additionally,  
20 Respondent FFSP's owner shall submit written notification to the Board, within fifteen (15) days  
21 of the effective date of this decision, that this term has been satisfied. Failure to submit such  
22 notification to the Board shall be considered a violation of probation.

23 "Employees" as used in this provision includes all full-time, part-time,  
24 volunteer, temporary and relief employees and independent contractors employed or  
25 hired at any time during probation.

#### 26 **10. Owners and Officers: Knowledge of the Law**

27 Respondent FFSP's owner shall provide, within thirty (30) days after the effective date of  
28 this decision, signed and dated statements from its owners, including any owner or holder of ten

1 percent (10%) or more of the interest in respondent FFSP or respondent FFSP's stock, and any  
2 officer, stating under penalty of perjury that said individuals have read and are familiar with state  
3 and federal laws and regulations governing the practice of pharmacy. The failure to timely  
4 provide said statements under penalty of perjury shall be considered a violation of probation.

5 **11. Posted Notice of Probation**

6 Respondent FFSP's owner shall prominently post a probation notice provided by the board  
7 in a place conspicuous and readable to the public. The probation notice shall remain posted  
8 during the entire period of probation.

9 Respondent FFSP's owner shall not, directly or indirectly, engage in any conduct or make  
10 any statement which is intended to mislead or is likely to have the effect of misleading any  
11 patient, customer, member of the public, or other person(s) as to the nature of and reason for the  
12 probation of the licensed entity.

13 Failure to post such notice shall be considered a violation of probation.

14 **12. Violation of Probation**

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

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

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1           **13. Completion of Probation**

2           Upon written notice by the board or its designee indicating successful completion of  
3 probation, Respondent FFSP's Pharmacy license will be fully restored.

4           **14. Community Services Program**

5           Within sixty (60) days of the effective date of this decision, Respondent FFSP's owner shall  
6 submit to the Board or its designee, for prior approval, a community service program in which  
7 Respondent FFSP shall provide free health-care related services to a community or charitable  
8 facility or agency for at 50 hours per year for each year of probation.

9           Within thirty (30) days of Board approval thereof, Respondent FFSP's owner shall submit  
10 documentation to the Board demonstrating commencement of the community service program.  
11 Respondent FFSP's owner shall report on progress with the community service program in the  
12 quarterly reports.

13           Failure to timely submit, commence, or comply with the program shall be considered a  
14 violation of probation.

15           **15. Separate File of Records**

16           Respondent FFSP shall maintain and make available for inspection a separate file of all  
17 records pertaining to the acquisition or disposition of all controlled substances. Failure to  
18 maintain such file or make it available for inspection shall be considered a violation of probation.

19           **16. Monetary Contribution to Community**

20           Respondent FFSP shall contribute to the general community \$21,000 in free,  
21 pharmacy-related services during the first 2 years of its probationary period. Respondent FFSP's  
22 owner shall report on progress with the monetary contribution to the community in the quarterly  
23 reports. Failure to timely submit, commence, or comply with the program shall be considered a  
24 violation of probation.

25           **DISCIPLINARY ORDER FOR PHARMACIST BRANDON BRODT**

26           IT IS HEREBY ORDERED that Pharmacist License No. 43082 issued to Respondent  
27 Brandon Brodt is revoked. However, the revocation is stayed and Respondent Brodt is placed on  
28 probation for four (4) years on the following terms and conditions.

1           **1. Suspension**

2           As part of probation, Respondent Brodt is suspended from working as a pharmacist for 30  
3 days beginning the effective date of this decision.

4           During suspension, Respondent Brodt shall not enter any pharmacy area or any portion of  
5 the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor  
6 of drugs licensed by the board, or any drug manufacturer, or any other location where dangerous  
7 drugs and devices or controlled substances are maintained. Respondent Brodt shall not perform  
8 any of the duties of a pharmacist, nor do any act involving drug selection, selection of stock,  
9 manufacturing, dispensing; nor shall Respondent Brodt manage, administer, or be a consultant to  
10 any licensee of the board, or have access to or control the ordering, manufacturing or dispensing  
11 of dangerous drugs and devices and controlled substances.

12           Respondent Brodt shall not direct, control or perform any aspect involving the distribution  
13 of dangerous drugs and devices and controlled substances. Subject to the above restrictions,  
14 respondent may continue to own or hold an interest in any licensed entity in which he or she  
15 holds an interest at the time this decision becomes effective unless otherwise specified in this  
16 order.

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

18           **2. Obey All Laws**

19           Respondent shall obey all state and federal laws and regulations.

20           Respondent Brodt shall report any of the following occurrences to the Board, in writing,  
21 within seventy-two (72) hours of such occurrence:

- 22            an arrest or issuance of a criminal complaint for violation of any provision of the  
23 Pharmacy Law, state and federal food and drug laws, or state and federal controlled  
24 substances laws
- 25            an arrest or issuance of a criminal complaint for violation of any state or federal law
- 26            a plea of guilty or nolo contendere in any state or federal criminal proceeding to any  
27 criminal complaint, information or indictment
- 28            a conviction of any crime

1           □ discipline, citation, or other administrative action filed by any state or federal agency  
2           which involves respondent's Pharmacist license or which is related to the practice of  
3           pharmacy or the manufacturing, obtaining, handling or distribution or billing or  
4           charging for of any drug, device or controlled substance.

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

6           **3. Report to the Board**

7           Respondent Brodt shall report to the board quarterly, on a schedule as directed by the Board  
8           or its designee. The report shall be made either in person or in writing, as directed. Among other  
9           requirements, Respondent Brodt shall state in each report under penalty of perjury whether there  
10          has been compliance with all the terms and conditions of probation. Failure to submit timely  
11          reports in a form as directed shall be considered a violation of probation. Any period(s) of  
12          delinquency in submission of reports as directed may be added to the total period of probation.  
13          Moreover, if the final probation report is not made as directed, probation shall be automatically  
14          extended until such time as the final report is made and accepted by the board.

