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

In the Matter of the Accusation Against: **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 7th 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.	Case No. 3797

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is here by 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

KAMALA D. HARRIS
Attorney General of California
DIANN SOKOLOFF
Supervising Deputy Attorney General
TIMOTHY J. MCDONOUGH
Deputy Attorney General
State Bar No. 235850
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612-0550
Telephone: (510) 622-2134
Facsimile: (510) 622-2270
E-mail: Tim.McDonough@doj.ca.gov
Attorneys for Complainant

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

In the Matter of the Accusation Against: **FOUR FIFTY SUTTER PHARMACY** **Elaine Chan Owner** **450 Sutter Pharmacy, # 710** **San Francisco, CA 94108** **Pharmacy License No. PHY 45225,** **BRANDON BRODT** **450 Sutter Street, #712 7th Floor** **San Francisco, California 94108** **Pharmacist No. RPH 43082,** **and** **ELAINE CHAN** **875 Payne Street** **Sunnyvale, CA 94087** **Pharmacy Technician No. TCH 36761** Respondents.	Case No. 3797 OAH No. 2012020427 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

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

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

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

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

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

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

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

JURISDICTION

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

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

///

///

ADVISEMENT AND WAIVERS

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

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

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

CULPABILITY

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

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

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

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

CONTINGENCY

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

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

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

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

CITATION IN SETTLEMENT FOR RESPONDENT CHAN

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

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

DISCIPLINARY ORDER FOR 450 SUTTER PHARMACY

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

1. Obey All Laws

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

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

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

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

2. Report to the Board

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

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

3. Interview with the Board

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

4. Cooperate with Board Staff

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

5. Reimbursement of Board Costs

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

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

6. Probation Monitoring Costs

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

///

7. Status of License

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

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

8. License Surrender While on Probation/Suspension

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

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

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

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

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

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

9. Notice to Employees

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

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

10. Owners and Officers: Knowledge of the Law

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

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

11. Posted Notice of Probation

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

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

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

12. Violation of Probation

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

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

///

13. Completion of Probation

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

14. Community Services Program

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

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

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

15. Separate File of Records

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

16. **Monetary Contribution to Community**

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

DISCIPLINARY ORDER FOR PHARMACIST BRANDON BRODT

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

1. Suspension

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

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

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

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

2. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

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

- ☐ an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- ☐ an arrest or issuance of a criminal complaint for violation of any state or federal law
- ☐ a plea of guilty or nolo contendre in any state or federal criminal proceeding to any criminal complaint, information or indictment
- ☐ a conviction of any crime

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

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

3. Report to the Board

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

4. Interview with the Board

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

5. Cooperate with Board Staff

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

///

///

///

6. Notice to Employers

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

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

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

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

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

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

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

7. No Being Designated Representative-in-Charge

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

8. Reimbursement of Board Costs

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

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

9. Probation Monitoring Costs

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

10. Status of License

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

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

11. License Surrender While on Probation/Suspension

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

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

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

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

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

13. Tolling of Probation

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

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

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

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

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

14. Violation of Probation

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

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

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

15. Completion of Probation

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

16. No Ownership of Licensed Premises

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

17. Community Services Program

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

18. Remedial Education

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

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

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

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

19. Consultant for Owner or Pharmacist-In-Charge

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

20. Tolling of Suspension

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

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

21. Ethics Course

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

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

///

///

///

///

///

///

///

///

TO: SANDRA McINTOSH

ACCEPTANCE

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 Brodt
BRANDON BRODT
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 [illegible]
FOUR FIFTY [illegible] PHARMACY--ELAINE CHAN OWEN
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 [illegible]
ELAINE CHAN
Respondent

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 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

TIMOTHY J. MCDONOUGH
Deputy Attorney General
Attorneys for Complainant

SF2010900268
90275499.doc

Exhibit A

Accusation No. 3797

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

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

In the Matter of the Accusation Against: **BRANDON BRODT** **450 Sutter Street, #712 7th Floor** **San Francisco, California 94108** **Pharmacist No. RPH 43082,** **ELAINE CHAN** **Owner Four Fifty Sutter Pharmacy** **875 Payne Street** **Sunnyvale, CA 94087** **Pharmacy Technician No. TCH 36761,** **and** **FOUR FIFTY SUTTER PHARMACY** **450 SUTTER STREET, #710** **SAN FRANCISCO, CA** **450 Sutter Street, #710** **San Francisco, CA 94108** **Pharmacy License No. PHY45225** Respondents.	Case No. 3797 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about March 1, 1990, the Board of Pharmacy issued Pharmacist License Number RPH 43082 to Brandon Brodt (Respondent Brodt). The Pharmacist License was in full force and effect at all times relevant to the charges alleged in this Accusation and will expire on January 31, 2012, unless renewed. Since approximately November 4, 2004, Respondent Brodt has been and/or has been reflected in Board records as the Pharmacist-in-Charge for Respondent Four Fifty Sutter Pharmacy.

