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

11 In the Matter of the Accusation Against:

Case No. 5000

12 **FOUR FIFTY SUTTER PHARMACY and**
13 **ELAINE CHAN, Owner**
14 **450 Sutter Street, #710, 7th Floor**
San Francisco, California 94108

OAH No. 2015050642

15 **Pharmacy Permit No. PHY 45225**

SECOND AMENDED ACCUSATION
AND PETITION TO REVOKE
PROBATION

16 **ELAINE CHAN**
17 **450 Sutter Street, Ste. 713, 7th Floor**
San Francisco, CA 94108

18 **Pharmacy Technician License No. TCH**
36761

19 **THINH PHU NGUYEN**
20 **106 Summerrain Drive**
21 **South San Francisco, CA 94080**

22 **Pharmacist License No. RPH 64877**

23 **BRANDON VALOR BRODT**
24 **139 W. Richmond Avenue, #B**
Richmond, CA 94801

25 **Pharmacist License No. RPH 43082**

26 Respondents.

1 Complainant alleges:

2 **PARTIES**

3 1. Virginia Herold (Complainant) brings this Second Amended Accusation and Petition
4 to Revoke solely in her official capacity as the Executive Officer of the Board of Pharmacy,
5 Department of Consumer Affairs.

6 2. On or about March 7, 2001, the Board of Pharmacy issued Pharmacy Permit Number
7 PHY 45225 to Four Fifty Sutter Pharmacy and Elaine Chan, Owner (Respondent FFSP). The
8 Pharmacy Permit was in full force and effect at all times relevant to the charges brought in this
9 Second Amended Accusation and Petition to Revoke Probation and will expire on March 1, 2016,
10 unless renewed.

11 3. On or about January 2, 2002, the Board of Pharmacy issued Pharmacy Technician
12 License No. 36761 to Elaine Chan (Respondent Chan). The Pharmacy Technician License was in
13 full force and effect at all times relevant to the charges brought in this Second Amended
14 Accusation and Petition to Revoke Probation and will expire on July 31, 2017, unless renewed.

15 4. On or about March 1, 1990, the Board of Pharmacy issued Pharmacist License No.
16 RPH 43082 to Brandon Valor Brodt (Respondent Brodt). The Pharmacist License was in full
17 force and effect at all times relevant to the charges brought in this Second Amended Accusation
18 and Petition to Revoke Probation and will expire on January 31, 2016, unless renewed.

19 5. On or about October 14, 2010, the Board of Pharmacy issued Pharmacist License No.
20 RPH 64877 to Think Phu Nguyen (Respondent Nguyen). The Pharmacist License was in full
21 force and effect at all times relevant to the charges brought in this Second Amended Accusation
22 and Petition to Revoke Probation and will expire on September 30, 2016, unless renewed.

23 **PRIOR DISCIPLINARY ACTION**

24 6. In a disciplinary action entitled "*In the Matter of the Accusation against Four Fifty*
25 *Sutter, Brandon Brodt, and Elaine Chan,*" Case No. 3797, the Board of Pharmacy issued a
26 Decision and Order, effective June 20, 2013. The Board revoked Respondent FFSP's Pharmacy
27 Permit. However, the Board stayed the revocation and placed Respondent FFSP's Pharmacy
28 Permit on probation for five years with certain terms and conditions. The Board revoked

1 Respondent Brodt's Pharmacist License. However, the Board stayed the revocation and placed
2 Respondent's Pharmacist License on probation for four years with certain terms and conditions.
3 The Board issued a citation against Respondent Chan. A copy of that Decision and Order is
4 attached as Exhibit A and is incorporated by reference.

5 **JURISDICTION**

6 7. The Board of Pharmacy (Board), Department of Consumer Affairs, brings this
7 Second Amended Accusation and Petition to Revoke Probation under the authority of the
8 following laws. All section references are to the Business and Professions Code (Code) unless
9 otherwise indicated.

10 8. Code section 4011 provides that the Board shall administer and enforce both the
11 Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act
12 [Health & Safety Code, § 11000 et seq.].

13 9. Code section 4300 states, in part:

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

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

18 "(1) Suspending judgment.

19 "(2) Placing him or her upon probation.

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

21 "(4) Revoking his or her license.

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

24 . . .

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

1 10. Code section 4300.1 states:

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

8 **STATUTORY PROVISIONS**

9 11. Code section 4081 states, in part:

10 “(a) All records of manufacture and of sale, acquisition, or disposition of dangerous
11 drugs or dangerous devices shall be at all times during business hours open to inspection by
12 authorized officers of the law, and shall be preserved for at least three years from the date
13 of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy,
14 veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory,
15 clinic, hospital, institution, or establishment holding a currently valid and unrevoked
16 certificate, license, permit, registration, or exemption under Division 2 (commencing with
17 Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section
18 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of
19 dangerous drugs or dangerous devices.

20 “(b) The owner, officer, and partner of a pharmacy, wholesaler, or veterinary food-
21 animal drug retailer shall be jointly responsible, with the pharmacist-in-charge or
22 designated representative-in-charge, for maintaining the records and inventory described in
23 this section.

24 12. Code section 4105, subdivision (a), states:

25 “All records or other documentation of the acquisition and disposition of dangerous
26 drugs and dangerous devices by any entity licensed by the board shall be retained on the
27 licensed premises in a readily retrievable form.

1 13. Code section 4113, subdivision (c), states that the pharmacist-in-charge “shall be
2 responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining
3 to the practice of pharmacy.”

4 14. Code section 4125, subdivision (a), provides:

5 “Every pharmacy shall establish a quality assurance program that shall, at a
6 minimum, document medication errors attributable, in whole or in part, to the pharmacy or
7 its personnel. The purpose of the quality assurance program shall be to assess errors that
8 occur in the pharmacy in dispensing or furnishing prescription medications so that the
9 pharmacy may take appropriate action to prevent a recurrence.”

10 15. Code section 4301, states, in part:

11 “The board shall take action against any holder of a license who is guilty of
12 unprofessional conduct Unprofessional conduct shall include, but is not limited to,
13 any of the following:

14 . . .

15 “(c) Gross negligence.

16 . . .

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

19 . . .