15          **4. Interview with the Board**

16          Upon receipt of reasonable prior notice, Respondent Brodt shall appear in person for  
17          interviews with the Board or its designee, upon request at such intervals and locations as are  
18          determined by the Board or its designee. Failure to appear for any scheduled interview without  
19          prior notification to board staff, or failure to appear for two (2) or more scheduled interviews with  
20          the Board or its designee during the period of probation, shall be considered a violation of  
21          probation.

22          **5. Cooperate with Board Staff**

23          Respondent Brodt shall cooperate with the Board's inspection program and with the Board's  
24          monitoring and investigation of Respondent Brodt's compliance with the terms and conditions of  
25          his probation. Failure to cooperate shall be considered a violation of probation.

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1           **6. Notice to Employers**

2           During the period of probation, Respondent Brodt shall notify all present and prospective  
3 employers of the decision in case number 3797 and the terms, conditions and restrictions imposed  
4 on Respondent Brodt by the decision, as follows:

5           Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of  
6 respondent undertaking any new employment, respondent shall cause his direct supervisor,  
7 designated representative-in-charge (including each new designated representative-in-charge  
8 employed during respondent's tenure of employment), and owner to report to the Board in writing  
9 acknowledging that the listed individual(s) has/have read the decision in case number 3797 and  
10 terms and conditions imposed thereby. It shall be Respondent Brodt's responsibility to ensure  
11 that his employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the board.

12           If Respondent Brodt works for or is employed by or through a pharmacy employment  
13 service, respondent must notify his direct supervisor, designated representative-in-charge and  
14 owner at each entity licensed by the Board of the terms and conditions of the decision in case  
15 number 3797 in advance of the respondent commencing work at each licensed entity. A record of  
16 this notification must be provided to the board upon request.

17           Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen  
18 (15) days of respondent undertaking any new employment by or through a pharmacy employment  
19 service, respondent shall cause his direct supervisor with the pharmacy employment service to  
20 report to the board in writing acknowledging that he has read the decision in case number 3797  
21 and the terms and conditions imposed thereby. It shall be the respondent's responsibility to  
22 ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

23           Failure to timely notify present or prospective employer(s) or to cause that/those  
24 employer(s) to submit timely acknowledgements to the board shall be considered a violation of  
25 probation.

26           "Employment" within the meaning of this provision shall include any full-time,  
27 part-time, temporary or relief service or pharmacy management service as a  
28 designated representative or in any position for which a designated representative

1 license is a requirement or criterion for employment, whether the respondent is  
2 considered an employee or independent contractor or volunteer.

3 **7. No Being Designated Representative-in-Charge**

4 During the period of probation, Respondent Brodt shall not be the designated  
5 representative-in-charge of any entity licensed by the Board unless otherwise specified in this  
6 order. Assumption of any such unauthorized supervision responsibilities shall be considered a  
7 violation of probation.

8 **8. Reimbursement of Board Costs**

9 As a condition precedent to successful completion of probation, Respondent Brodt shall pay  
10 to the Board its costs of investigation and prosecution in the amount of \$3,000. Respondent  
11 Brodt shall make the payments on a payment plan approved by the Board. There shall be no  
12 deviation from this schedule absent prior written approval by the Board or its designee. Failure to  
13 pay costs by the deadline(s) as directed shall be considered a violation of probation.

14 The filing of bankruptcy by Respondent Brodt shall not relieve Respondent Brodt of his  
15 responsibility to reimburse the Board its costs of investigation and prosecution.

16 **9. Probation Monitoring Costs**

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

21 **10. Status of License**

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

25 If Respondent Brodt's Pharmacist license expires or is cancelled by operation of law or  
26 otherwise at any time during the period of probation, including any extensions thereof due to  
27 tolling or otherwise, upon renewal or reapplication respondent's license shall be subject to all  
28 terms and conditions of this probation not previously satisfied.

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

2           Following the effective date of this decision, should Respondent Brodt cease work due to  
3 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,  
4 Respondent Brodt may tender his designated representative license to the Board for surrender.  
5 The Board or its designee shall have the discretion whether to grant the request for surrender or  
6 take any other action it deems appropriate and reasonable. Upon formal acceptance of the  
7 surrender of the license, Respondent Brodt will no longer be subject to the terms and conditions  
8 of probation. This surrender constitutes a record of discipline and shall become a part of  
9 Respondent Brodt's license history with the board.

10           Upon acceptance of the surrender, Respondent Brodt shall relinquish his pharmacist license  
11 to the board within ten (10) days of notification by the board that the surrender is accepted.  
12 Respondent may not reapply for any license, permit, or registration from the board for three (3)  
13 years from the effective date of the surrender. Respondent Brodt shall meet all requirements  
14 applicable to the license sought as of the date the application for that license is submitted to the  
15 Board.

16           **12. Notification of a Change in Name, Residence Address, Mailing Address or**  
17 **Employment**

18           Respondent Brodt shall notify the board in writing within ten (10) days of any change of  
19 employment. Said notification shall include the reasons for leaving and the address of the new  
20 employer, supervisor and owner and work schedule, if known. Respondent shall further notify  
21 the board in writing within ten (10) days of a change in name, residence address and mailing  
22 address, or phone number.