3. On or about March 7, 2001, the Board of Pharmacy issued Pharmacy License Number PHY45225 to Four Fifty Sutter Pharmacy (Respondent FFSP). The Pharmacy License was in full force and effect at all times relevant to the charges alleged in this Accusation and will expire on March 1, 2012, unless renewed.

4. On or about January 2, 2002, the Board of Pharmacy issued Pharmacy Technician License Number TCH 36761 to Elaine Chan (Respondent Chan). The Pharmacist Technician License was in full force and effect at all times relevant to the charges alleged in this Accusation and will expire on July 31, 2011, unless renewed. Respondent Chan is the owner of Respondent Four Fifty Sutter Pharmacy (FFSP).

JURISDICTION

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

6. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].

7. Section 4300 of the Code states, in relevant part:

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

"(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

"(1) Suspending judgment.

"(2) Placing him or her upon probation.

"(3) Suspending his or her right to practice for a period not exceeding one year.

"(4) Revoking his or her license.

"(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

. . .

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

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

STATUTORY PROVISIONS

9. Section 4301 of the Code states, in relevant part:

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

. . .

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

. . .

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

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

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

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

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

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

. . .

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

REGULATIONS

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

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

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

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

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

"(1) The master formula record.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

. . .

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

///

COST RECOVERY

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

FACTUAL BACKGROUND

November 25, 2008 Inspection at FFSP.

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

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

[1] The investigation in 2008 did not reveal sufficient evidence to substantiate these allegations.

[2] The will-call area of a pharmacy is the area where prescriptions are waiting to be picked up by patients.

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

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

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

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

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

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

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

April 29, 2010 Inspection at FFSP

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

[3] The prescription labels had dates on them which incorrectly extended the dating of the prescription beyond the manufacturer's expiration date for the product.

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

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

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

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

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

///

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

26. Respondent Brandon Brodt, as Pharmacist-in-Charge of FFSP, has subjected his Pharmacist License to disciplinary action under Code section 4301, subdivision (o), by violating California Code of Regulations, title 16, section 1711, subdivision (f), in that he failed to maintain a medication error Quality Assurance Review Report in the pharmacy for the present year. Specifically, on March 16, 2010, during an inspection at FFSP there were no Quality Assurance Review Reports on file and immediately retrievable pertaining to medication dispensing errors involving two prescriptions dated October 28, 2009. These reports were not on file even though they were requested before and not located during the December 15, 2009 inspection.

THIRD CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Labeling Error)
(Bus. & Prof. §§ 4031(o), 4076 (a)(9), & 4077(a))

27. Respondent Brodt, as Pharmacist-in-Charge of FFSP, has subjected his Pharmacist License to disciplinary action under Code section 4301, subdivision (o), by violating Code sections 4076, subdivision (a)(9), and 4077, subdivision (a), in that on March 16, 2010, during an inspection of the pharmacy, four prescriptions in the will call area which were ready for patient pick-up were labeled with incorrect expiration dates. Each prescription contained expiration dates which post-dated the actual expiration dates listed on the manufacturer's box containers. The circumstances of the incorrect expiration dates for the four prescriptions are explained in paragraph 21, above.

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

28. Respondent Brodt, as Pharmacist-in-Charge of FFSP, has subjected his Pharmacist License to disciplinary action under Code section 4301, subdivision (o), by violating California Code of Regulations, title 16, section 1761, subdivision (a), in that FFSP dispensed numerous medications to a doctor for "office use" without obtaining important information such as the doctor's office address or phone number. The circumstances are as follows:

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

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

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

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

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

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

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

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

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

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

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

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

Causes of Discipline--Respondent FFSP.

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

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

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

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

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

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

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

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

39. Respondent FFSP's Pharmacy License is subject to disciplinary action under Code 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

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

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

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

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

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

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

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

///

///

///

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

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

Causes of Discipline-Respondent Chan.

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

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

DISCIPLINE CONSIDERATIONS

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

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

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

DISCIPLINE CONSIDERATIONS

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

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

PRAYER

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

1. Revoking or suspending Pharmacist License Number RPH 43082, issued to Brandon Brodt;

2. Revoking or suspending Pharmacy License Number PHY45225, issued to 450 Sutter Street Pharmacy;

3. Revoking or suspending Pharmacy Technician Number TCH 36761, issued to Elaine Chan;

///

///

///

///

///

///

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

SF2010900268
90176999.doc