

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

In the Matter of the Petition for Reinstatement
of:

LORI DIBENEDETTO
Ventura, CA 93001,

Petitioner.

Case No. 2810

OAH No. 2010020492

DECISION

This matter was heard before a quorum of the Board of Pharmacy (Board) in Sacramento, California, on February 17, 2010. Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, presided at the hearing.

Joshua A. Room, Deputy Attorney General, appeared pursuant to Government Code section 11522.

Lori DiBenedetto (petitioner) appeared on her own behalf.

Evidence was received, the record was closed, and the matter was submitted for decision on February 17, 2010.

FACTUAL FINDINGS

1. On September 10, 1997, the Board issued Pharmacist License No. RPH 49700 (license) to petitioner.
2. On May 13, 2005, the Board's Executive Officer issued an Accusation against petitioner. The Accusation sought to revoke petitioner's license based upon the following convictions: (1) an April 26, 2002 conviction for violating Vehicle Code section 23103 (reckless driving), a misdemeanor; (2) an August 30, 2004 conviction for violating Health and Safety Code section 11550, subdivision (a) (under the influence of a controlled substance), a misdemeanor; (3) an August 30, 2004 conviction for violating Health and Safety Code section 11377, subdivision (a) (possession of a controlled substance), a felony; (4) an August 30, 2004 conviction for violating Health and Safety Code section 11550, subdivision (a) (under the influence of a controlled substance), a misdemeanor; (5) an October 23, 2004 conviction for violating Health and Safety Code section 11364 (possession

of an injection device), a misdemeanor; and (6) October 28, 2004 convictions for violating Penal Code sections 530.5, subdivision (a) (identity theft), and 484g, subdivision (a) (grand theft), both misdemeanors.

3. On July 19, 2005, the Board issued a Default Decision and Order (Default Decision), effective August 18, 2005. The Default Decision found that petitioner did not file a Notice of Defense within 15 days after service of the Accusation upon her, and consequently waived her right to a hearing on the merits. The Board therefore issued the Default Decision against petitioner revoking her license.

4. On October 21, 2009, the Board received petitioner's petition for reinstatement dated October 15, 2009 (petition).

5. Petitioner is currently 38 years old. In her petition and at the hearing, petitioner described her long history of alcohol and drug addiction. According to petitioner, she began drinking and using cocaine when she was about 16 or 17 years old. She has had degenerative disc disease since she was 15 years old. Between 1994 and 2001, she developed an addiction to the prescription opiate analgesics she was given to treat her pain symptoms. From 2001 to 2006, she self-medicated with narcotics.

6. Beginning in 1989, petitioner received treatment for her addictions at a number of facilities. On July 19, 2005, she entered a 90-day in-patient drug and alcohol treatment program at Miracle House/Miracle Recovery Center, a women's recovery program in Ventura. After successfully completing the program, she transitioned to Miracle House's sober living facility. After maintaining abstinence from alcohol and drugs for nearly five months, she experienced a relapse. She has been clean and sober since May 1, 2006.

7. Since August 2005, petitioner has worked for Miracle House in several capacities. Until March 2006, she worked as an office administrator. From October 2006 through July 2008, she was given responsibilities including accounting, human resources, payroll, grant writing, contract acquisition and interpretation, claims processing, fundraising, and compliance with state and county licensing regulations. From March 2007 through July 2008, she was the manager for the Transitional Living Home. From July to November 2008, she assisted Mr. Sam Gill with several business endeavors, including The Meeting Place, which provides more than twenty 12-step meetings weekly, and Bali Dolphin Imports. Since November 2008, she has worked for Trend Concepts/Worldwide Photography.

8. Since May 1, 2006, petitioner has been an active member of Narcotics Anonymous (NA). She generally attends three to four meetings a week. She is also active in the NA fellowship. She has held 12 commitment meetings. She has served as the Area Secretary and Area Vice-Treasurer of the Gold Coast Area of NA. She has served on several Gold Coast Area NA committees, including: (1) the literature committee as vice-chair; (2) the activities committee as secretary and vice-chair; (3) the phone lines committee as acting secretary and volunteer on the hotline; (4) the public information committee as volunteer staff for the information booth at the Ventura County Fair; and (5) the hospitals and institutions committee as a panel participant at the Hillmont Psychiatric Center and Creative