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

25           **13. Tolling of Probation**

26           Except during periods of suspension, Respondent Brodt shall, at all times while on  
27 probation, be employed as a designated representative in California for a minimum of 40 hours  
28 per calendar month. Any month during which this minimum is not met shall toll the period of



1 probation, i.e., the period of probation shall be extended by one month for each month during  
2 which this minimum is not met. During any such period of tolling of probation, Respondent  
3 Brodt must nonetheless comply with all terms and conditions of probation.

4       Should Respondent Brodt, regardless of residency, for any reason (including vacation)  
5 cease working as a designated representative for a minimum of 40 hours in California,  
6 Respondent Brodt must notify the board in writing within ten (10) days of cessation of work and  
7 must further notify the Board in writing within ten (10) days of the resumption of work. Any  
8 failure to provide such notification(s) shall be considered a violation of probation.

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

12       "Cessation of work" means any calendar month during which respondent is not  
13 working as a designated representative for at least 40 hours as a designated  
14 representative as defined by Business and Professions Code section 4053.

15       "Resumption of work" means any calendar month during which respondent is  
16 working as a designated representative for at least 40 hours as a designated  
17 representative as defined by Business and Professions Code section 4053.

#### 18       **14. Violation of Probation**

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

24       If Respondent Brodt violates probation in any respect, the Board, after giving Respondent  
25 Brodt notice and an opportunity to be heard, may revoke probation and carry out the disciplinary  
26 order that was stayed. Notice and opportunity to be heard are not required for those provisions  
27 stating that a violation thereof may lead to automatic termination of the stay and/or revocation of  
28 the license. If a petition to revoke probation or an accusation is filed against Respondent Brodt

1 during probation, the board shall have continuing jurisdiction, and the period of probation shall be  
2 automatically extended, until the petition to revoke probation or accusation is heard and decided.

3 **15. Completion of Probation**

4 Upon written notice by the Board indicating successful completion of probation,  
5 Respondent Brodt's Pharmacist License will be fully restored.

6 **16. No Ownership of Licensed Premises**

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

14 **17. Community Services Program**

15 Within sixty (60) days of the effective date of this decision, Respondent Brodt shall submit  
16 to the Board or its designee, for prior approval, a community service program in which  
17 Respondent Brodt shall provide free health-care related services on a regular basis to a  
18 community or charitable facility or agency for at least 30 hours per year while on probation.  
19 Within thirty (30) days of board approval thereof, Respondent Brodt shall submit documentation  
20 to the board demonstrating commencement of the community service program. A record of this  
21 notification must be provided to the board upon request. Respondent Brodt shall report on  
22 progress with the community service program in the quarterly reports. Failure to timely submit,  
23 commence, or comply with the program shall be considered a violation of probation.

24 **18. Remedial Education**

25 Within sixty (60) days of the effective date of this decision, Respondent Brodt shall submit  
26 to the Board or its designee, for prior approval, an appropriate program of remedial education  
27 related to compounding and record keeping. The program of remedial education shall consist of  
28 at least 10 hours each year for the first three years of Respondent Brodt's probation. The

1 education classes shall be at respondent's own expense. All remedial education shall be in  
2 addition to, and shall not be credited toward, continuing education (CE) courses used for license  
3 renewal purposes.

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

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

14 **19. Consultant for Owner or Pharmacist-In-Charge**

15 During the period of probation, Respondent Brodt shall not supervise any intern pharmacist,  
16 or serve as a consultant to any entity licensed by the board. In the event that the Respondent  
17 Brodt is currently the pharmacist-in-charge of a pharmacy, the pharmacy shall retain an  
18 independent consultant at its own expense who shall be responsible for reviewing pharmacy  
19 operations on a monthly basis for compliance by Respondent Brodt with state and federal laws  
20 and regulations governing the practice of pharmacy and for compliance by Respondent Brodt  
21 with the obligations of a pharmacist-in-charge. The consultant shall be a pharmacist licensed by  
22 and not on probation with the board and whose name shall be submitted to the Board or its  
23 designee, for prior approval. Within thirty (30) days of the effective date of this decision.  
24 Respondent Brodt shall not be a pharmacist-in-charge at more than one pharmacy or at any  
25 pharmacy of which he is not the current PIC. The Board may, in case of an employment change  
26 by respondent or for other reasons as deemed appropriate by the board or its designee, preclude  
27 Respondent Brodt from acting as a pharmacist-in-charge. Failure to timely retain, seek approval  
28 of, or ensure timely reporting by the consultant shall be considered a violation of probation.

1           **20. Tolling of Suspension**

2           During the period of suspension, Respondent Brodt shall not leave California for any period  
3           exceeding ten (10) days, regardless of purpose (including vacation). Any such absence in excess  
4           of the (10) days during suspension shall be considered a violation of probation. Moreover, any  
5           absence from California during the period of suspension exceeding ten (10) days shall toll the  
6           suspension, i.e., the suspension shall be extended by one day for each day over ten (10) days  
7           Respondent Brodt is absent from California. During any such period of tolling of suspension,  
8           Respondent Brodt must nonetheless comply with all terms and conditions of probation.

9           Respondent Brodt must notify the Board in writing within ten (10) days of departure, and  
10          must further notify the board in writing within ten (10) days of return. The failure to provide such  
11          notification(s) shall constitute a violation of probation. Upon such departure and return,  
12          respondent shall not resume the practice of pharmacy until notified by the board that the period of  
13          suspension has been satisfactorily completed.