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

24 16. Code section 4342 states:

25 “(a) The board may institute any action or actions as may be provided by law and
26 that, in its discretion, are necessary, to prevent the sale of pharmaceutical preparations and
27 drugs that do not conform to the standard and tests as to quality and strength, provided in
28 the latest edition of the United States Pharmacopoeia or the National Formulary, or that

1 violate any provision of the Sherman Food, Drug and Cosmetic Law (Part 5 (commencing
2 with Section 109875) of Division 104 of the Health and Safety Code).

3 “(b) Any knowing or willful violation of any regulation adopted pursuant to Section
4 4006 shall be subject to punishment in the same manner as is provided in Sections 4336 and
5 4321.”

6 17. Health and Safety Code section 11164 states, in part:

7 “Except as provided in Section 11167, no person shall prescribe a controlled
8 substance, nor shall any person fill, compound, or dispense a prescription for a controlled
9 substance, unless it complies with the requirements of this section.

10 “(a) Each prescription for a controlled substance classified in Schedule II, III, IV,
11 or V, except as authorized by subdivision (b), shall be made on a controlled substance
12 prescription form as specified in Section 11162.1 and shall meet the following
13 requirements:

14 . . .

15 “(1) The prescription shall be signed and dated by the prescriber in ink . . .”

16 18. Health and Safety Code section 11165, subdivision (d), states:

17 “For each prescription for a Schedule II, Schedule III, or Schedule IV controlled
18 substance, as defined in the controlled substances schedules in federal law and regulations,
19 specifically Sections 1308.12, 1308.13, and 1308.14, respectively, of Title 21 of the Code
20 of Federal Regulations, the dispensing pharmacy, clinic, or other dispenser shall report the
21 following information to the Department of Justice as soon as reasonably possible, but not
22 more than seven days after the date a controlled substance is dispensed, in a format
23 specified by the Department of Justice:

24 “(1) Full name, address, and, if available, telephone number of the ultimate user or
25 research subject, or contact information as determined by the Secretary of the United States
26 Department of Health and Human Services, and the gender, and date of birth of the ultimate
27 user.

1 “(2) The prescriber's category of licensure, license number, national provider
2 identifier (NPI) number, if applicable, the federal controlled substance registration number,
3 and the state medical license number of any prescriber using the federal controlled
4 substance registration number of a government-exempt facility.

5 “(3) Pharmacy prescription number, license number, NPI number, and federal
6 controlled substance registration number.

7 “(4) National Drug Code (NDC) number of the controlled substance dispensed.

8 “(5) Quantity of the controlled substance dispensed.

9 “(6) International Statistical Classification of Diseases, 9th revision (ICD-9) or 10th
10 revision (ICD-10) Code, if available.

11 “(7) Number of refills ordered.

12 “(8) Whether the drug was dispensed as a refill of a prescription or as a first-time
13 request.

14 “(9) Date of origin of the prescription.

15 “(10) Date of dispensing of the prescription.

16 **REGULATORY PROVISIONS**

17 19. California Code of Regulations, title 16, section 1711, states, in part:

18 “(a) Each pharmacy shall establish or participate in an established quality assurance
19 program which documents and assesses medication errors to determine cause and an
20 appropriate response as part of a mission to improve the quality of pharmacy service and
21 prevent errors.

22 “(b) For purposes of this section, “medication error” means any variation from a
23 prescription or drug order not authorized by the prescriber, as described in Section 1716.
24 Medication error, as defined in the section, does not include any variation that is corrected
25 prior to furnishing the drug to the patient or patient's agent or any variation allowed by law.

26 “(c)(1) Each quality assurance program shall be managed in accordance with
27 written policies and procedures maintained in the pharmacy in an immediately retrievable
28 form.

1 “(2) When a pharmacist determines that a medication error has occurred, a
2 pharmacist shall as soon as possible:

3 “(A) Communicate to the patient or the patient's agent the fact that a medication
4 error has occurred and the steps required to avoid injury or mitigate the error.

5 “(B) Communicate to the prescriber the fact that a medication error has occurred.

6 “(3) The communication requirement in paragraph (2) of this subdivision shall only
7 apply to medication errors if the drug was administered to or by the patient, or if the
8 medication error resulted in a clinically significant delay in therapy.

9 “(4) If a pharmacist is notified of a prescription error by the patient, the patient's
10 agent, or a prescriber, the pharmacist is not required to communicate with that individual as
11 required in paragraph (2) of this subdivision.

12 “(d) Each pharmacy shall use the findings of its quality assurance program to
13 develop pharmacy systems and workflow processes designed to prevent medication errors.
14 An investigation of each medication error shall commence as soon as is reasonably
15 possible, but no later than 2 business days from the date the medication error is discovered.
16 All medication errors discovered shall be subject to a quality assurance review.

17 “(e) The primary purpose of the quality assurance review shall be to advance error
18 prevention by analyzing, individually and collectively, investigative and other pertinent
19 data collected in response to a medication error to assess the cause and any contributing
20 factors such as system or process failures. A record of the quality assurance review shall be
21 immediately retrievable in the pharmacy. The record shall contain at least the following:

22 “1. the date, location, and participants in the quality assurance review;

23 “2. the pertinent data and other information relating to the medication error(s)
24 reviewed and documentation of any patient contact required by subdivision (c);

25 “3. the findings and determinations generated by the quality assurance review; and,

26 “4. recommend changes to pharmacy policy, procedure, systems, or processes, if
27 any.

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1 “The pharmacy shall inform pharmacy personnel of changes to pharmacy policy,
2 procedure, systems, or processes made as a result of recommendations generated in the
3 quality assurance program.

4 “(f) The record of the quality assurance review, as provided in subdivision (e) shall
5 be immediately retrievable in the pharmacy for at least one year from the date the record
6 was created.

7 “(g) The pharmacy's compliance with this section will be considered by the board
8 as a mitigating factor in the investigation and evaluation of a medication error.”

9 20. California Code of Regulations, title 16, section 1714, states, in part:

10 “(b) Each pharmacy licensed by the board shall maintain its facilities, space,
11 fixtures, and equipment so that drugs are safely and properly prepared, maintained, secured
12 and distributed. The pharmacy shall be of sufficient size and unobstructed area to
13 accommodate the safe practice of pharmacy.

14 “(c) The pharmacy and fixtures and equipment shall be maintained in a clean and
15 orderly condition. The pharmacy shall be dry, well-ventilated, free from rodents and
16 insects, and properly lighted. The pharmacy shall be equipped with a sink with hot and cold
17 running water for pharmaceutical purposes.”