Care in-patient treatment program, the Ventura County Work Furlough Program, and the California Youth Authority. From June 2008 to March 2009, she attended meetings for the Circle of Sisters Traveling Convention of NA in Woodland Hills, and assisted the convention's operations committee. From January to October 2008, she conducted house meetings at My Choices Sober Living Home for Women, and assisted Mr. Gill, the proprietor, with management of the home. Since July 2008, she has worked with Mr. Gill at Gold Coast Recovery Center as a volunteer coordinator. She has participated in several events sponsored by the United Way, including Operation Sunrise, a disaster preparedness exercise in Ventura County, and Project Understanding, a program that provides food, clothing and shelter for individuals with behavioral disorders. She has recently completed orientation and training with Roze Room Hospice with the intent of becoming a hospice volunteer.

9. Petitioner has a seven-year-old daughter. For four years, petitioner did not have contact with her daughter. Although petitioner's ex-husband has custody, petitioner has reestablished a relationship with her daughter.

10. Petitioner successfully completed her probation from her criminal convictions on January 7, 2008.

11. With her petition, petitioner submitted certificates showing that she took 40 hours of Board-approved continuing education in 2009.

12. Pursuant to Business and Professions Code section 4309, subdivision (b),¹ petitioner submitted two letters of recommendation from licensed pharmacists and 13 letters of recommendation from private citizens, as follows:

a. John Favour, R.Ph., has been a registered pharmacist in California since 1977. Between 1998 and 2002, he was a staff pharmacist at Rite-Aid in San Diego. Petitioner was the pharmacy manager and his immediate supervisor. According to Mr. Favour, petitioner was a "competent, enthusiastic, and knowledgeable pharmacist."

b. Ryan Russell, R.Ph., met petitioner in 2009 at an annual 12-step picnic hosted by the Gold Coast Area of NA. Mr. Russell is aware of petitioner's history of drug abuse. According to Mr. Russell, petitioner "understands the nature of addiction and takes the day-to-day steps to maintain a sober lifestyle." Petitioner "has spent much of the last three years being of service to other addicts." In his recommendation letter, Mr. Russell states that "[o]ne

¹ Business and Professions Code section 4309, subdivision (b), provides:

The petition shall state any facts required by the Board, and the petition shall be accompanied by two or more verified recommendations from holders of licenses issued by the Board to which the petition is addressed, and two or more recommendations from citizens, each having personal knowledge of the disciplinary penalty imposed by the Board and the activities of the petitioner since the disciplinary penalty was imposed.

addict helping another is a basic premise of recovery that, when applied to one's life as [petitioner] has, becomes a component of long-term sobriety."

c. Samuel Gill has known petitioner for three years. As set forth above, petitioner volunteered at treatment and recovery facilities owned by Mr. Gill and assisted Mr. Gill with other business ventures. Mr. Gill believes that petitioner is "capable, trustworthy, and honest."

d. Matthew Farson, M.D., was petitioner's personal physician from the time her license was revoked until January 2008. Emlyn S. Jones, M.D., became petitioner's personal physician after Dr. Farson. According to Dr. Farson, petitioner has recovered from any physiologic addiction. He cared for her during hip replacement surgery. During that time, she did not receive any narcotics for pain relief. Dr. Jones has cared for petitioner during her more recent back surgery. Petitioner relied on non-narcotic medication for pain relief during that period. Dr. Jones finds petitioner to be "very honest and hard working and dedicated to her sobriety."

e. Petitioner submitted 10 other letters of recommendation from private individuals, six of whom are recovering addicts. All the letters attest to petitioner's commitment to sobriety.

13. Petitioner was candid and forthcoming about her prior abuse of alcohol and controlled substances. She demonstrated insight into her addictions. She has engaged in rehabilitation and has remained clean and sober for over three years. She successfully completed her criminal probation over one year ago. She is involved in significant volunteer work dedicated to helping others overcome their addictions. Given petitioner's positive recommendations, her rehabilitation, her volunteer work, and her track record of sobriety, it would not be contrary to the public interest, safety or welfare to issue her a probationary license on the terms and conditions set forth below.

14. As set forth in the Default Decision, as of June 10, 2005, the Board had incurred costs of investigation and enforcement in the amount of \$5,006.25. Petitioner shall be permitted to reimburse the Board for these costs over the term of the probationary period according to a payment plan established by the Board.