14           **21. Ethics Course**

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

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

21          ///  
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TO: SANDRA MCINTOSH

ACCEPTED

I have carefully read the above stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Sandra McIntosh. 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:

12/6/12 Brandon Beodj  
BRANDON BEODJ  
Respondent

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Sandra McIntosh. I understand the stipulation and the effect it will have on my Pharmacy. 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:

12/6/12 Elaine O  
ELAINE O  
SUTTER PHARMACY--ELAINE  
THAN OWE  
Respondent

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

DATED:

12/6/12 Elaine O  
ELAINE O  
Respondent

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I have read and fully discussed with Respondents Brandon Brodt, Respondent 450 Sutter Pharmacy, and Respondent Elaine Chan the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 12/6/12 *Sandra R McIntosh*  
Sandra McIntosh  
Attorney for Respondents

ENDORSEMENT

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

Dated: 12-7-12

Respectfully submitted,  
KAMALA D. HARRIS  
Attorney General of California  
DIANN SOKOLOFF  
Supervising Deputy Attorney General

*T. J. McDonough*  
TIMOTHY J. MCDENOUGH  
Deputy Attorney General  
Attorneys for Complainant

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**Exhibit A**

**Accusation No. 3797**

1 KAMALA D. HARRIS  
Attorney General of California  
2 DIANN SOKOLOFF  
Supervising Deputy Attorney General  
3 TIMOTHY J. McDONOUGH  
Deputy Attorney General  
4 State Bar No. 235850  
1515 Clay Street, 20th Floor  
5 P.O. Box 70550  
Oakland, CA 94612-0550  
6 Telephone: (510) 622-2134  
Facsimile: (510) 622-2270  
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 3797

12 **BRANDON BRODT**  
450 Sutter Street, #712 7th Floor.  
13 San Francisco, California 94108  
Pharmacist No. RPH 43082,

**ACCUSATION**

14 **ELAINE CHAN**  
15 **Owner Four Fifty Sutter Pharmacy**  
875 Payne Street  
16 Sunnyvale, CA 94087  
Pharmacy Technician No. TCH 36761,

17 **and**  
18 **FOUR FIFTY SUTTER PHARMACY**  
450 SUTTER STREET, #710  
19 SAN FRANCISCO, CA  
450 Sutter Street, #710  
20 San Francisco, CA 94108  
Pharmacy License No. PHY45225

21 Respondents.

22  
23  
24 Complainant alleges:

25 PARTIES

26 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
27 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.  
28





- 1           "(2) Placing him or her upon probation.  
2           "(3) Suspending his or her right to practice for a period not exceeding one year.  
3           "(4) Revoking his or her license.  
4           "(5) Taking any other action in relation to disciplining him or her as the board in its  
5 discretion may deem proper.

6           ...  
7           "(e) The proceedings under this article shall be conducted in accordance with Chapter 5  
8 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board  
9 shall have all the powers granted therein. The action shall be final, except that the propriety of  
10 the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of  
11 Civil Procedure."

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

16                                   STATUTORY PROVISIONS

17           9. Section 4301 of the Code states, in relevant part:  
18           "The board shall take action against any holder of a license who is guilty of unprofessional  
19 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.  
20 Unprofessional conduct shall include, but is not limited to, any of the following:

21           ...  
22           "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
23 violation of or conspiring to violate any provision or term of this chapter or of the applicable  
24 federal and state laws and regulations governing pharmacy, including regulations established by  
25 the board.

26           ...  
27           "(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the  
28 board."

1 10. Section 4113, subdivision (b) of the Code states, in relevant part:

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

4 11. Section 4077 of the Code states, in relevant part, that except as provided in  
5 subdivisions (b) and (c) of this section, no person shall dispense any dangerous drug upon  
6 prescription except in a container correctly labeled with the information required by Section  
7 4076.

8 12. Section 4076 of the Code states, in relevant part:

9 "(a) A pharmacist shall not dispense any prescription except in a container that meets the  
10 requirements of state and federal law and is correctly labeled with all of the following:

11 ...

12 "(9) The expiration date of the effectiveness of the drug dispensed."

13 REGULATIONS

14 13. California Code of Regulations, title 16, section 1718, states:

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

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

20 14. California Code of Regulations, title 16, section 1735.3, states:

21 "(a) For each compounded drug product, the pharmacy records shall include:

22 "(1) The master formula record.

23 "(2) The date the drug product was compounded.

24 "(3) The identity of the pharmacy personnel who compounded the drug product.

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

26 "(5) The quantity of each component used in compounding the drug product.

27 "(6) The manufacturer and lot number of each component. If the manufacturer name is  
28 demonstrably unavailable, the name of the supplier may be substituted. Exempt from the

1 requirements in this paragraph are sterile products compounded on a one-time basis for  
2 administration within twenty-four hours to an inpatient in a health care facility licensed under  
3 section 1250 of the Health and Safety Code.

4 "(7) The equipment used in compounding the drug product.

5 "(8) A pharmacy assigned reference or lot number for the compounded drug product.

6 "(9) The expiration date of the final compounded drug product.

7 "(10) The quantity or amount of drug product compounded.

8 "(b) Pharmacies shall maintain records of the proper acquisition, storage, and destruction of  
9 chemicals, bulk drug substances, drug products, and components used in compounding.

10 "(c) Chemicals, bulk drug substances, drug products, and components used to compound  
11 drug products shall be obtained from reliable suppliers. The pharmacy shall acquire and retain  
12 any available certificates of purity or analysis for chemicals, bulk drug substances, drug products,  
13 and components used in compounding. Certificates of purity or analysis are not required for drug  
14 products that are approved by the Food and Drug Administration.

15 "(d) Pharmacies shall maintain and retain all records required by this article in the  
16 pharmacy in a readily retrievable form for at least three years from the date the record was  
17 created."

18 15. California Code of Regulations, title 16, section 1735.2 states, in relevant part:

19 ...