18 21. California Code of Regulations, title 16, section 1715, states, in part:

19 “(a) The pharmacist-in-charge of each pharmacy as defined under section 4029 or
20 section 4037 of the Business and Professions Code shall complete a self-assessment of the
21 pharmacy's compliance with federal and state pharmacy law. The assessment shall be
22 performed before July 1 of every odd-numbered year. The primary purpose of the self-
23 assessment is to promote compliance through self-examination and education.

24 “(b) In addition to the self-assessment required in subdivision (a) of this section, the
25 pharmacist-in-charge shall complete a self-assessment within 30 days whenever:

26 “(1) A new pharmacy permit has been issued, or

27 “(2) There is a change in the pharmacist-in-charge, and he or she becomes the new
28 pharmacist-in-charge of a pharmacy.”

1 22. California Code of Regulations, title 16, section 1716, states, in part:

2 “Pharmacists shall not deviate from the requirements of a prescription except upon
3 the prior consent of the prescriber or to select the drug product in accordance with Section
4 4073 of the Business and Professions Code.”

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

6 “‘Current Inventory’ as used in Sections 4081 and 4332 of the Business and
7 Professions Code shall be considered to include complete accountability for all dangerous
8 drugs handled by every licensee enumerated in Sections 4081 and 4332.

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

12 24. California Code of Regulations, title 16, section 1735.2, states, in part:

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

21 . . .

22 “(j) Prior to allowing any drug product to be compounded in a pharmacy, the
23 pharmacist-in-charge shall complete a self-assessment for compounding pharmacies
24 developed by the board. (Incorporated by reference is “Community Pharmacy & Hospital
25 Outpatient Pharmacy Compounding Self-Assessment” Form 17M-39 Rev. 02/12.) That
26 form contains a first section applicable to all compounding, and a second section applicable
27 to sterile injectable compounding. The first section must be completed by the pharmacist-
28 in-charge before any compounding is performed in the pharmacy. The second section must

1 be completed by the pharmacist-in-charge before any sterile injectable compounding is
2 performed in the pharmacy. The applicable sections of the self-assessment shall
3 subsequently be completed before July 1 of each odd-numbered year, within 30 days of the
4 start of a new pharmacist-in-charge, and within 30 days of the issuance of a new pharmacy
5 license. The primary purpose of the self-assessment is to promote compliance through self-
6 examination and education.”

7 25. California Code of Regulations, title 16, section 1735.3, subdivision (a), states, in
8 part:

9 “For each compounded drug product, the pharmacy records shall include:

10 . . .

11 “(6) The manufacturer, expiration date and lot number of each component. If the
12 manufacturer name is demonstrably unavailable, the name of the supplier may be
13 substituted.”

14 26. California Code of Regulations, title 16, section 1774, subdivision (b), states:

15 “When the circumstances of the case so require, the Board may impose conditions
16 of probation in addition to those enumerated herein by the terms of its decision in an
17 administrative case or by stipulation of the parties.”

18 27. Federal Code of Regulations, title 21, section 1304.04, states, in part:

19 “(a) Except as provided in paragraphs (a)(1) and (a)(2) of this section, every
20 inventory and other records required to be kept under this part must be kept by the
21 registrant and be available, for at least 2 years from the date of such inventory or records,
22 for inspection and copying by authorized employees of the Administration.

23 . . .

24 “(h) Each registered pharmacy shall maintain the inventories and records of
25 controlled substances as follows:

26 “(1) Inventories and records of all controlled substances listed in Schedule I and II
27 shall be maintained separately from all other records of the pharmacy.

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1 “(2) Paper prescriptions for Schedule II controlled substances shall be maintained
2 at the registered location in a separate prescription file.

3 “(3) Inventories and records of Schedules III, IV, and V controlled substances
4 shall be maintained either separately from all other records of the pharmacy or in such
5 form that the information required is readily retrievable from ordinary business records of
6 the pharmacy.

7 “(4) Paper prescriptions for Schedules III, IV, and V controlled substances shall
8 be maintained at the registered location either in a separate prescription file for Schedules
9 III, IV, and V controlled substances only or in such form that they are readily retrievable
10 from the other prescription records of the pharmacy. Prescriptions will be deemed readily
11 retrievable if, at the time they are initially filed, the face of the prescription is stamped in
12 red ink in the lower right corner with the letter "C" no less than 1 inch high and filed
13 either in the prescription file for controlled substances listed in Schedules I and II or in the
14 usual consecutively numbered prescription file for noncontrolled substances. However, if
15 a pharmacy employs a computer application for prescriptions that permits identification
16 by prescription number and retrieval of original documents by prescriber name, patient's
17 name, drug dispensed, and date filled, then the requirement to mark the hard copy
18 prescription with a red "C" is waived.

19 “(5) Records of electronic prescriptions for controlled substances shall be
20 maintained in an application that meets the requirements of part 1311 of this chapter. The
21 computers on which the records are maintained may be located at another location, but the
22 records must be readily retrievable at the registered location if requested by the
23 Administration or other law enforcement agent. The electronic application must be
24 capable of printing out or transferring the records in a format that is readily
25 understandable to an Administration or other law enforcement agent at the registered
26 location. Electronic copies of prescription records must be sortable by prescriber name,
27 patient name, drug dispensed, and date filled.”

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1 **COST RECOVERY**

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

5 **JUNE 11, 2012, INSPECTION**

6 29. From on or about November 4, 2004, to January 1, 2013, Respondent Brodt was the
7 Pharmacist-in-Charge (PIC) at Respondent FFSP.

8 30. On February 3, 2012, Respondent Brodt and Respondent FFSP dispensed prescription
9 number 6431311 to Patient A¹ for orphenadrine 100 mg extended release instead of orphenadrine
10 100 mg immediate release as prescribed.

11 31. On or about June 11, 2012, a Board investigator conducted an inspection at
12 Respondent FFSP after the Board received an online complaint from Patient A that the pharmacy
13 charged patient A for unwanted medication and dispensed orphenadrine 100 mg that was not in
14 accordance with a physician's written prescription.

15 32. During the inspection, the investigator observed the following:

16 a. The premises was cluttered and disorganized despite written notice in 2009 and 2010.

