

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

In the Matter of the First Amended Accusation
and Petition to Revoke Probation Against:

LISA ANNE PANAB
5178 Mowry Ave. #2168
Fremont, California 94536

Pharmacist License No. RPH 47276,

Respondent.

Case No. 4493
OAH No. 2015090917

DEFAULT DECISION AND ORDER

(Gov. Code, § 11520)

FINDINGS OF FACT

1. On or about September 9, 2013, complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, filed Accusation No. 4493 against respondent Lisa Anne Panab before the Board of Pharmacy. The accusation is attached as exhibit A.)

2. On or about August 4, 1994, the Board issued Pharmacist License No. RPH 47276 to respondent. The pharmacist license was in full force and effect at all times relevant to the charges brought in Accusation No. 4493 and expired on September 30, 2015. The pharmacist license has not been renewed.

///

1 3. On or about October 1, 2013, respondent was served by Certified and First Class Mail
2 copies of Accusation and Petition to Revoke Probation No. 4493, Statement to Respondent,
3 Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections
4 11507.5, 11507.6, and 11507.7) at respondent's address of record which is required to be reported
5 and maintained with the Board under Business and Professions Code section 4100. Respondent's
6 address of record was 5178 Mowry Avenue, #2168, Fremont, California 94536.

7 4. On or about November 4, 2014, respondent was served by Certified and First Class
8 Mail copies of the First Amended Accusation and Petition to Revoke Probation No. 4493, and
9 Supplemental Statement to Respondent at respondent's address of record which is required to be
10 reported and maintained with the Board under Business and Professions Code section 4100.
11 Respondent's address of record was 5178 Mowry Avenue, #2168, Fremont, California 94536.

12 5. Service of the Accusation and Petition to Revoke Probation No. 4493, and First
13 Amended Accusation and Petition to Revoke Probation No. 4493, were effective as a matter of
14 law under the provisions of Government Code section 11505, subdivision (c) and/or Business &
15 Professions Code section 124.

16 6. On or about October 21, 2013, respondent signed and returned a notice of defense
17 requesting a hearing in this matter. A notice of hearing was served by mail at respondent's
18 address of record and it informed her that an administrative hearing in this matter was scheduled
19 for January 25, 2016. Respondent failed to appear at that hearing.

20 7. Government Code section 11506 states in part:

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

26 8. California Government Code section 11520 states in part:

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

1 Amended Petition to Revoke Probation which are supported by the evidence contained in the
2 Default Decision Evidence Packet in this case:

- 3 • Failure to Report Arrest to the Board (Violation of Term and Condition 2)
- 4 • Failure to Report to the Board (Violation of Term and Condition 4)
- 5 • Failure to Notify Employment Change (Violation of Term and Condition 14)
- 6 • Failure to Work Required Number of Hours (Violation of Term and Condition 15)
- 7 • Failure to Successfully Participate In and Complete the PRP (Violation of Term and
8 Condition 18)

9 ORDER

10 IT IS SO ORDERED that Pharmacist License No. RPH 47276, issued to respondent Lisa
11 Anne Panab, is revoked.

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

16 This Decision shall become effective at 5:00 p.m. on April 13, 2016.

17 It is so ORDERED on March 14, 2016.

18 BOARD OF PHARMACY
19 DEPARTMENT OF CONSUMER AFFAIRS
20 STATE OF CALIFORNIA

21 

22
23 By _____

24 Amy Gutierrez, Pharm.D.
25 Board President

26 90611231.DOC
27 DOJ Matter ID:SF2013901656

28 Attachment: Exhibit A

Exhibit A

Accusation and Petition to Revoke Probation

(LISA ANNE PANAB)

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 GREGORY TUSS
Deputy Attorney General
4 State Bar Number 200659
1515 Clay Street, 20th Floor
5 Post Office Box 70550
Oakland, California 94612-0550
6 Telephone: (510) 622-2143
Facsimile: (510) 622-2270
7 *Attorneys for Complainant*

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

11 In the Matter of the First Amended Accusation
and Petition to Revoke Probation Against:

Case Number 4493

**FIRST AMENDED ACCUSATION AND
PETITION TO REVOKE PROBATION**

12 **LISA ANNE PANAB**
13 a.k.a. Lisa Anne Kesler
a.k.a. Lisa Ann Kesler
14 a.k.a. Lisa Anne Kesler
5178 Mowry Avenue, #2168
15 Fremont, California 94536

16 **Pharmacist License Number RPH 47276**

17 **Respondent.**

18
19 Complainant Virginia Herold alleges:

20 **PARTIES**

21 1. Complainant brings this first amended accusation and petition to revoke probation
22 solely in her official capacity as the Executive Officer of the Board of Pharmacy (Board),
23 Department of Consumer Affairs.