15. Because petitioner has not practiced as a pharmacist since 2005, in order to ensure that she has the requisite knowledge and skill to practice pharmacy safely, before her license will be reinstated, she must first take and pass the North American Pharmacist Licensure Examination and the California Pharmacist Jurisprudence Examination.

LEGAL CONCLUSIONS

As set forth in Finding 13, given petitioner's positive recommendations, her rehabilitation, her volunteer work, and her track record of sobriety, it would not be contrary to the public interest, safety or welfare to issue her a probationary license on the terms and conditions set forth below.

ORDER

The petition of Lori DiBenedetto for reinstatement is granted, conditioned upon petitioner taking and passing North American Pharmacist Licensure Examination (NAPLEX) and the California Pharmacist Jurisprudence Examination (CPJE), as set forth in paragraph 16 below. Upon passing the NAPLEX and CPJE, and if petitioner satisfies all statutory and regulatory requirements for issuance of a license, petitioner's license shall be reinstated. The license shall be immediately revoked, the revocation stayed, and petitioner's license placed on probation for a period of five (5) years on the following terms and conditions:

- 1. Obey All Laws.** Petitioner shall obey all state and federal laws and regulations. Petitioner shall report any of the following occurrences to the Board, in writing, within seventy-two (72) hours of such occurrence: (a) 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; (b) a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment; (c) a conviction of any crime; or (d) discipline, citation, or other administrative action filed by any state or federal agency which involves petitioner's pharmacist license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance. Failure to timely report such occurrence shall be considered a violation of probation.
- 2. Report to the Board.** Petitioner 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, petitioner 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, petitioner 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.** Petitioner shall cooperate with the Board's inspection program and with the Board's monitoring and investigation of petitioner's compliance with the terms and conditions of her probation. Failure to cooperate shall be considered a violation of probation.

5. **Continuing Education.** Petitioner shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the Board or its designee.

6. **Notice to Employers.** During the period of probation, petitioner shall notify all present and prospective employers of the decision in this case and the terms, conditions and restrictions imposed on petitioner by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of petitioner undertaking any new employment, petitioner shall cause her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during petitioner'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 this case, and terms and conditions imposed hereby. It shall be petitioner's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

If petitioner works for or is employed by or through a pharmacy employment service, petitioner must notify her direct supervisor, pharmacist-in-charge, and owner at every entity licensed by the Board of the terms and conditions of the decision in this case in advance of the petitioner 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 petitioner undertaking any new employment by or through a pharmacy employment service, petitioner shall cause her direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that he or she has read the decision in this case and the terms and conditions imposed thereby. It shall be petitioner's responsibility to ensure that her 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 acknowledgments 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, relief or pharmacy management service as a pharmacist or any position for which a pharmacist license is a requirement or criterion for employment, whether petitioner is an employee, independent contractor or volunteer.

7. **No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), or Serving as Designated Representative-in-Charge.** During the period of probation, petitioner shall not supervise any intern pharmacist, or be the pharmacist-in-charge or 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, petitioner shall pay to the Board its costs of investigation and prosecution in the amount of \$5,006.25. Petitioner shall make payments over the probationary term in accordance with a payment schedule established 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 petitioner shall not relieve petitioner of her responsibility to reimburse the Board its costs of investigation and prosecution.

9. **Probation Monitoring Costs.** Petitioner 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.** Petitioner shall, at all times while on probation, maintain an active, current license with the Board, including any period during which suspension or probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation.

If petitioner's 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 petitioner'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 petitioner cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, petitioner may tender her 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, petitioner 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 petitioner's license history with the Board.

Upon acceptance of the surrender, petitioner shall relinquish her pocket and wall license to the Board within ten (10) days of notification by the Board that the surrender is

accepted. Petitioner may not reapply for any license from the Board for three (3) years from the effective date of the surrender. Petitioner shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board, including any outstanding costs.

12. Notification of a Change in Name, Residence Address, Mailing Address or Employment. Petitioner shall notify the Board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if known. Petitioner shall further notify the Board in writing within ten (10) days of a change in name, residence address, 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, petitioner shall, at all times while on probation, be employed as a pharmacist 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, petitioner must nonetheless comply with all terms and conditions of probation.