17 b. Respondent FFSP and Respondent Brodt did not conduct a quality assurance report
18 and review of the February 3, 2012, medication error for prescription number 6431311 for
19 orphenadrine 100 mg.

20 c. Respondent FFSP and Respondent Brodt could not provide a dispensing record for
21 prescription number 6431311.

22 d. Multiple expired products were on Respondent FFSP's pharmacy shelves including,
23 but not limited to, the following: glycerin (January 2006), alcohol (June 2009), ether (December
24 1992), water (March 2012), hydrogen peroxide (July 2004), bismuth subgallate (November 30,
25 2010), and sodium borate (March 31, 2010).

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27 _____
28 ¹ Patients are identified by number to protect their privacy.

1 e. When Patient A complained to Respondent Chan about the February 3, 2012,
2 medication error for prescription number 6431311 for orphenadrine. Respondent Chan did not
3 acknowledge the error, and, instead, insisted that Respondent FFSP dispensed the prescription
4 correctly.

5 33. On or about August 27, 2012, a Board investigator issued notices of noncompliance
6 to Respondent FFSP and Respondent Brodt.

7 **DRUGS**

8 34. Fortesta is the brand name for testosterone gel. It is a Schedule III controlled
9 substance pursuant to Health and Safety Code section 11056, subdivision (f)(30), and a dangerous
10 drug pursuant to Code section 4022.

11 35. Orphenadrine is the generic name for trade drug Norflex. It is a dangerous drug
12 pursuant to Code section 4022.

13 36. Valacyclovir is the generic name for Valtrex and is a dangerous drug pursuant to
14 Code section 4022.

15 **ACCUSATION**

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Failure to Maintain Premises)**

18 37. Respondent FFSP's license is subject to discipline for not maintaining the premises in
19 a manner suitable for the safe practice of pharmacy. (Bus. & Prof. Code, § 4301, subd. (o); Cal.
20 Code Regs., tit. 16, §1714, subd. (c).) During a Board inspection on or about June 11, 2012,
21 Respondent FFSP's facilities were cluttered and disorganized. The underlying facts are set forth
22 more particularly in paragraphs 29, 31, and 32, above.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(Variation from Prescription)**

25 38. Respondent FFSP's license is subject to discipline for deviating from the
26 requirements of a prescription. (Bus. & Prof. Code, § 4301, subd. (o); Cal. Code Regs., tit. 16, §
27 1716.) On or about February 3, 2012, Respondent FFSP dispensed orphenadrine 100 mg
28

1 extended release instead of orphenadrine 100 mg immediate release, as prescribed. The
2 underlying facts are set forth more particularly in paragraphs 29 through 32, above.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Missing Quality Assurance Review Report)**

5 39. Respondent FFSP's license is subject to discipline for failing to prepare a medication
6 error quality assurance review report in the pharmacy for the present year. (Bus. & Prof. Code, §
7 4301, subds. (j) and (o); Cal. Code Regs., tit. 16, §1711.) On or about February 3, 2012,
8 Respondent FFSP committed a medication error regarding prescription number 6431311 for
9 orphenadrine 100 mg. Respondent FFSP was required to prepare a report within two days of the
10 date of the discovery of the error. However, during a Board inspection on or about June 11, 2012,
11 Respondent FFSP did not have available a quality assurance review report on file and
12 immediately retrievable. The underlying facts are set forth more particularly in paragraphs 29
13 through 32, above.

14 **FOURTH CAUSE FOR DISCIPLINE**

15 **(Failure to Maintain Records of Dangerous Drugs)**

16 40. Respondent FFSP's license is subject to discipline for failing to maintain records of
17 dangerous drugs. (Bus. & Prof. Code, §§ 4301, subds. (j) and (o) and 4081, subd. (a).) During a
18 Board inspection on or about June 11, 2012, Respondent FFSP did not have any dispensing
19 records for prescription number 6431311 for orphenadrine available for Board review. The
20 underlying facts are set forth more particularly in paragraphs 29 through 32, above.

21 **FIFTH CAUSE FOR DISCIPLINE**

22 **(Expired Drugs in Inventory)**

23 41. Respondent FFSP's license is subject to discipline for maintaining expired drugs in its
24 inventory. (Bus. & Prof. Code, §§ 4301, subd. (o), and 4342, subd. (a).) During a Board
25 inspection on or about June 11, 2012, a board investigator observed that Respondent FFSP
26 maintained several expired pharmacy products. The underlying facts are set forth more
27 particularly in paragraphs 29, 31, and 32, above.

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1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Failure to Maintain Premises)**

3 42. Respondent Brodt's license is subject to discipline for not maintaining the premises in
4 a manner suitable for the safe practice of pharmacy. (Bus. & Prof. Code, § 4301, subd. (o); Cal.
5 Code Regs., tit. 16, §1714, subd. (c).) During a Board inspection on or about June 11, 2012,
6 Respondent Brodt was the PIC and Respondent FFSP's facilities were cluttered and disorganized.
7 The underlying facts are set forth more particularly in paragraphs 29, 31, and 32, above

8 **SEVENTH CAUSE FOR DISCIPLINE**

9 **(Variation from Prescription)**

10 43. Respondent Brodt's license is subject to discipline for deviating from the
11 requirements of a prescription. (Bus. & Prof. Code, § 4301, subds. (j) and (o); Cal. Code Regs.,
12 tit. 16, § 1716.) On or about February 3, 2012, Respondent Brodt dispensed orphenadrine 100 mg
13 extended release instead of orphenadrine 100 mg immediate release, as prescribed. The
14 underlying facts are set forth more particularly in paragraphs 29 through 32, above.

15 **EIGHTH CAUSE FOR DISCIPLINE**

16 **(Missing Quality Assurance Review Report)**

17 44. Respondent Brodt's license is subject to discipline for failing to prepare a medication
18 error quality assurance review report in the pharmacy for the present year. (Bus. & Prof. Code, §
19 4301, subds. (j) and (o); Cal. Code Regs., tit. 16, §1711.) On or about February 3, 2012,
20 Respondent Brodt committed a medication error regarding prescription number 6431311 for
21 orphenadrine 100 mg. Respondent Brodt was required to prepare a report within two days of the
22 date of the discovery of the error. However, during a Board inspection on or about June 11, 2012,
23 Respondent Brodt did not have available a quality assurance review report on file and
24 immediately retrievable. The underlying facts are set forth more particularly in paragraphs 29
25 through 32, above.