24 2. On or about August 4, 1994, the Board issued Pharmacist License Number RPH
25 47276 to respondent Lisa Anne Panab, a.k.a Lisa Anne Kesler, a.k.a. Lisa Ann Kesler, a.k.a. Lisa
26 Anne Kesler. This pharmacist license was in full force and effect at all times relevant to the
27 charges brought in this first amended accusation and petition to revoke probation, and will expire
28 on September 30, 2015, unless renewed.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRIOR DISCIPLINARY ACTIONS

3. The Board issued a Decision and Order effective June 27, 2008, adopting a Stipulated Settlement and Disciplinary Order entitled *In the Matter of the First Amended Accusation Against Lisa Anne Panab, a.k.a Lisa Anne Kesler, a.k.a. Lisa Ann Kesler, a.k.a. Lisa Aanne Kesler*, Case Number 3050 (Disciplinary Order). This Disciplinary Order revoked respondent's pharmacist license. However, the revocation was stayed and respondent's pharmacist license was placed on probation for five (5) years with terms and conditions. A copy of that Decision and Order, and Disciplinary Order is attached as exhibit 1 and is incorporated by reference.

JURISDICTION, AND STATUTORY AND REGULATORY PROVISIONS FOR FIRST AMENDED ACCUSATION

4. This first amended accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 490 states in part:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued."

6. Section 4011 states:

"The board shall administer and enforce this chapter and the Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code)."

7. Section 4060 states in part:

"A person shall not possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5,

1 or a pharmacist pursuant to Section 4052.1, 4052.2, or 4052.6. This section does not apply to the
2 possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist,
3 physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-
4 midwife, nurse practitioner, or physician assistant, if in stock in containers correctly labeled with
5 the name and address of the supplier or producer.”

6 8. Section 4300 states in part:

7 “(a) Every license issued may be suspended or revoked.”

8 9. Section 4300.1 states:

9 “The expiration, cancellation, forfeiture, or suspension of a board-issued license by
10 operation of law or by order or decision of the board or a court of law, the placement of a license
11 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
12 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
13 proceeding against, the licensee or to render a decision suspending or revoking the license.”

14 10. Section 4301 states in part:

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

19 ...

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

23 ...

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

26 ...

27 “(l) The conviction of a crime substantially related to the qualifications, functions, and
28 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13

1 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
2 substances or of a violation of the statutes of this state regulating controlled substances or
3 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
4 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
5 The board may inquire into the circumstances surrounding the commission of the crime, in order
6 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
7 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
8 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
9 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
10 of this provision. The board may take action when the time for appeal has elapsed, or the
11 judgment of conviction has been affirmed on appeal or when an order granting probation is made
12 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
13 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
14 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
15 indictment.

16 ...

17 “(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
18 violation of or conspiring to violate any provision or term of this chapter or of the applicable
19 federal and state laws and regulations governing pharmacy, including regulations established by
20 the board or by any other state or federal regulatory agency.”

21 11. Section 4304 states:

22 “The board may deny, revoke, or suspend any license issued pursuant to Section 4161 for
23 any violation of this chapter or for any violation of Part 5 (commencing with Section 109875) of
24 Division 104 of the Health and Safety Code.”

25 12. California Code of Regulations, title 16, section 1770, states:

26 “For the purpose of denial, suspension, or revocation of a personal or facility license
27 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
28 crime or act shall be considered substantially related to the qualifications, functions or duties of a

1 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
2 licensee or registrant to perform the functions authorized by his license or registration in a manner
3 consistent with the public health, safety, or welfare.”

4 COST RECOVERY

5 13. Section 125.3 states in part:

6 “(a) Except as otherwise provided by law, in any order issued in resolution of a
7 disciplinary proceeding before any board within the department or before the Osteopathic
8 Medical Board, upon request of the entity bringing the proceedings, the administrative law judge
9 may direct a licentiate found to have committed a violation or violations of the licensing act to
10 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.”