Should petitioner, regardless of residency, for any reason (including vacation) cease practicing as a pharmacist for a minimum of 40 hours per calendar month in California, petitioner must notify the Board in writing within ten (10) days of the cessation of practice, and must further notify the Board in writing within ten (10) days of the resumption of practice. Any failure to provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for petitioner'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 practice" means any calendar month during which petitioner is not practicing as a pharmacist for at least 40 hours, as defined by Business and Professions Code section 4000 et seq. "Resumption of practice" means any calendar month during which petitioner is practicing as a pharmacist for at least 40 hours as a pharmacist as defined by Business and Professions Code section 4000 et seq.

14. Violation of Probation. If petitioner has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over petitioner, 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 petitioner violates probation in any respect, the Board, after giving petitioner 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 petitioner 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 or its designee indicating successful completion of probation, petitioner's license will be fully restored.

16. **Pharmacist Examination.** Petitioner shall take and pass the CPJE and the NAPLEX within one (1) year of the effective date of this decision. Petitioner shall not practice pharmacy until she takes and passes the CPJE and NAPLEX and is notified, in writing, that she has passed the examination(s) and may resume practice. Petitioner shall bear all costs of the examination(s) required by the Board.

Until petitioner passes the CPJE and NAPLEX, she 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 which is licensed by the Board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Petitioner shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall petitioner 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 controlled substances. Petitioner shall not resume practice until notified by the Board.

Until petitioner passes the CPJE and NAPLEX, she shall not engage in any activity that requires the professional judgment of a pharmacist. Petitioner shall not direct or control any aspect of the practice of pharmacy. Petitioner shall not perform the duties of a pharmacy technician or a designated representative for any entity licensed by the Board.

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

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

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

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

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

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

During suspension, petitioner 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 which is licensed by the Board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Petitioner shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall petitioner 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 controlled substances. Petitioner shall not resume practice until notified by the Board.

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

Subject to the above restrictions, petitioner may continue to own or hold an interest in any licensed premises in which 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.

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

18. **Random Drug Screening.** Petitioner, at her own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the Board or its designee. Petitioner may be required to participate in testing for the entire probation period and the frequency of testing will be determined by the Board or its designee. At all times, petitioner shall fully cooperate with the Board or its designee, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the Board or its designee may direct. Failure to timely submit to testing as directed shall be considered a violation of probation.

Upon request of the Board or its designee, petitioner shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of the petitioner. Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result in the automatic suspension of practice of pharmacy by petitioner. Petitioner may not resume the practice of pharmacy until notified by the Board in writing.

During suspension, petitioner 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 which is licensed by the Board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Petitioner shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall petitioner 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 controlled substances. Petitioner shall not resume practice until notified by the Board.

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

Subject to the above restrictions, petitioner may continue to own or hold an interest in any licensed premises 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.

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

the petitioner. Failure to timely provide such documentation shall be considered a violation of probation. Petitioner shall ensure that she is not in the same physical location as individuals who are using illicit substances even if petitioner is not personally ingesting the drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia not supported by the documentation timely provided, and/or any physical proximity to persons using illicit substances, shall be considered a violation of probation.

Effective: April 14, 2010

DATED: April 14, 2010



KENNETH H. SCHELL, Pharm.D.

President

Board of Pharmacy

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5 **BEFORE THE**
6 **BOARD OF PHARMACY**
7 **DEPARTMENT OF CONSUMER AFFAIRS**
8 **STATE OF CALIFORNIA**

8 In the Matter of the Accusation Against:

Case No. 2810

9 **LORI HAZEL DIBENEDETTO**
10 12 Oakland Rd.
11 Exeter, NH 03833

DEFAULT DECISION
AND ORDER.

[Gov. Code § 11520]

11 and

12 4440 Antiqua Way
13 Oxnard, CA 93035

14 Pharmacist License No. RPH 49700

15 Respondent.

16 FINDINGS OF FACT

17 1. On or about April 14, 2005, Complainant Patricia F. Harris, in her official
18 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,
19 filed Accusation No. 2810 against Lori Hazel Dibenedetto (Respondent) before the Board of
20 Pharmacy.

21 2. On or about September 10, 1997, the Board of Pharmacy (Board) issued
22 Pharmacist License No. RPH 49700 to Respondent. The Pharmacist License was in full force
23 and effect at all times relevant to the charges brought herein and will expire on September 30,
24 2005, unless renewed.