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NINTH CAUSE FOR DISCIPLINE

(Failure to Maintain Records of Dangerous Drugs)

45. Respondent Brodt’s license is subject to discipline for failing to maintain records of dangerous drugs. (Bus. & Prof. Code, §§ 4301, subds. (j) and (o), and 4081, subd. (a).) During a Board inspection on or about June 11, 2012, Respondent Brodt did not have any dispensing records for prescription number 6431311 for orphenadrine available for Board review. The underlying facts are set forth more particularly in paragraphs 29 through 32, above.

TENTH CAUSE FOR DISCIPLINE

(Expired Drugs in Inventory)

46. Respondent Brodt’s license is subject to discipline for maintaining expired drugs in its inventory. (Bus. & Prof. Code, §§ 4301, subd. (o), and 4342, subd. (a).) During a Board inspection on or about June 11, 2012, a board investigator observed that Respondent Brodt maintained several expired pharmacy products. The underlying facts are set forth more particularly in paragraphs 29, 31 and 32, above.

JUNE 26, 2013, INSPECTION

47. From on or about January 1, 2013, to present, Respondent Nguyen was the PIC at FFSP.

48. On or about January 24, 2013, Respondent FFSP and Respondent Nguyen dispensed prescription number 4149633 for Patient B for a testosterone gel preparation and wrote an expiration date of July 2013. However, two ingredients expired on June 2013 and one ingredient did not have a documented expiration date.

49. On or about March 27, 2013, Respondent FFSP dispensed prescription number 4150016 for Patient B for Fortesta with directions to use four pumps a day, instead of the eight pumps a day as prescribed.

50. On or about April 19, 2013, Respondent FFSP dispensed prescription number 6143144 for Patient B for valacyclovir 1 gram once a day, instead of the prescribed 500 mg twice a day.

1 51. On or about May 13, 2013, Patient B informed Respondent FFSP of the medication
2 errors.

3 52. On or about June 26, 2013, a Board investigator conducted an inspection at
4 Respondent FFSP after the Board received an online complaint that the pharmacy dispensed
5 medications that were not in accordance with a physician's written prescriptions.

6 53. During the inspection, the investigator observed the following:

7 a. Respondent FFSP and Respondent Nguyen were unable to provide a compounding
8 log for prescription number 4146533 for Patient B for testosterone.

9 b. Respondent Nguyen admitted that he assigned an expiration date to the compounded
10 testosterone for prescription 4149633 for Patient B that was beyond the expiration date of
11 multiple ingredients.

12 c. On or about December 2 and 27, 2011, January 29, February 27, March 22, and April
13 17, 2012, Respondent FFSP dispensed testosterone gel to Patient B instead of testosterone
14 powder as ordered by the original prescription, dated November 7, 2011. Respondent FFSP also
15 dispensed the compound with incorrect directions for use, stating to use it once a day instead of
16 twice a day. Respondent FFSP and Respondent Nguyen were unable to provide any
17 documentation showing a change in dosage, form, or directions from the prescribing physician.

18 d. Respondent FFSP and Respondent Nguyen could not provide to the Board a current
19 biennial controlled substance inventory and a record of a biennial inventory for any time period.

20 e. Respondent FFSP and Respondent Nguyen did not conduct a self-assessment of the
21 pharmacy's compliance with federal and state pharmacy law within 30 days of January 1, 2013,
22 when Respondent Nguyen became the new PIC. Respondent FFSP and Respondent Nguyen
23 could not provide to the Board a copy of a completed current self-assessment that should have
24 been conducted in July 2011.

25 f. Respondent FFSP and Respondent Nguyen did not conduct a self-assessment of the
26 pharmacy's compliance with compounding laws within 30 days of January 1, 2013, when
27 Respondent Nguyen became the new PIC. Respondent FFSP and Respondent Nguyen could not
28

1 provide to the Board a copy of a completed current compounding self-assessment that should
2 have been conducted in July 2011.

3 g. Respondent FFSP and Respondent Nguyen Respondent FFSP and Respondent
4 Nguyen did not conduct a quality assurance review report by May 15, 2013, within two business
5 days of the date that they discovered that they dispensed prescription number 4150016 to Patient
6 B for Fortesta with incorrect directions. Respondent FFSP and Respondent Nguyen were unable
7 to provide to the Board a copy of a quality assurance review report.

8 h. Respondent FFSP and Respondent Nguyen were unable to provide an original copy to
9 the Board of prescription number 6423645 to Patient B for valacyclovir 500 mg with directions to
10 take one tablet twice a day.

11 i. Respondent FFSP's premises was cluttered and disorganized despite written notice in
12 2009, 2010, and 2012.

13 j. A Notice of Probation was not posted at Respondent FFSP as required by Condition
14 Number 11, of the Decision and Order *In the Matter of the Accusation against Four Fifty Sutter*,
15 Case No. 3797.

16 54. On or about June 26, 2013, a Board investigator issued a notice of noncompliance to
17 Respondent FFSP. The Board issued a citation against Respondent Nguyen, as set forth more
18 particularly in paragraph 87, below.

19 **ELEVENTH CAUSE FOR DISCIPLINE**

20 **(Failure to Provide Controlled Substance Inventories)**

21 55. Respondent FFSP's license is subject to discipline for not providing controlled
22 substance inventories during an inspection. (Bus. & Prof. Code, § 4301, subds. (j) and (o); Cal.
23 Code Regs., tit. 16, § 1718; and 21 C.F.R. § 1304.04.) During a Board inspection on or about
24 June 26, 2013, Respondent FFSP did not have available a current biennial inventory and there
25 was no record of a biennial inventory for any time period. The underlying facts are set forth more
26 particularly in paragraphs 47, 52, and 53, above.

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1 **TWELFTH CAUSE FOR DISCIPLINE**

2 **(Failure to Prepare Controlled Substance Inventory Self-Assessment)**

3 56. Respondent FFSP's license is subject to discipline for not providing controlled
4 substance inventory self-assessments during an inspection. (Bus. & Prof. Code, § 4301, subds. (j)
5 and (o); Cal. Code Regs., tit. 16, § 1715, subds. (a) and (b)(2).) By January 31 and July 1, 2013,
6 Respondent FFSP was required to conduct controlled substance inventory self-assessments.
7 During a Board inspection on or about June 26, 2013, Respondent FFSP did not have these self-
8 assessments available for Board review. The underlying facts are set forth more particularly in
9 paragraphs 37, 52, and 53, above.