11 DRUGS

12 14. Hydrocodone is a Schedule II controlled substance pursuant to Health and Safety
13 Code section 11055, subdivision (b)(1)(I), and a dangerous drug within the meaning of Business
14 and Professions Code section 4022. It is used for the relief of pain.

15 FACTUAL BACKGROUND FOR FIRST AMENDED ACCUSATION

16 15. On October 21, 2012, loss prevention officers at Safeway in Santa Clara,
17 California, saw respondent put approximately \$53.00 of merchandise into her purse and leave the
18 store without paying for the items. Respondent first identified herself to the arresting police
19 officer as Anne Lynn Keller, and then by other false names.

20 16. Respondent had keys to a car. When the officer asked for her permission to search
21 the car, she said that it was not her car but she consented to a search. The officer found a purse in
22 the glove compartment. Inside the purse was respondent’s driver’s license, and five and one-half
23 loose pills of suspected Hydrocodone. The pills were not in a prescription bottle and respondent
24 could not produce a prescription for them.

25 17. Respondent was arrested and charged with petty theft (Pen. Code, §§ 484, 488),
26 false representation of identity to a police officer (Pen. Code, § 148.9.), and possession of a
27 controlled substance (Health & Saf. Code, § 11350, subd. (a)).

28 18. On or about May 29, 2013, in *The People of the State of California vs. Lisa Anne*

1 *Kesler*, Santa Clara County Superior Court Case Number C1243520, entitled respondent pled
2 guilty or no contest to false representation of identity to a police officer (Pen. Code, § 148.9.), a
3 misdemeanor, and was placed on probation.

4 **CAUSES FOR DISCIPLINE**

5 **FIRST CAUSE FOR DISCIPLINE**

6 **Criminal Conviction**

7 **Business and Professions Code section 490, subdivision (a)**

8 19. The allegations of paragraphs 15-18 are realleged and incorporated by reference as
9 if fully set forth.

10 20. Respondent has subjected her pharmacist license to discipline for being convicted
11 of a crime (Bus. & Prof. Code, § 490, subd. (a)). Respondent pled guilty or no contest to false
12 representation of identity to a police officer (Pen. Code, § 148.9.), a misdemeanor.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **Unprofessional Conduct – Criminal Conviction**

15 **Business and Professions Code section 4301, subdivision (l)**

16 21. The allegations of paragraphs 15-18 are realleged and incorporated by reference as
17 if fully set forth.

18 22. Respondent has subjected her pharmacist license to discipline for the
19 unprofessional conduct of being convicted of a crime (Bus. & Prof. Code, § 4301, subd. (l)).
20 Respondent pled guilty or no contest to false representation of identity to a police officer (Pen.
21 Code, § 148.9.), a misdemeanor.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **Unprofessional Conduct – Act Involving Dishonesty, Fraud, Deceit, or Corruption**

24 **Business and Professions Code section 4301, subdivision (f)**

25 23. The allegations of paragraphs 15-18 are realleged and incorporated by reference as
26 if fully set forth.

27 24. Respondent has subjected her pharmacist license to discipline for the
28 unprofessional conduct of committing an act involving moral turpitude, dishonesty, fraud, deceit,
or corruption (Bus. & Prof. Code, § 4301, subd. (f)). Respondent used false names to identify
herself to a police officer, and subsequently was convicted of false representation of identity to a
police officer (Pen. Code, § 148.9.), a misdemeanor.

1 **FOURTH CAUSE FOR DISCIPLINE**
2 **Unprofessional Conduct – Act Involving Dishonesty, Fraud, Deceit, or Corruption**
3 **Business and Professions Code section 4301, subdivision (f)**

4 25. The allegations of paragraphs 15-18 are realleged and incorporated by reference as
5 if fully set forth.

6 26. Respondent has subjected her pharmacist license to discipline for the
7 unprofessional conduct of committing an act involving moral turpitude, dishonesty, fraud, deceit,
8 or corruption (Bus. & Prof. Code, § 4301, subd. (f)). Respondent stole merchandise from a
9 Safeway in Santa Clara, California.

10 **FIFTH CAUSE FOR DISCIPLINE**
11 **Unprofessional Conduct – Possession of Controlled Substance**
12 **Business and Professions Code sections 4060 and 4301, subdivisions (j) and (o)**

13 27. The allegations of paragraphs 15-18 are realleged and incorporated by reference as
14 if fully set forth.