25 3. On or about April 21, 2005, Anna Carpenter, an employee of the
26 Department of Justice, served by Certified and First Class Mail a copy of the Accusation No.
27 2810, Statement to Respondent, Notice of Defense, Request for Discovery, and Government
28 Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board,

1 which was and is 12 Oakland Rd., Exeter, NH 03833. On or about April 21, 2005, a copy of the
2 Accusation and supporting documents were also served on Respondent at 4440 Antiqua Way,
3 Oxnard, CA 93035. A copy of the Accusation is attached as Exhibit A, and is incorporated
4 herein by reference.

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

7 5. On May 2, 2005, the Accusation was received and signed for at
8 Respondent's address of record. A copy of the postal return receipt is incorporated herein by
9 reference. On or about May 16, 2005, the Accusation served at the Antigua Way address was
10 returned by the postal service marked "Return To Sender, Unclaimed."

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

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

16 7. Respondent failed to file a Notice of Defense within 15 days after service
17 upon her of the Accusation, and therefore waived her right to a hearing on the merits of
18 Accusation No. 2810.

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

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

24 9. Pursuant to its authority under Government Code section 11520, the Board
25 finds Respondent is in default. The Board will take action without further hearing and, based on
26 Respondent's express admissions by way of default and the evidence before it, contained in
27 exhibit A finds that the allegations in Accusation No. 2810 are true.

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ORDER


IT IS SO ORDERED that Pharmacist License No. RPH 49700, heretofore issued to Respondent Lori Hazel Dibenedetto, is revoked.

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

This Decision shall become effective on August 18, 2005

It is so ORDERED July 19, 2005

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By 
STANLEY W. GOLDENBERG
Board President

Attachments:
Exhibit A: Accusation No.2810
50045469.wpd



Exhibit A
Accusation No. 2810

1 BILL LOCKYER, Attorney General
of the State of California
2 ERLINDA G. SHRENGER, State Bar No. 155904
Deputy Attorney General
3 California Department of Justice
300 So. Spring Street, Suite 1702
4 Los Angeles, CA 90013
Telephone: (213) 897-5794
5 Facsimile: (213) 897-2804
6 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 2810

12 **LORI HAZEL DIBENEDETTO**
4440 Antiqua Way
13 Oxnard, CA 93035

ACCUSATION

14 - and -

15 12 Oakland Rd.
Exeter, NH 03833
16 Pharmacist License No. RPH 49700

17 Respondent.
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19
20 Complainant alleges:

21 PARTIES

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

25 2. On or about September 10, 1997, the Board issued Pharmacist License
26 No. RPH 49700 to Lori Hazel Dibenedetto (Respondent). The Pharmacist License was in full
27 force and effect at all times relevant to the charges brought herein and will expire on
28 September 30, 2005, unless renewed.

JURISDICTION

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

4. Section 118, subdivision (b), states: "The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground."

5. Section 4300, subdivision (a), states: "Every license issued may be suspended or revoked."

6. Section 4301 states, in pertinent 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:

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

....
"(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to

1 the public the practice authorized by the license.

2

3 "(j) The violation of any of the statutes of this state or of the United States
4 regulating controlled substances and dangerous drugs.

5 "(k) The conviction of more than one misdemeanor or any felony involving the
6 use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any
7 combination of those substances.

8 "(l) The conviction of a crime substantially related to the qualifications, functions
9 and duties of a licensee under this chapter. . . .

10

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

15 "(p) Actions or conduct that would have warranted denial of a license."

16 7. Section 475 states, in pertinent part:

17 "(a) Notwithstanding any other provisions of this code, the provisions of this
18 division shall govern the denial of licenses on the grounds of:

19

20 "(3) Commission of any act involving dishonesty, fraud or deceit with the intent to
21 substantially benefit himself or another, or substantially injure another. . . ."

22 8. Section 480 states, in pertinent part:

23 "(a) A board may deny a license regulated by this code on the grounds that the
24 applicant has one of the following:

25

26 "(2) Done any act involving dishonesty, fraud or deceit with the intent to
27 substantially benefit himself or another, or substantially injure another; or

28 "(3) Done any act which if done by a licentiate of the business or profession in

1 question, would be grounds for suspension or revocation of license.