10 **THIRTEENTH CAUSE FOR DISCIPLINE**

11 **(Failure to Prepare Compounding Self-Assessment)**

12 57. Respondent FFSP's license is subject to discipline for not providing copies of
13 compounding self-assessments during an inspection. (Bus. & Prof. Code, § 4301, subd. (o); Cal.
14 Code Regs., tit. 16, § 1735.2, subd. (j).) By January 31, 2013 and July 1, 2013, Respondent FFSP
15 was required to conduct compounding self-assessments. During a Board inspection on or about
16 June 26, 2013, Respondent FFSP did not have these assessments available for Board review. The
17 underlying facts are set forth more particularly in paragraphs 37, 52, and 53, above.

18 **FOURTEENTH CAUSE FOR DISCIPLINE**

19 **(Failure to Maintain Premises –Safe Practice of Pharmacy)**

20 58. Respondent FFSP's license is subject to discipline for not maintaining the premises in
21 a manner suitable for the safe practice of pharmacy. (Bus. & Prof. Code, § 4301, subd. (o); Cal.
22 Code Regs., tit. 16, §1714, subd. (b).) During a Board inspection on or about June 26, 2013,
23 Respondent FFSP's facilities were cluttered and disorganized. The underlying facts are set forth
24 more particularly in paragraphs 47, and 52 through 54, above.

25 **FIFTEENTH CAUSE FOR DISCIPLINE**

26 **(Missing Quality Assurance Review Report)**

27 59. Respondent FFSP's license is subject to discipline for failing to prepare a quality
28 assurance review report in the pharmacy for the present year. (Bus. & Prof. Code, § 4301, subds.

1 (j) and (o); Cal. Code Regs., tit. 16, §1711.) On May 13, 2013, Respondent FFSP discovered that
2 it made a medication error regarding prescription number 4150016 for Fortesta. Respondent
3 FFSP was required to investigate and prepare a report. During a Board inspection on or about
4 June 26, 2013, Respondent FFSP did not have available a quality assurance review report on file
5 and immediately retrievable. The underlying facts are set forth more particularly in paragraphs
6 47 through 54, above.

7 **SIXTEENTH CAUSE FOR DISCIPLINE**

8 **(Missing Original Prescription for Dangerous Drug)**

9 60. Respondent FFSP's license is subject to discipline for failing to retain original
10 documentation for the disposition of dangerous drugs. (Bus. & Prof. Code, §§ 4301, subds. (j)
11 and (o) and 4105, subd. (a).) During a Board inspection on or about June 26, 2013, Respondent
12 FFSP did not have available in readily retrievable form the original prescription number 6423645
13 for valacyclovir. The underlying facts are set forth more particularly in paragraphs 47 through
14 54, above.

15 **SEVENTEENTH CAUSE FOR DISCIPLINE**

16 **(Expiration Date Error)**

17 61. Respondent FFSP's license is subject to discipline for assigning an expiration date to
18 a compounded drug product that was beyond the use date. (Bus. & Prof. Code, §§ 4301, subds.
19 (j) and (o); Cal. Code Regs., tit. 16, § 1735.2, subd. (h).) On or about January 24, 2013,
20 Respondent FFSP assigned an expiration date of July 2013 for a testosterone gel when the
21 shortest expiration date of several of the gel's components was June 2013. The underlying facts
22 are set forth more particularly in paragraphs 47 through 54, above.

23 **EIGHTEENTH CAUSE FOR DISCIPLINE**

24 **(Labeling Error)**

25 62. Respondent FFSP's license is subject to discipline for dispensing medication with
26 instructions that deviated from the prescription as written by a physician. (Bus. & Prof. Code, §
27 4301, subds. (j) and (o); Cal. Code Regs., tit. 16, § 1716.) Respondent FFSP dispensed
28 prescription number 4146533 as a testosterone gel to be used once a day instead of the

1 testosterone powder to be used twice a day. The underlying facts are set forth more particularly
2 in paragraphs 47 through 54, above.

3 **OCTOBER 8, 2013, INSPECTION**

4 63. On or about October 8, 2013, Board investigators conducted an inspection at
5 Respondent FFSP. Board investigators requested copies of transmission of controlled substance
6 dispensing data to Controlled Substance Utilization Review and Evaluation System (CURES) for
7 2012 through 2013. Respondent FFSP and Respondent Nguyen were unable to provide proof of
8 transmission of CURES reports.

9 64. On October 24, 2013, a Board investigator discovered that Respondent FFSP,
10 Respondent Brodt, and Respondent Nguyen submitted controlled substance dispensing data to
11 CURES on February 27, 2012, April 6, 2012, January 21, 2013, July 10, 2013, August 21, 22,
12 and 29, 2013, and October 15, 22, and 23, 2013, instead of on a weekly basis as required.
13 Respondent FFSP and Respondent Nguyen did not file a report for February 2013.

14 65. On or about November 5, 2013, a Board investigator issued a notice of
15 noncompliance to Respondent FFSP and Respondent Nguyen.

16 66. On or about November 12, 2013, a Board investigator issued a notice of
17 noncompliance to Respondent Brodt.

18 **NINETEENTH CAUSE FOR DISCIPLINE**

19 **(Failure to Transmit CURES Dispensing Data)**

20 67. Respondent FFSP's license is subject to discipline for failing to comply with
21 controlled substance laws. (Bus. & Prof. Code, § 4301, subds. (j) and (o), and Health & Saf.
22 Code § 11165, subd. (d).) During a Board inspection on or about October 8, 2013, Respondent
23 FFSP did not have available controlled substance dispensing data for Board review. Respondent
24 FFSP failed to submit controlled substance data to CURES within seven days after the date of
25 dispensing controlled substances, as required. The underlying facts are set forth more particularly
26 in paragraphs 63 through 65, above.