15 28. Respondent has subjected her pharmacist license to discipline for the
16 unprofessional conduct of possession of a controlled substance (Bus. & Prof. Code, §§ 4060,
17 4301, subds. (j) & (o)). Respondent possessed five and one-half loose pills of suspected
18 Hydrocodone. The pills were not in a prescription bottle and respondent could not produce a
19 prescription for them.

20 **JURISDICTION FOR PETITION TO REVOKE PROBATION**

21 29. This petition to revoke probation is brought before the Board under the authority
22 of the following laws and probationary conditions. All section references are to the Business and
23 Professions Code unless otherwise indicated.

24 30. Section 4011 states:

25 “The board shall administer and enforce this chapter and the Uniform Controlled
26 Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code).”

27 31. Section 4300, states in part:

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

...

“(d) The board may initiate disciplinary proceedings to revoke or suspend any

1 probationary certificate of licensure for any violation of the terms and conditions of probation.
2 Upon satisfactory completion of probation, the board shall convert the probationary certificate to
3 a regular certificate, free of conditions.”

4 32. Section 4300.1 states:

5 “The expiration, cancellation, forfeiture, or suspension of a board-issued license by
6 operation of law or by order or decision of the board or a court of law, the placement of a license
7 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
8 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
9 proceeding against, the licensee or to render a decision suspending or revoking the license.”

10 33. Section 4304 states:

11 “The board may deny, revoke, or suspend any license issued pursuant to Section 4161 for
12 any violation of this chapter or for any violation of Part 5 (commencing with Section 109875) of
13 Division 104 of the Health and Safety Code.”

14 34. At all times after the effective date of respondent’s probation, Term and Condition
15 16 of the Disciplinary Order stated:

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

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

27 35. On July 1, 2008, and December 15, 2009, the Board reviewed the terms and
28 conditions of the Disciplinary Order with respondent. After each meeting, respondent signed a

1 declaration confirming her understanding of those terms and conditions.

2 **CAUSES TO REVOKE PROBATION**

3 **FIRST CAUSE TO REVOKE PROBATION**

4 **Term and Condition 2**

5 **Failure to Report Arrest to the Board**

6 36. At all times after the effective date of respondent's probation, Term and Condition
7 2 of the Disciplinary Order stated:

8 "Obey All Laws. Respondent shall obey all state and federal laws and regulations
9 substantially related to or governing the practice of pharmacy.

10 "Respondent shall report any of the following occurrences to the Board, in writing, within
11 72 hours of such occurrence:

12 "an arrest or issuance of a criminal complaint for violation of any provision of the
13 Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances
14 laws;

15 "a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
16 criminal complaint, information or indictment;

17 "a conviction of any crime;

18 "discipline, citation, or other administrative action filed by any state and federal agency
19 which involves Respondent's license or which is related to the practice of pharmacy or the
20 manufacturing, obtaining, handling or distribution or billing or charging for any drug, device or
21 control"

22 37. Respondent's probation is subject to revocation because she did not notify the
23 Board in writing within 72 hours after she was arrested on October 21, 2012, and charged with
24 violating, among other sections, Penal Code section 148.9.

25 **SECOND CAUSE TO REVOKE PROBATION**

26 **Term and Condition 4**

27 **Failure to Report to the Board**

28 38. At all times after the effective date of respondent's probation, Term and Condition
4 of the Disciplinary Order stated:

"Reporting to the Board. Respondent shall report to the Board quarterly. The report

1 shall be made either in person or in writing, as directed. Respondent shall state under penalty of
2 perjury whether there has been compliance with all the terms and conditions of probation. If the
3 final probation report is not made as directed, probation shall be extended automatically until
4 such time as the final report is made and accepted by the Board.”

5 39. Respondent’s probation is subject to revocation because on November 3, 2009, the
6 Board notified respondent to appear in person at a Board probation office conference on
7 November 17, 2009, to review the terms and conditions of her probation. The Board sent this
8 notification by first class and certified mail, and respondent received and signed for the certified
9 letter. Respondent failed to appear for the conference on November 17 and did not contact the
10 Board about her absence. On November 19, the Board spoke with respondent. Respondent stated
11 that she did not attend the office conference on November 17 and did not contact the Board about
12 her absence because she did not open the notification letter.