20 "(h) Every compounded drug product shall be given an expiration date representing the date  
21 beyond which, in the professional judgment of the pharmacist performing or supervising the  
22 compounding, it should not be used. This "beyond use date" of the compounded drug product  
23 shall not exceed 180 days from preparation or the shortest expiration date of any component in  
24 the compounded drug product, unless a longer date is supported by stability studies of finished  
25 drugs or compounded drug products using the same components and packaging. Shorter dating  
26 than set forth in this subsection may be used if it is deemed appropriate in the professional  
27 judgment of the responsible pharmacist."

28 ///

1 COST RECOVERY

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

6 FACTUAL BACKGROUND

7 *November 25, 2008 Inspection at FFSP.*

8 17. On or about November 25, 2008, Board Investigator Nip conducted an inspection at  
9 Respondent Four Fifty Sutter Pharmacy (FFSP) after the Board received a tip that a technician at  
10 the pharmacy was acting as a pharmacist by checking off prescriptions and consulting with  
11 patients. The complaint also claimed that "root canal powder" was manufactured by Respondent  
12 Elaine Chan (Chan), a pharmacy technician and sole owner of FFSP, at her home without the  
13 supervision of a pharmacist. According to the complaint, the root canal powder was brought back  
14 into the pharmacy to be dispensed to dental offices.<sup>1</sup> During the inspection, Investigator Nip  
15 asked Respondent Chan about the compounding of root canal powder. Respondent Chan said that  
16 the pharmacy had not compounded this product for a long time and denied that any of the product  
17 was made outside of the pharmacy.

18 18. At the conclusion of the inspection, Investigator Nip issued a written notice for non-  
19 compliance based on the following: 1) a prescription with an incorrect expiration date on its label  
20 was in the will call area<sup>2</sup> and ready for patient pick-up; 2) a compounded product was found in  
21 the pharmacy's inventory without a retrievable compounding record and formula during and after  
22 the inspection; 3) a compounded product labeled with a 12 month expiration date from the date of  
23 the preparation date was found in the will call area ready for patient pick-up; (4) numerous  
24 compounded products--with expiration dates beyond the allowable 180 days-- were located on the  
25 compounding shelves and inventory area; (5) lack of a Drug Enforcement Agency (DEA) power

26 <sup>1</sup> The investigation in 2008 did not reveal sufficient evidence to substantiate these  
27 allegations.

28 <sup>2</sup> The will-call area of a pharmacy is the area where prescriptions are waiting to be picked  
up by patients.

1 of attorney for the pharmacist-in-charge, Respondent Brandon Brodt (Brodt), who was not  
2 present during the inspection; and (6) no Theft/Impairment of Licensed Employees policies and  
3 procedures were in place.

4 ***December 15, 2009 and March 16, 2010 Inspections at FFSP***

5 19. On or about December 15, 2009, Board Inspector Barnard went to Respondent FFSP  
6 to conduct another inspection after receiving another complaint about the pharmacy. The  
7 inspectors noticed numerous violations of pharmacy laws. Among those noted was a lack of a  
8 Drug Enforcement Agency (DEA) power of attorney for the pharmacist-in-charge, Respondent  
9 Brandon Brodt (Brodt), who was not present during the inspection. Other violations included a  
10 cluttered and disorganized pharmacy, out-dated chemicals in stock which needed to be  
11 quarantined for destruction, prescriptions left in will-call for over 30 days, labeling errors on  
12 some prescriptions, lack of a DEA Biennial inventory, and a lack of Quality Assurance Review  
13 Reports and documentation. At the end of the inspection, the inspector asked that certain  
14 documents and photographs be sent to her within fourteen days showing corrections to the  
15 various violations of pharmacy laws.

16 20. On December 23, 2009, Respondent Brodt sent a fax to the Board investigator with a  
17 copy of a DEA power of attorney for himself-the pharmacist-in-charge-and a copy of a DEA  
18 biennial inventory dated July 7, 2008. The fax indicated that other corrections would be  
19 addressed in another fax. On January 14, 2010, Inspector Barnard called Respondent Chan to  
20 discuss the missing documentation and on February 10, 2010, Inspector Barnard received some of  
21 the documentation in the mail that she had requested.

22 21. On March 16, 2010, Board Inspectors Barnard and Nip returned to FFSP to see if  
23 certain corrections had been made. Inspector Nip was also investigating an additional complaint  
24 received by the Board. Most of the pharmacy was still cluttered and disorganized and there was  
25 insufficient clear work space for the safe practice of pharmacy. Many mandatory documents  
26 could not be found such as a Community Pharmacy Self-Assessment. Complete compounding  
27 records were not available. Further, certain Quality Assurance Review Reports were missing.

28

1 Inspector Nip found four prescriptions in the will call area with incorrect expiration dates.<sup>3</sup>  
2 Specifically, prescriptions RX 6412288, RX6412289, RX 6412609, RX6412672 had expiration  
3 dates of March 2, 2011, March 2, 2011, March 11, 2011, and March 15, 2011, respectfully.  
4 However, the actual expiration dates for these prescriptions was November 2010, November  
5 2010, July 2010, and December 2010, respectfully. The inspectors found return-to-stock  
6 prescription containers in inventory which were expired. The inspectors noted that the Pharmacy  
7 refridgerator contained expired drugs and chemicals. The backroom refridgerator contained food  
8 along with an H1N1 vaccine and the refridgerator did not contain a thermometer. Before leaving  
9 FFSP, the inspectors provided legal reference information regarding compliance with pharmacy  
10 laws. The inspectors requested missing documentation to be sent to them in three days.  
11 Respondent Brodt sent a facsimile to the inspectors with some of the requested information on  
12 March 17, 2010.