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1 **TWENTIETH CAUSE FOR DISCIPLINE**

2 **(Failure to Transmit CURES Dispensing Data)**

3 68. Respondent Brodt's license is subject to discipline for failing to comply with
4 controlled substance laws. (Bus. & Prof. Code, § 4301, subds. (j) and (o), and Health & Saf.
5 Code § 11165, subd. (d).) While acting as PIC, Respondent Brodt failed to submit controlled
6 substance data to CURES within seven days after the dispensing controlled substances, as
7 required. The underlying facts are set forth more particularly in paragraphs 63, 64, and 66, above.

8 **TWENTY FIRST CAUSE FOR DISCIPLINE**

9 **(Failure to Transmit CURES Dispensing Data)**

10 69. Respondent Nguyen's license is subject to discipline for failing to comply with
11 controlled substance laws. (Bus. & Prof. Code, § 4301, subds. (j) and (o), and Health & Saf.
12 Code § 11165, subd. (d).) During a Board inspection on or about October 8, 2013, Respondent
13 Nguyen did not have available controlled substance dispensing data for Board review. While
14 acting as PCI, Respondent Nguyen failed to submit controlled substance data to CURES within
15 seven days after dispensing controlled substances, as required. The underlying facts are set forth
16 more particularly in paragraphs 63, 64, and 66, above.

17 **JANUARY 21, 2015 INSPECTION**

18 70. On or about November 25, 2014, the Board discovered that Respondent FFSP had
19 failed to include all prescriptions in its CURES report and was not transmitting data consistently
20 on a weekly basis as required. On or about January 21, 2015, a Board investigator conducted an
21 inspection at Respondent FFSP. The Board investigator asked Respondent's staff to logon to the
22 CURES Prescription Drug Monitoring Program (PDMP) to confirm that randomly selected
23 prescription documents for controlled substances that were dispensed from December 15, 2014 to
24 January 12, 2015 were documented in the CURES database. Board investigators found that, of
25 fifteen selected prescriptions, information for ten were not in the CURES PDMP. Ultimately, the
26 Board investigator found that, from December 2013 to September 2014, Respondent FFSP failed
27 to transmit controlled substance data consistently on a weekly basis, and had failed to transmit
28 data for controlled substances dispensed on December 22, 23, 24, 30 and 31, 2014. When asked,

1 Respondent Nguyen stated that Respondent Chan was responsible for submitted the CURES data
2 at Respondent FFSP.

3 71. On or about January 21, 2015, a Board investigator issued a notice of noncompliance
4 to Respondent FFSP and Respondent Nguyen.

5 **TWENTY SECOND CAUSE FOR DISCIPLINE**

6 **(Failure to Transmit CURES Dispensing Data)**

7 72. Respondent FFSP's license is subject to discipline for failing to comply with
8 controlled substance laws. (Bus. & Prof. Code, § 4301, subds. (j) and (o), and Health & Saf.
9 Code § 11165, subd. (d).) During an inspection on or about January 21, 2015, a Board
10 investigator found that Respondent FFSP failed to submit controlled substance data to CURES
11 within seven days after the date of dispensing controlled substances as required. The underlying
12 facts are set forth more particularly in paragraphs 70 through 71, above.

13 **TWENTY THIRD CAUSE FOR DISCIPLINE**

14 **(Gross Negligence)**

15 73. Respondent FFSP's license is subject to discipline for gross negligence. (Bus. &
16 Prof. Code, § 4301, subd. (c).) The underlying facts are set forth more particularly in paragraphs
17 70 through 71, above.

18 **TWENTY FOURTH CAUSE FOR DISCIPLINE**

19 **(Failure to Transmit CURES Dispensing Data)**

20 74. Respondent Nguyen's license is subject to discipline for failing to comply with
21 controlled substance laws. (Bus. & Prof. Code, § 4301, subds. (j) and (o), and Health & Saf.
22 Code § 11165, subd. (d).) During an inspection on or about January 21, 2015, a Board
23 investigator found that, while acting as PCI, Respondent Nguyen failed to submit controlled
24 substance data to CURES within seven days after dispensing controlled substances, as required.
25 The underlying facts are set forth more particularly in paragraphs 70 through 71, above.

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TWENTY FIFTH CAUSE FOR DISCIPLINE

(Gross Negligence)

75. Respondent Nguyen’s license is subject to discipline for gross negligence. (Bus. & Prof. Code, § 4301, subd. (c).) The underlying facts are set forth more particularly in paragraphs 70 through 71, above.

TWENTY SIXTH CAUSE FOR DISCIPLINE

(Failure to Transmit CURES Dispensing Data)

76. Respondent Chan’s license is subject to discipline for failing to comply with controlled substance laws. (Bus. & Prof. Code, § 4301, subds. (j) and (o), and Health & Saf. Code § 11165, subd. (d).) During an inspection on or about January 21, 2015, a Board investigator found that, while acting as the individual licensed owner of Respondent FFSP, Respondent FFSP failed to submit controlled substance data to CURES within seven days after dispensing controlled substances, as required. The underlying facts are set forth more particularly in paragraphs 70 through 71, above.

TWENTY SEVENTH CAUSE FOR DISCIPLINE

(Gross Negligence)

77. Respondent Chan’s license is subject to discipline for gross negligence. (Bus. & Prof. Code, § 4301, subd. (c).) The underlying facts are set forth more particularly in paragraphs 70 through 71, above.

PETITION TO REVOKE PROBATION

78. Grounds exist for revoking the probation and re-imposing the order of revocation of Respondent FFSP’s Pharmacy Permit.

79. This Petition to Revoke Probation is brought before the Board under the probation terms and conditions of the Decision and Order for *In the Matter of the Accusation against Four Fifty Sutter, Brandon Brodt, and Elaine Chan*, Case No. 3797.

1 80. At all times after the effective date of Respondent FFSP’s probation, Condition 1 of
2 the Disciplinary Order stated, in part, that: “Respondent shall obey all federal and state and
3 regulations.”

4 81. At all times after the effective date of Respondent FFSP’s probation, Condition 11 of
5 the Disciplinary Order stated that:

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

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

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

14 82. At all times after the effective date of Respondent FFSP’s probation, Condition 12 of
15 the Disciplinary Order stated that:

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

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

1 **FIRST CAUSE TO REVOKE PROBATION**

2 **(Failure to Obey All Laws)**

3 83. Respondent FFSP's probation is subject to revocation because it failed to comply
4 with Probation Condition 1, referenced above, by failing to comply with all laws and regulations,
5 as more particularly set forth in paragraphs 29 through 77, above.