13 **THIRD CAUSE TO REVOKE PROBATION**
14 **Term and Condition 14**
15 **Failure to Notify Employment Change**

16 40. At all times after the effective date of respondent’s probation, Term and Condition
17 14 of the Disciplinary Order stated:

18 “Notification of Employment/Mailing Address Change. Respondent shall notify the
19 Board in writing within 10 days of any change of employment. Said notification shall include the
20 reasons for leaving and/or the address of the new employer, supervisor or owner and work
21 schedule if known. Respondent shall notify the Board in writing within 10 days of a change in
22 name, mailing address or phone number.”

23 41. Respondent’s probation is subject to revocation because she was hired by a
24 pharmacy to work as a pharmacist on May 28, 2010. On July 16, 2012, she orally notified the
25 Board that she had been terminated from that employment on June 13, 2012.

26 **FOURTH CAUSE TO REVOKE PROBATION**
27 **Term and Condition 15**
28 **Failure to Work Required Number of Hours**

42. At all times after the effective date of respondent’s probation, Term and Condition
15 of the Disciplinary Order stated:

1 **“Tolling of Probation.** Respondent shall work at least 40 hours in each calendar month
2 as a pharmacist and at least an average of 80 hours per month in any six consecutive months
3 following the 12-month suspension. Failure to do so will be a violation of probation. If
4 Respondent has not complied with this condition during the probationary term, and Respondent
5 has presented sufficient documentation of her good faith efforts to comply with this condition,
6 and if no other conditions have been violated, the Board, in its discretion, may grant an extension
7 of Respondent’s probation period up to one year without further hearing in order to comply with
8 this condition.”

9 43. Respondent’s probation is subject to revocation because after her 12-month
10 suspension was completed in June 2009, respondent’s only reported employment as a pharmacist
11 was from May 28, 2010 to June 13, 2012.

12 **FIFTH CAUSE TO REVOKE PROBATION**

13 **Term and Condition 18**

14 **Failure to Successfully Participate In and Complete the PRP**

15 44. At all times after the effective date of respondent’s probation, Term and Condition
16 18 of the Disciplinary Order stated:

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

22 **“If Respondent is currently enrolled in the PRP, said participation is now mandatory and**
23 **is no longer considered a self-referral under Business and Professions Code section 4363, as of**
24 **the effective date of this decision. Respondent shall successfully participate in and complete her**
25 **current contract and any subsequent addendums with the PRP. Probation shall be automatically**
26 **extended until Respondent successfully completes her treatment contract. If Respondent is**
27 **terminated from the program, she shall be automatically suspended upon notice by the Board.**
28 **Respondent may not resume the practice of pharmacy until notified by the Board in writing. The**
Board shall retain jurisdiction to institute action to terminate probation for any violation of this

1 term.”

2 45. Respondent’s probation is subject to revocation because after she enrolled in
3 Maximus, the Board’s approved provider of the PRP, on June 30, 2008, Maximus terminated
4 respondent from the PRP on February 7, 2013, as a public risk for non-compliance with its
5 program.

6 **PRAYER**

7 WHEREFORE, complainant requests that a hearing be held on the matters alleged in this
8 first amended accusation and petition to revoke probation, and that following the hearing, the
9 Board of Pharmacy issue a decision:

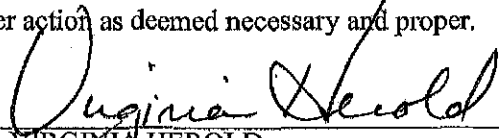
10 1. Revoking the probation that was granted by the Board of Pharmacy in Case
11 Number 3050 and imposing the disciplinary order that was stayed revoking Pharmacist License
12 Number RPH 47276 issued to Lisa Anne Panab, a.k.a Lisa Anne Kesler, a.k.a. Lisa Ann Kesler,
13 a.k.a. Lisa Aanne Kesler;

14 2. Revoking or suspending Pharmacist License Number RPH 47276 issued to Lisa
15 Anne Panab, a.k.a Lisa Anne Kesler, a.k.a. Lisa Ann Kesler, a.k.a. Lisa Aanne Kesler;

16 3. Ordering Lisa Anne Panab, a.k.a Lisa Anne Kesler, a.k.a. Lisa Ann Kesler, a.k.a.
17 Lisa Aanne Kesler, to pay the Board of Pharmacy the reasonable costs of the investigation and
18 enforcement of this case under Business and Professions Code section 125.3; and

19 4. Taking such other and further action as deemed necessary and proper.