13 22. During the inspection, Inspectors found a handwritten telephone prescription  
14 document for medications (Testosterone injectable and Ambien 10 mg) ordered by Dr. Leonidas  
15 Priest for "office use." Respondent Chan did not know the location of Dr. Priest's office. She  
16 was also unable to provide a valid office phone number for Dr. Priest. When asked about  
17 compounding root canal powder, Respondent Chan indicated that the formula for the product was  
18 very old and that she had not made any for a long time. She admitted she probably did compound  
19 some in the past three years. The inspectors asked for compounding logs for the dental root canal  
20 powder for the last three years, the master formula, and the names of dentists to whom the  
21 compound was sold. The inspectors asked that the documents be sent to them in three days. The  
22 documents were not timely received.

23 *April 29, 2010 Inspection at FFSP*

24 23. On April 29, 2010, Inspector Nip returned to FFSP for a further inspection. Much of  
25 the pharmacy area had been cleared of debris. However, the compounding counter was still  
26 cluttered, contained expired chemicals, and provided insufficient work-space. Inspector Nip was

27 <sup>3</sup> The prescription labels had dates on them which incorrectly extended the dating of the  
28 prescription beyond the manufacturer's expiration date for the product.

1 unable to obtain many documents she requested because Respondent Chan was the only one who  
2 had access to the documentation and she was not present at the time. Some documents were  
3 reviewed. Documents showed that FFSP had dispensed a large amount of medications to Dr.  
4 Priest "for office use" by telephoned prescriptions or pharmacy-generated refill requests.  
5 Inspector Nip could not locate any hand-written prescription document and label from Dr. Priest.  
6 Further, a prescription document and label for root canal cement, dated April 9, 2010, for a  
7 dentist in Newark, CA was located in the will call/on order box of the pharmacy. At the end of  
8 the inspection, Inspector Nip asked that certain documents be forwarded to her. On May 10,  
9 2010, Inspector Nip received some documents she requested from Respondent Chan. The  
10 documents received indicated that seventeen dentists obtained compounded root canal cement  
11 from FFSP within three years of March 16, 2010.

12 **Causes of Discipline-Respondent Brodt as Pharmacist-in-Charge at FFSP.**

13 **FIRST CAUSE FOR DISCIPLINE**  
14 **(Unprofessional Conduct-Failure to Maintain Premises -Safe Practice of Pharmacy)**  
15 **(Bus. & Prof. § 4301(o) and 16 CCR § 1714(b))**

16 24. Respondent Brodt, as Pharmacist-in-Charge of FFSP, has subjected his Pharmacist  
17 License to disciplinary action under Code section 4301, subdivision (o), by violating California  
18 Code of Regulations, title 16, section 1714, subdivision (b), in that he failed to maintain the  
19 pharmacy in a manner suitable for the safe practice of pharmacy. The circumstances are as  
20 follows:

21 25. On December 15, 2009 and March 16, 2010 inspections at FFSP revealed that the  
22 pharmacy was disorganized, dirty and contained insufficient unobstructed space for the safe  
23 practice of pharmacy. The pharmacy sink was dirty and the compounding area was unsanitary.  
24 The work spaces were covered with boxes, paperwork, and trash. The pharmacy dispensing area  
25 was insufficient in size to accommodate two pharmacists and a technician working at the same  
26 time. Further, FFSP stored outdated compounded products, expired chemicals and drugs, and  
27 prescriptions which were 60 days old or older. Pharmacy paperwork was not located during the  
28 inspection due to disorganization.

///





1 29. On or about August 10, 2007, to approximately March 12, 2010, FFSP dispensed  
2 numerous medications to Dr. Priest for "office use." The medications dispensed included  
3 Adipex, Ambien, Delatestryl, Nandrolone Decanoate, Phentermine, Testosterone, and Zolpidem  
4 Tartrate. Dr. Priest would pick up the medications himself and usually pay with cash.  
5 Respondent Chan claimed that Dr. Priest ran a diet clinic. However, during this period of time,  
6 Dr. Priest primarily worked in an emergency department in a medical center in Stockton without  
7 another known office location or office telephone number.

8 **FIFTH CAUSE FOR DISCIPLINE**  
9 **(Unprofessional Conduct-Failure to Verify Legitimacy of Prescriptions)**  
10 **(Bus. & Prof. § 4301(o) and Health and Safety Code § 11153(a))**

11 30. Respondent Brodt, as Pharmacist-in-Charge of FFSP, has subjected his Pharmacist  
12 License to disciplinary action under Code section 4301, subdivision (o), by violating Health and  
13 Safety Code sections 11153, subdivision (a), in that Respondent FFSP dispensed medications to  
14 Dr. Priest which were not for legitimate medical purposes in the usual course of his practice. The  
15 circumstances are as follows:

16 31. On or about August 10, 2007 to approximately March 12, 2010, FFSP dispensed  
17 numerous medications to Dr. Priest for "office use." Many of these medications were in large  
18 quantities not ordinarily needed for "office use." Dr. Priest would pick up the medications  
19 himself and often pay with cash. Respondent Chan claimed that the large quantities of  
20 medications for office use were needed because Dr. Priest ran a diet clinic. The medications  
21 provided to Dr. Priest are listed in a paragraph 29, above. However, during this period of time  
22 Dr. Priest primarily worked in an emergency department in a medical center in Stockton without  
23 another known office location or office telephone number.

24 **SIXTH CAUSE FOR DISCIPLINE**  
25 **(Unprofessional Conduct-Failure to Transmit Dispensing Data to CURES)**  
26 **(Bus. & Prof. § 4301(o) and Health and Safety Code § 11165(d))**

27 32. Respondent Brodt, as Pharmacist-in-Charge of FFSP, has subjected his Pharmacist  
28 License to disciplinary action under Code section 4301, subdivision (o), by violating Health and  
29 Safety Code sections 11165, subdivision (d), in that from on or about December 16, 2009, until  
30 Approximately April 13, 2010, Respondent FFSP failed to transmit dispensing data on a weekly

1 basis for Schedule II, Schedule III, and Schedule IV controlled substances to Controlled  
2 Substances Utilization Review and Evaluation System (CURES).