2 "The board may deny a license pursuant to this subdivision only if the crime or a
3 is substantially related to the qualifications, functions or duties of the business or profession for
4 which application is made. . . ."

5 9. Section 490 states:

6 "A board may suspend or revoke a license on the ground that the licensee has been
7 convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties
8 of the business or profession for which the license was issued . A conviction within the meaning
9 of this section means a plea or verdict of guilty or a conviction following a plea of nolo
10 contendere. Any action which a board is permitted to take following the establishment of a
11 conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has
12 been affirmed on appeal, or when an order granting probation is made suspending the imposition
13 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the
14 Penal Code."

15 10. Section 4051 states, in pertinent part:

16 "(a) Except as otherwise provided in this chapter, it is unlawful for any person to
17 manufacture, compound, furnish, sell, or dispense any dangerous drug or dangerous device, or to
18 dispense or compound any prescription pursuant to Section 4040 of a prescriber unless he or she
19 is a pharmacist under this chapter."

20 11. Section 4059 states, in pertinent part

21 "(a) A person may not furnish any dangerous drug, except upon the prescription
22 of a physician, dentist, podiatrist, optometrist, or veterinarian. A person may not furnish any
23 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, or
24 veterinarian."

25 12. Section 4060 states, in pertinent part:

26 "No person shall possess any controlled substance, except that furnished to a
27 person upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian, or
28 furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to

1 Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant
2 pursuant to Section 3502.1."

3 13. Health and Safety Code section 11170 states: "No person shall prescribe,
4 administer, or furnish a controlled substance for himself."

5 14. Health and Safety Code section 11350(a) states, in pertinent part: "Except
6 as otherwise provided in this division, every person who possesses (1) any controlled
7 substance . . . specified in subdivision (b) or (c) of Section 11055, . . . or (2) any controlled
8 substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written
9 prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state,
10 shall be punished by imprisonment in the state prison."

11 15. Health and Safety Code section 11377(a) states, in pertinent part:
12 ". . . every person who possesses any controlled substance which is . . . specified in subdivision
13 (d), (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or
14 veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail
15 for a period of not more than one year or in the state prison."

16 16. Health and Safety Code section 11550(a) states, in pertinent part: "No
17 person shall use, or be under the influence of any controlled substance which is . . . specified in
18 subdivision (b) . . . of Section 11055, or specified in paragraph (1) or (2) of subdivision (d) . . . of
19 Section 11055, . . . except when administered by or under the direction of a person licensed by
20 the state to dispense, prescribe, or administer controlled substances."

21 17. California Code of Regulations, title 16, section 1770, states:

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

28 18. Section 125.3 provides, in pertinent part, that the Board may request the

1 administrative law judge to direct a licentiate found to have committed a violation or violations
2 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
3 enforcement of the case.

4 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

5 19. Amphetamine is a Scheduled II controlled substance as defined in Health
6 and Safety Code section 11055(d)(1), and is categorized as a dangerous drug pursuant to Section
7 4022 of the Code.

8 20. Methamphetamine is a Schedule II controlled substance as defined in
9 Health and Safety Code section 11055(d)(2), and is categorized as a dangerous drug pursuant to
10 Section 4022 of the Code.

11 21. OxyContin is a brand name for Oxycodone Hydrochloride, which is an
12 opioid agonist and a Schedule II controlled substance as defined in Health and Safety Code
13 section 11055(b)(1) and a dangerous drug pursuant to Section 4022 of the Code.

14 22. Health and Safety Code section 11020 states, in pertinent part: "Opiate"
15 means any substance having an addiction-forming or addiction sustaining liability similar to
16 morphine or being capable of conversion into a drug having addiction-forming or addiction-
17 sustaining liability."

18 FIRST CAUSE FOR DISCIPLINE

19 (Criminal Convictions)

20 23. Respondent is subject to disciplinary action pursuant to Sections 4300(a),
21 490, and 4301(l) of the Code, and California Code of Regulations, title 16, section 1770, in that
22 Respondent was convicted of crimes substantially related to the qualifications, duties and
23 functions of a pharmacist, as follows:

24 Case No. 2004034336MA

25 24. On or about October 28, 2004, in a criminal proceeding entitled *People v.*
26 *Lori Hazel Dibenedetto* in Ventura County Superior Court, Case No. 2004034336MA,
27 Respondent was convicted on a plea of guilty for violating Penal Code sections 530.5(a) (identity
28 theft), a misdemeanor, and 484g(a) (grand theft), a misdemeanor.