20 DATED: 10/21/14


21 VIRGINIA HEROLD
22 Executive Officer
23 Board of Pharmacy
24 Department of Consumer Affairs
25 State of California
26 Complainant

27 SF2012403171
28 90440810.doc

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 GREGORY TUSS
Deputy Attorney General
4 State Bar Number 200659
1515 Clay Street, 20th Floor
5 Post Office Box 70550
Oakland, California 94612-0550
6 Telephone: (510) 622-2143
Facsimile: (510) 622-2270
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation and Petition to
Revoke Probation Against:

Case Number 4493

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

12 **LISA ANNE PANAB**
13 a.k.a Lisa Anne Kesler
a.k.a. Lisa Ann Kesler
14 a.k.a. Lisa Anne Kesler
5178 Mowry Avenue, #2168
15 Fremont, California 94536
Pharmacist License Number RPH 47276

16 Respondent.
17

18
19 Complainant Virginia Herold alleges:

20 **PARTIES**

21 1. Complainant brings this accusation and petition to revoke probation solely in her
22 official capacity as the Executive Officer of the Board of Pharmacy (Board), Department of
23 Consumer Affairs.

24 2. On or about August 4, 1994, the Board issued Pharmacist License Number RPH
25 47276 to respondent Lisa Anne Panab, a.k.a Lisa Anne Kesler, a.k.a. Lisa Ann Kesler, a.k.a. Lisa
26 Anne Kesler. The pharmacist license was in full force and effect at all times relevant to the
27 charges brought in this accusation and petition to revoke probation and will expire on September
28 30, 2013, unless renewed.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRIOR DISCIPLINARY ACTIONS

3. The Board issued a Decision and Order effective June 27, 2008, adopting a Stipulated Settlement and Disciplinary Order entitled *In the Matter of the First Amended Accusation Against Lisa Anne Panab, a.k.a Lisa Anne Kesler, a.k.a. Lisa Ann Kesler, a.k.a. Lisa Anne Kesler*, Case Number 3050 (Disciplinary Order). This Disciplinary Order revoked respondent's pharmacist license. However, the revocation was stayed and respondent's pharmacist license was placed on probation for five (5) years with terms and conditions. A copy of that Decision and Order, and Disciplinary Order is attached as exhibit A and is incorporated by reference.

JURISDICTION, AND STATUTORY AND REGULATORY PROVISIONS

FOR ACCUSATION

4. This accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 490, subdivision (a), states:

"In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued."

6. Section 4011 states:

"The board shall administer and enforce this chapter and the Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code)."

7. Section 4300, subdivision (a), states:

"Every license issued may be suspended or revoked."

8. Section 4300.1 states:

"The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license."

1 9. Section 4301 states, in pertinent part:

2 "The board shall take action against any holder of a license who is guilty of unprofessional
3 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

4 Unprofessional conduct shall include, but is not limited to, any of the following:

5 ...

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

9 ...

10 "(l) The conviction of a crime substantially related to the qualifications, functions, and
11 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
12 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
13 substances or of a violation of the statutes of this state regulating controlled substances or
14 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
15 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
16 The board may inquire into the circumstances surrounding the commission of the crime, in order
17 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
18 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
19 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
20 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
21 of this provision. The board may take action when the time for appeal has elapsed, or the
22 judgment of conviction has been affirmed on appeal or when an order granting probation is made
23 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
24 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
25 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
26 indictment.

27 ///

1 10. Section 4304 states:

2 "The board may deny, revoke, or suspend any license issued pursuant to Section 4161 for
3 any violation of this chapter or for any violation of Part 5 (commencing with Section 109875) of
4 Division 104 of the Health and Safety Code."

5 11. California Code of Regulations, title 16, section 1770, states:

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

12 **COST RECOVERY**

13 12. Section 125.3, subdivision (a), states:

14 "Except as otherwise provided by law, in any order issued in resolution of a disciplinary
15 proceeding before any board within the department or before the Osteopathic Medical Board,
16 upon request of the entity bringing the proceedings, the administrative law judge may direct a
17 licentiate found to have committed a violation or violations of the licensing act to pay a sum not
18 to exceed the reasonable costs of the investigation and enforcement of the case."