3 **SEVENTH CAUSE FOR DISCIPLINE**  
4 **(Unprofessional Conduct-Failure to Maintain Compounding Records)**  
5 **(Bus. & Prof. § 4301(o) and 16 CCR § 1735.3)**

6 33. Respondent Brodt, as Pharmacist-in-Charge of FFSP, has subjected his Pharmacist  
7 License to disciplinary action under Code section 4301, subdivision (o), by violating California  
8 Code of Regulations, title 16, section 1735.3 in that, on or about March 16, 2007, to  
9 approximately April 29, 2010, Respondent FFSP dispensed root canal cement to seventeen  
10 different dentists in various quantities. However, Respondent FFSP did not maintain the  
11 complete compounding records for the root canal cement it dispensed. Any records that FFSP did  
12 have were not readily available.

13 **EIGHTH CAUSE FOR DISCIPLINE**  
14 **(Unprofessional Conduct-Labeling Error)**  
15 **(Bus. & Prof. § 4301(o) and CCR § 1735.2(h))**

16 34. Respondent Brodt, as Pharmacist-in-Charge of FFSP, has subjected his Pharmacist  
17 License to disciplinary action under Code section 4301, subdivision (o), by violating California  
18 Code of Regulations, title 16, section 1735.2, subdivision (h), in that Respondent FFSP dispensed  
19 prescriptions for compounded root canal cement with expiration dates over 180 days from the  
20 time it was prepared. The circumstances are as follows:

21 35. On or about July 17, 2009, Respondent FFSP dispensed to Dr. Le Claire prescription  
22 number RX6405783, compounded root canal cement, which had an assigned expiration date of  
23 July 17, 2010, on its label. Also, on or about August 20, 2009, Respondent FFSP dispensed to  
24 Dr. Louie prescription number RX6406838, compounded root canal cement, which had an  
25 assigned expiration date of August 20, 2010 on its label.

26 **Causes of Discipline--Respondent FFSP.**

27 **FIRST CAUSE FOR DISCIPLINE**  
28 **(Unprofessional Conduct-Failure to Maintain Premises --Safe Practice of Pharmacy)**  
29 **(Bus. & Prof. § 4301(o) and 16 CCR § 1714(b))**

30 36. Respondent FFSP's Pharmacy License is subject to disciplinary action under Code  
31 section 4301, subdivision (o), because of violations of California Code of Regulations, title 16,

1 section 1714, subdivision (b), in that FFSP was not maintained in a manner suitable for the safe  
2 practice of pharmacy. The circumstances are explained in paragraph 25, above.

3 **SECOND CAUSE FOR DISCIPLINE**  
4 **(Unprofessional Conduct-Missing Quality Assurance Review Report)**  
5 **(Bus. & Prof. § 4301(o) and 16 CCR § 1711(f))**

6 37. Respondent FFSP's Pharmacy License is subject to disciplinary action under Code  
7 section 4301, subdivision (o), because of violations of California Code of Regulations, title 16,  
8 section 1711, subdivision (f), in that FFSP did not maintain a medication error Quality Assurance  
9 Review Report in the pharmacy for the present year. Specifically, on March 16, 2010, during an  
10 inspection at FFSP there were no Quality Assurance Review Reports on file and immediately  
11 retrievable pertaining to medication dispensing errors for two prescriptions dated October 23,  
12 2009 and October 28, 2009. These reports were not on file even though they were requested  
13 before and not located during the December 15, 2009 inspection.

14 **THIRD CAUSE FOR DISCIPLINE**  
15 **(Unprofessional Conduct-Labeling Error)**  
16 **(Bus. & Prof. §§ 4076 (a)(9) & 4077(a))**

17 38. Respondent FFSP's Pharmacy License is subject to disciplinary action under Code  
18 section 4301, subdivision (o), because of violations of Code section 4076, subdivision (a)(9) and  
19 section 4077, subdivision (a), in that, on March 16, 2010, during an inspection of FFSP, four  
20 prescriptions in the will call area which were ready for patient pick-up were labeled with incorrect  
21 expiration dates. Each prescription contained expiration dates which were later than the actual  
22 expiration dates listed on the manufacturer's box containers. The circumstances of the four  
23 prescriptions are explained in paragraph 21, above.

24 **FOURTH CAUSE FOR DISCIPLINE**  
25 **(Unprofessional Conduct-Erroneous Prescriptions)**  
26 **(Bus. & Prof. § 4301(o) and 16 CCR § 1761(a))**

27 39. Respondent FFSP's Pharmacy License is subject to disciplinary action under Code  
28 section 4301, subdivision (o), because of violations of California Code of Regulations, title 16,  
section 1761, subdivision (a), in that Pharmacists and staff at FFSP dispensed numerous  
medications to a doctor for office use without obtaining important information such as the

1 doctor's office address or phone number. The circumstances are explained in paragraph 29,  
2 above.

3 **FIFTH CAUSE FOR DISCIPLINE**  
4 **(Unprofessional Conduct-Failure to Verify Legitimacy of Prescriptions)**  
5 **(Bus. & Prof. § 4301(o) and Health and Safety Code § 11153(a))**

6 40. Respondent FFSP's Pharmacy License is subject to disciplinary action under Code  
7 section 4301, subdivision (o), because of violations of Health and Safety Code section 11153,  
8 subdivision (a), in that Pharmacists and staff at FFSP dispensed medications to Dr. Priest which  
9 were not for legitimate medical purposes in the usual course of his practice. The circumstances  
10 are explained in paragraph 29, above.