1 25. The circumstances of the conviction are that on or about September 9,
2 2004, Respondent was arrested after being found in possession of stolen property that had been
3 taken during a vehicle burglary on August 18, 2004. The burglary victim was Hillary Wallace,
4 and Respondent was found with Ms. Wallace's identification, checkbook, credit cards, and ATM
5 card. At the time of her arrest, Respondent was in a hotel room which she checked into under the
6 name Hillary Wallace. Ms. Wallace reported to law enforcement officers that she did not know
7 Respondent nor authorize Respondent to use or have possession of her credit cards, checkbook,
8 identification, or ATM card.

9 Case No. 2004032126MA

10 26. On or about October 23, 2004, in a criminal proceeding entitled *People v.*
11 *Lori Hazel Dibenedetto* in Ventura County Superior Court, Case No. 2004032126MA,
12 Respondent was convicted on a plea of guilty for violating Health and Safety Code section 1136
13 (possession of injection device), a misdemeanor.

14 27. The circumstances of the conviction are that on or about August 19,
15 2004, Ventura Police Department officers responded to a call from paramedics for assistance as
16 Respondent had locked herself in a restaurant bathroom and refused to come out, claiming she
17 was sick. After paramedics convinced Respondent to unlock the door and come out of the
18 bathroom, Respondent gave the paramedics a syringe from her purse that was filled with a clear
19 liquid. Respondent admitted to being a heroin user, and said she was having possible withdrawal
20 symptoms and felt sick. Respondent was taken to a hospital for medical treatment, where she
21 was later arrested because of three outstanding warrants and her possession of the syringe.

22 Case No. 2004022542MA

23 28. On or about August 30, 2004, in a criminal proceeding entitled *People v.*
24 *Lori Hazel Dibenedetto* in Ventura County Superior Court, Case No. 2004022542MA,
25 Respondent was convicted on a plea of nolo contendere for violating Health and Safety Code
26 section 11550(a) (under influence of controlled substance), a misdemeanor.

27 29. The circumstances of the conviction are that on or about June 8, 2004,
28 Respondent was arrested after Ventura County sheriff deputies observed that Respondent

1 exhibited signs and symptoms that she was under the influence of a combination of heroin and
2 central nervous system (CNS) stimulant. Among other things, the deputies observed fresh scab
3 and several puncture wounds on Respondent's arms, which appeared to be of the type caused by
4 the use of a hypodermic needle. The wounds were over and following a visible vein. The
5 deputies also observed that Respondent's speech was rapid and mumbled, her body movements
6 were rapid and jerky, and she exhibited mood changes ranging from paranoia and excitement to
7 state of stupor. Respondent admitted to the deputies that she had injected illegal drugs three day
8 earlier. In Respondent's hotel room, the deputies found a plastic grocery bag with two
9 hypodermic needles, a third hypodermic needle floating in the toilet tank, and a ziplock baggy
10 containing a white powdery residue inside Respondent's purse.

11 Case No. 2004009451FA

12 30. On or about August 30, 2004, in a criminal proceeding entitled *People v.*
13 *Lori Hazel Dibenedetto* in Ventura County Superior Court, Case No. 2004009451FA,
14 Respondent was convicted on a plea of guilty for violating Health and Safety Code section
15 11377(a) (possession of a controlled substance), a felony.

16 31. The circumstances of the conviction are that, on or about March 11, 2004,
17 Respondent did unlawfully possess a controlled substance, to wit, methamphetamine. Ventura
18 Police Department officers observed that Respondent displayed signs and symptoms of being
19 under the influence of a central nervous system (CNS) stimulant. Respondent appeared nervous;
20 she shifted from side to side and tried to avoid eye contact; her speech was rapid; her eyes were
21 red and watery, and her pupils were dilated.

22 Case No. 2003037046MA

23 32. On or about August 30, 2004, in a criminal proceeding entitled *People v.*
24 *Lori Hazel Dibenedetto* in Ventura County Superior Court, Case No. 2003037046MA,
25 Respondent was convicted on a plea of guilty for violating Health and Safety Code section
26 11550(a) (under influence of controlled substance), a misdemeanor.