19 **FACTUAL BACKGROUND FOR ACCUSATION**

20 13. On October 21, 2012, respondent was stopped on suspicion of shoplifting in Santa
21 Clara, California. She first identified herself to the arresting police officer as Anne Lynn Keller,
22 and then other false names. She was arrested and charged with violating Penal Code section
23 148.9 (false representation of identity to police officer.), among other sections.

24 14. On or about May 29, 2013, in the Superior Court of California, County of Santa
25 Clara, case number C1243520, entitled *The People of the State of California vs. Lisa Anne*
26 *Kesler*, respondent pled guilty or no contest to a misdemeanor violation of Penal Code section
27 148.9 and was placed on probation.

28 ///

1 **CAUSES FOR DISCIPLINE**

2 **FIRST CAUSE FOR DISCIPLINE**
3 **Bus. & Prof. Code, § 490, subd. (a)**
4 **Criminal Conviction**

5 15. The allegations of paragraphs 13-14 are realleged and incorporated by reference as if
6 fully set forth.

7 16. Respondent has subjected her pharmacist license to disciplinary action for a criminal
8 conviction under section 490, subdivision (a). As set forth in paragraphs 13-14 above, respondent
9 was convicted of a misdemeanor violation of Penal Code section 148.9.

10 **SECOND CAUSE FOR DISCIPLINE**
11 **Bus. & Prof. Code, § 4301, subd. (l)**
12 **Unprofessional Conduct – Criminal Conviction**

13 17. The allegations of paragraphs 13-14 are realleged and incorporated by reference as if
14 fully set forth.

15 18. Respondent has subjected her pharmacist license to disciplinary action under section
16 4301, subdivision (l), for unprofessional conduct (criminal conviction). As set forth in
17 paragraphs 13-14 above, respondent was convicted of a misdemeanor violation of Penal Code
18 section 148.9.

19 **THIRD CAUSE FOR DISCIPLINE**
20 **Bus. & Prof. Code, § 4301, subd. (f)**
21 **Unprofessional Conduct – Act Involving Dishonesty, Fraud, Deceit, or Corruption**

22 19. The allegations of paragraphs 13-14 are realleged and incorporated by reference as if
23 fully set forth.

24 20. Respondent has subjected her pharmacist license to disciplinary action under section
25 4301, subdivision (f), for unprofessional conduct (act involving moral turpitude, dishonesty,
26 fraud, deceit, or corruption). As set forth in paragraphs 14-15 above, respondent identified
27 herself to a police officer by a false name, and consequently was convicted of violating Penal
28 Code section 148.9.

///

JURISDICTION FOR PETITION TO REVOKE PROBATION

21. This petition to revoke probation is brought before the Board under the authority of the following laws and probationary conditions. All section references are to the Business and Professions Code unless otherwise indicated.

22. Section 4011 states:

"The board shall administer and enforce this chapter and the Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code)."

23. Section 4300, states, in pertinent part:

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

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

24. Section 4300.1 states:

"The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license."

25. Section 4304 states:

"The board may deny, revoke, or suspend any license issued pursuant to Section 4161 for any violation of this chapter or for any violation of Part 5 (commencing with Section 109875) of Division 104 of the Health and Safety Code."

26. At all times after the effective date of respondent's probation, Term and Condition 16 of the Disciplinary Order stated:

"Violation of Probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the

1 disciplinary order which was stayed. If a petition to revoke probation or an accusation is filed
2 against respondent during probation, the Board shall have continuing jurisdiction and the period
3 of probation shall be extended, until the petition to revoke probation or accusation is heard and
4 decided.

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

10 27. On July 1, 2008, and December 15, 2009, the Board reviewed the terms and
11 conditions of the Disciplinary Order with respondent. After each meeting, respondent signed a
12 declaration confirming her understanding of those terms and conditions.

13 CAUSES TO REVOKE PROBATION

14 **FIRST CAUSE TO REVOKE PROBATION**

15 **Term and Condition 2**

16 **Failure to Report Arrest to the Board**

17 28. At all times after the effective date of respondent's probation, Term and Condition 2
18 of the Disciplinary Order stated:

19 "Obey All Laws. Respondent shall obey all state and federal laws and regulations
20 substantially related to or governing the practice of pharmacy.