11 **SIXTH CAUSE FOR DISCIPLINE**  
12 **(Unprofessional Conduct-Failure to Transmit Dispensing Data to CURES)**  
13 **(Bus. & Prof. § 4301(o) and Health and Safety Code § 11165(d))**

14 41. Respondent FFSP's Pharmacy License is subject to disciplinary action under Code  
15 section 4301, subdivision (o), because of violations of Health and Safety Code section 11165,  
16 subdivision (d), in that from on or about December 16, 2009, until approximately April 13, 2010,  
17 Respondent FFSP failed to transmit dispensing data for Schedule II, Schedule III, and Schedule  
18 IV controlled substances to Controlled Substances Utilization Review and Evaluation System  
19 (CURES) on a weekly basis.

20 **SEVENTH CAUSE FOR DISCIPLINE**  
21 **(Unprofessional Conduct-Failure to Maintain Compounding Records)**  
22 **(Bus. & Prof. § 4301(o) and CCR § 1735.3)**

23 42. Respondent FFSP's Pharmacy License is subject to disciplinary action under Code  
24 section 4301, subdivision (o), because of violations of California Code of Regulations, title 16,  
25 section 1735.3, in that on or about March 16, 2007, to approximately April 29, 2010, Pharmacists  
26 and Staff at FFSP dispensed root canal cement to seventeen different dentists in various  
27 quantities. However, Respondent FFSP did not maintain complete compounding records for the  
28 root canal cement it dispensed.

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1 **EIGHTH CAUSE FOR DISCIPLINE**  
2 **(Unprofessional Conduct-Labeling Error)**  
3 **(Bus. & Prof. § 4301(o) and 16 CCR § 1735.2(h))**

4 43. Respondent FFSP's Pharmacy License is subject to disciplinary action under Code  
5 section 4301, subdivision (o), because of violations of California Code of Regulations, title 16,  
6 section 1735.2, subdivision (h), in that Pharmacists and staff at FFSP dispensed prescriptions for  
7 compounded root canal cement with expiration dates over 180 days from the time it was  
8 prepared. The circumstances are explained in paragraph 35, above.

9 **Causes of Discipline-Respondent Chan.**

10 **FIRST CAUSE FOR DISCIPLINE**  
11 **(Unprofessional Conduct-Subversion of Board Investigation)**  
12 **(Bus. & Prof. 4301(q))**

13 44. Respondent Chan has subjected her Pharmacy Technician License to disciplinary  
14 action under section 4301, subdivision (q), in that she acted unprofessionally when she engaged  
15 in conduct that attempted to deceive the Board's investigation into FFSP. Specifically,  
16 Respondent Chan informed Board inspectors that the pharmacy had not compounded or  
17 dispensed root canal powder for a long time while the pharmacy had continuously dispensed root  
18 canal powder to at least 17 different dentists within the last three years from March 2007, to April  
19 2010. Further, Respondent Chan failed to submit requested dispensing records of the  
20 compounded root canal powder to Board investigators by March 21, 2010, as requested. The  
21 requested records were not submitted until May 10, 2010, after another inspection was conducted  
22 at FFSP on April 29, 2010.

23 **DISCIPLINE CONSIDERATIONS**

24 45. To determine the degree of discipline, if any, to be imposed on Respondent Brodt,  
25 Complainant alleges that on or about June 15, 2007, in a prior action, the Board of Pharmacy  
26 issued Citation Number CI 06 33851 and ordered Respondent to pay \$1,000 in fines. That  
27 Citation is now final and is incorporated by reference as if fully set forth.

28 46. To determine the degree of discipline, if any, to be imposed on Respondent Brodt,  
Complainant alleges that on or about July 8, 2009, in a prior action, the Board of Pharmacy issued

1 Citation Number CI 09 40780 and ordered Respondent to pay \$3,000 in fines by the citation.  
2 That Citation is now final and is incorporated by reference as if fully set forth.

3 DISCIPLINE CONSIDERATIONS

4 47. To determine the degree of discipline, if any, to be imposed on Respondent Four Fifty  
5 Sutter Pharmacy, Complainant alleges that on or about June 15, 2007, in a prior action, the Board  
6 of Pharmacy issued Citation Number CI 06 33185 and ordered Respondent Four Fifty Sutter  
7 Pharmacy to pay \$2,500 in fines. That Citation is now final and is incorporated by reference as if  
8 fully set forth.

9 48. To determine the degree of discipline, if any, to be imposed on Respondent Four Fifty  
10 Sutter Pharmacy, Complainant alleges that on or about July 8, 2009, in a prior action, the Board  
11 of Pharmacy issued Citation Number CI 08 38139 and ordered Respondent Four Fifty Sutter  
12 Pharmacy to pay \$5,000 in fines. That Citation is now final and is incorporated by reference as if  
13 fully set forth.

14 PRAYER

15 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this  
16 Accusation, and that following the hearing, the Board of Pharmacy issue a decision:

- 17 1. Revoking or suspending Pharmacist License Number RPH 43082, issued to Brandon  
18 Brodt;
- 19 2. Revoking or suspending Pharmacy License Number PHY45225, issued to 450 Sutter  
20 Street Pharmacy;
- 21 3. Revoking or suspending Pharmacy Technician Number TCH 36761, issued to Elaine  
22 Chan;

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4. Ordering Brandon Brodt, Elaine Chan, and Four Fifty Sutter Pharmacy to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, under Business and Professions Code section 125.3;

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

DATED: 7/14/11 Virginia Herold  
VIRGINIA HEROLD  
Executive Officer  
Board of Pharmacy  
Department of Consumer Affairs  
State of California  
*Complainant*

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