27 33. The circumstances of the conviction are that, on or about November 7,
28 2003, Oxnard Police Department Officers conducted a routine traffic stop of a vehicle driven by

1 Respondent. Respondent was found in possession of controlled substances (OxyContin and
2 Amphetamine) without a valid prescription. Respondent also exhibited signs and symptoms that
3 she was under the influence of controlled substances.

4 Case No. CH01SM04099

5 34. On or about April 26, 2002, in a criminal proceeding entitled *People v.*
6 *Lori Hazel Dibenedetto* in Orange County Superior Court, Case No. CH01SM04099, Respondent
7 was convicted on a plea of guilty for violating Vehicle Code section 23103 (reckless driving), a
8 misdemeanor.

9 35. The circumstances of the conviction are that, on or about July 21, 2001,
10 Respondent did willfully and unlawfully drive a vehicle while under the influence of alcohol
11 and/or drugs.

12 SECOND CAUSE FOR DISCIPLINE

13 (Drug Related Convictions)

14 36. Respondent is subject to discipline under Sections 4300(a) and 4301(k) of
15 the Code, on the grounds of unprofessional conduct, in that on or between August 30, 2004 and
16 October 23, 2004, Respondent was convicted of crimes involving the use, consumption, or self-
17 administration of controlled substances and dangerous drugs, as alleged in Paragraphs 26-35,
18 above.

19 THIRD CAUSE FOR DISCIPLINE

20 (Unlawful Possession of Controlled Substances/Dangerous Drugs)

21 37. Respondent is subject to disciplinary action pursuant to Sections 4300(a)
22 and 4301(j) of the Code, on the grounds of unprofessional conduct, for violating Section 4060 of
23 the Code and Health and Safety Code sections 11350 and 11377, in that Respondent was in
24 possession of controlled substances and dangerous drugs without a valid prescription. On or
25 about November 7, 2003, Respondent was in possession of OxyContin and Amphetamine, as
26 alleged in Paragraph 33, above. On or about March 11, 2004, Respondent was in possession of
27 Methamphetamine, as alleged in Paragraph 31, above.

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1 FOURTH CAUSE FOR DISCIPLINE

2 (Use of Controlled Substances/Dangerous Drugs)

3 38. Respondent is subject to disciplinary action under Sections 4300(a) and
4 4301(h) of the Code, on the grounds of unprofessional conduct, for violating Health and Safety
5 Code section 11170, in that Respondent administered controlled substances/dangerous drugs to
6 herself to the extent or in a manner as to be dangerous or injurious to oneself, as alleged in
7 Paragraphs 27, 29, 31, 33, and 35, above.

8 FIFTH CAUSE FOR DISCIPLINE

9 (Unprofessional Conduct)

10 39. Respondent is subject to disciplinary action under Sections 4300(a) and
11 4301 of the Code, on the grounds of unprofessional conduct, in that on or between July 21, 2001
12 and September 9, 2004, Respondent committed unprofessional acts which directly relate to the
13 qualifications, functions, and duties of a pharmacist, as alleged in Paragraphs 25, 27, 29, 31, 33,
14 and 35, above.

15 SIXTH CAUSE FOR DISCIPLINE

16 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit)

17 40. Respondent is subject to disciplinary action under Sections 4300 and
18 4301(f) of the Code, in conjunction with Sections 475(a)(3) and 480(a)(2), in that on or about
19 September 9, 2004, Respondent committed acts involving moral turpitude, dishonesty, fraud and
20 deceit, as alleged in Paragraph 25, above.

21 SEVENTH CAUSE FOR DISCIPLINE

22 (Conduct Warranting Denial of License)

23 41. Respondent is subject to disciplinary action under Sections 4300, 4301(p),
24 and 480(a)(3) of the Code, and California Code of Regulations, title 16, section 1770, in that on
25 or between July 21, 2001 and September 9, 2004, Respondent engaged in conduct that would
26 have warranted denial of a license, as alleged in Paragraphs 24-35, above.

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PRAYER

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

A. Revoking or suspending Pharmacist License No. RPH 49700, issued to Lori Hazel Dibenedetto;

B. Ordering Lori Hazel Dibenedetto to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

DATED: 4/14/05

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

Complainant

50021109.wpd
(03/25/05)