21 "Respondent shall report any of the following occurrences to the Board, in writing, within
22 72 hours of such occurrence:

23 "an arrest or issuance of a criminal complaint for violation of any provision of the
24 Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances
25 laws;

26 "a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
27 criminal complaint, information or indictment;

28 "a conviction of any crime;

///

1 "discipline, citation, or other administrative action filed by any state and federal agency
2 which involves Respondent's license or which is related to the practice of pharmacy or the
3 manufacturing, obtaining, handling or distribution or billing or charging for any drug, device or
4 control?"

5 29. Respondent's probation is subject to revocation because she did not notify the Board
6 in writing within 72 hours after she was arrested on October 21, 2012, and charged with violating,
7 among other sections, Penal Code section 148.9.

8 **SECOND CAUSE TO REVOKE PROBATION**

9 **Term and Condition 4
Failure to Report to the Board**

10 30. At all times after the effective date of respondent's probation, Term and Condition 4
11 of the Disciplinary Order stated:

12 **"Reporting to the Board.** Respondent shall report to the Board quarterly. The report shall
13 be made either in person or in writing, as directed. Respondent shall state under penalty of
14 perjury whether there has been compliance with all the terms and conditions of probation. If the
15 final probation report is not made as directed, probation shall be extended automatically until
16 such time as the final report is made and accepted by the Board."

17 31. Respondent's probation is subject to revocation because on November 3, 2009, the
18 Board notified respondent to appear in person at a Board probation office conference on
19 November 17, 2009, to review the terms and conditions of her probation. The Board sent this
20 notification by first class and certified mail, and respondent received and signed for the certified
21 letter. Respondent failed to appear for the conference on November 17 and did not contact the
22 Board about her absence. On November 19, the Board spoke with respondent. Respondent stated
23 that she did not attend the office conference on November 17 and did not contact the Board about
24 her absence because she did not open the notification letter.

25 **THIRD CAUSE TO REVOKE PROBATION**

26 **Term and Condition 14
Failure to Notify Employment Change**

27 32. At all times after the effective date of respondent's probation, Term and Condition 14
28 of the Disciplinary Order stated:

1 **"Notification of Employment/Mailing Address Change.** Respondent shall notify the
2 Board in writing within 10 days of any change of employment. Said notification shall include the
3 reasons for leaving and/or the address of the new employer, supervisor or owner and work
4 schedule if known. Respondent shall notify the Board in writing within 10 days of a change in
5 name, mailing address or phone number."

6 33. Respondent's probation is subject to revocation because she was hired by a pharmacy
7 to work as a pharmacist on May 28, 2010. On July 16, 2012, she orally notified the Board that
8 she had been terminated from that employment on June 13, 2012.

9 **FOURTH CAUSE TO REVOKE PROBATION**
10 **Term and Condition 15**
11 **Failure to Work Required Number of Hours**

12 34. At all times after the effective date of respondent's probation, Term and Condition 15
13 of the Disciplinary Order stated:

14 **"Tolling of Probation.** Respondent shall work at least 40 hours in each calendar month as
15 a pharmacist and at least an average of 80 hours per month in any six consecutive months
16 following the 12-month suspension. Failure to do so will be a violation of probation. If
17 Respondent has not complied with this condition during the probationary term, and Respondent
18 has presented sufficient documentation of her good faith efforts to comply with this condition,
19 and if no other conditions have been violated, the Board, in its discretion, may grant an extension
20 of Respondent's probation period up to one year without further hearing in order to comply with
21 this condition."

22 35. Respondent's probation is subject to revocation because after her 12-month
23 suspension was completed in June 2009, respondent's only reported employment as a pharmacist
24 was from May 28, 2010 to June 13, 2012.

25 **FIFTH CAUSE TO REVOKE PROBATION**
26 **Term and Condition 18**
27 **Failure to Successfully Participate In and Complete the PRP**

28 36. At all times after the effective date of respondent's probation, Term and Condition 18
of the Disciplinary Order stated:

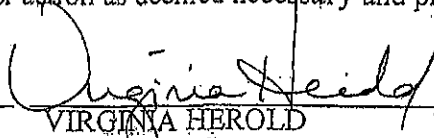
///

1 3. Ordering Lisa Anne Panab, a.k.a Lisa Anne Kesler, a.k.a. Lisa Ann Kesler, a.k.a. Lisa
2 Anne Kesler, to pay the Board of Pharmacy the reasonable costs of the investigation and
3 enforcement of this case pursuant to Business and Professions Code section 125.3; and

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

5 DATED:

9/19/13



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

SF2012403171
90329148.doc

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28