6 **SECOND CAUSE TO REVOKE PROBATION**

7 **(Failure to Post Notice of Probation)**

8 84. Respondent FFSP's probation is subject to revocation because it failed to comply
9 with Probation Condition 11, referenced above, by failing to post the Notice of Probation, as
10 more particularly set forth in paragraphs 52 and 53, above.

11 **THIRD CAUSE TO REVOKE PROBATION**

12 **(Failure to Comply with Terms of Probation)**

13 85. Respondent FFSP's probation is subject to revocation because it failed to comply
14 with Probation Condition 12, referenced above, by failing to comply with any term or condition
15 of probation, as more particularly set forth in paragraphs 29 through 77, above.

16 **DISCIPLINARY CONSIDERATIONS**

17 86. To determine the degree of discipline, if any, to be imposed on Respondent FFSP,
18 Complainant alleges that on or about June 15, 2007, in a prior action, the Board issued Citation
19 Number CI 06 33185. The Board ordered a \$2,500 fine against Respondent FFSP. That Citation
20 is now final and incorporated by reference as if fully set forth.

21 87. To determine the degree of discipline, if any, to be imposed on Respondent FFSP,
22 Complainant alleges that on or about July 8, 2009, in a prior action, the Board issued Citation
23 Number CI 08 38139. The Board and ordered a \$5,000.00 fine against Respondent FFSP. That
24 Citation is now final and incorporated by reference as if fully set forth.

25 88. To determine the degree of discipline, if any, to be imposed on Respondent Chan,
26 Complainant alleges that on or about May 21, 2013, in a disciplinary action entitled "*In the*
27 *Matter of the Accusation against Four Fifty Sutter, Brandon Brodt, and Elaine Chan,*" Case No.
28 3797, the Board issued a citation against Respondent Chan for subversion. The Board ordered a

1 \$5,000.00 fine against Respondent Chan. That Citation is now final and incorporated by
2 reference as if fully set forth.

3 89. To determine the degree of discipline, if any, to be imposed on Respondent Brodt,
4 Complainant alleges that on or about June 15, 2007, in a prior action, the Board issued Citation
5 Number CI 06 33851. The Board ordered a \$1,000.00 fine against Respondent Brodt. That
6 Citation is now final and incorporated by reference as if fully set forth.

7 90. To determine the degree of discipline, if any, to be imposed on Respondent Brodt,
8 Complainant alleges that on or about July 8, 2009, in a prior action, the Board issued Citation
9 Number CI 09 40780. The Board ordered a \$3,000.00 fine against Respondent Brodt. That
10 Citation is now final and incorporated by reference as if fully set forth.

11 91. To determine the degree of discipline, if any, to be imposed on Respondent Nguyen,
12 Complainant alleges that on or about March 13, 2014, in a prior action, the Board issued Citation
13 Number CI 2013 58775. The Board ordered a \$3,875.00 fine against Respondent Nguyen. That
14 Citation is now final and incorporated by reference as if fully set forth.

15 **PRAYER**

16 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
17 Second Amended Accusation and Petition to Revoke Probation, and that following the hearing,
18 the Board of Pharmacy issue a decision:

19 1. Revoking the probation that was granted by the Board of Pharmacy in Case No. 3797
20 and imposing the disciplinary order that was stayed thereby revoking Pharmacy Permit No. PHY
21 45225 issued to Four Fifty Sutter Pharmacy and Elaine Chan, Owner;

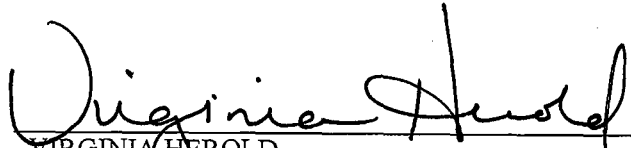
22 2. Revoking or suspending Pharmacy Permit Number PHY 45225 issued to Four Fifty
23 Sutter Pharmacy and Elaine Chan, Owner;

24 3. Revoking or suspending Pharmacy Technician License Number 367361 issued to
25 Elaine Chan;

26 4. Revoking or suspending Pharmacist License Number RPH 43082 issued to Brandon
27 Valor Brodt;

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- 5. Revoking or suspending Pharmacist License Number RPH 64877 issued to Think Phu Nguyen;
- 6. Ordering Four Fifty Sutter Pharmacy, Elaine Chan, Brandon Valor Brodt, and Think Phu Nguyen 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
- 7. Taking such other and further action as deemed necessary and proper.

DATED: 12/2/15 
VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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Exhibit A

Decision and Order

Board of Pharmacy Case No. 3797

1 KAMALA D. HARRIS
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2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 CARTER OTT
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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:
12 **FOUR FIFTY SUTTER PHARMACY and**
13 **ELAINE CHAN, Owner**
14 **450 Sutter Street, #710, 7th Floor**
15 **San Francisco, California 94108**
16 **Pharmacy Permit No. PHY 45225**
17 **ELAINE CHAN**
18 **450 Sutter Street, Ste. 713, 7th Floor**
19 **San Francisco, CA 94108**
20 **Pharmacy Technician License No. TCH**
21 **36761**
22 **THINH PHU NGUYEN**
23 **106 Summerrain Drive**
24 **South San Francisco, CA 94080**
25 **Pharmacist License No. RPH 64877**
26 **BRANDON VALOR BRODT**
27 **139 W. Richmond Avenue, #B**
28 **Richmond, CA 94801**
29 **Pharmacist License No. RPH 43082**

Respondents.

Case No. 5000

OAH No. 2015050642

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

1 Complainant alleges:

2 **PARTIES**

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

5 2. On or about March 7, 2001, the Board of Pharmacy issued Pharmacy Permit Number
6 PHY 45225 to Four Fifty Sutter Pharmacy and Elaine Chan, Owner (Respondent FFSP). The
7 Pharmacy Permit was in full force and effect at all times relevant to the charges brought in this
8 Accusation and Petition to Revoke Probation and will expire on July 31, 2015, unless renewed.

9 3. On or about January 2, 2002, the Board of Pharmacy issued Pharmacy Technician
10 License No. 36761 to Elaine Chan (Respondent Chan). The Pharmacy Technician License was in
11 full force and effect at all times relevant to the charges brought in this Accusation and Petition to
12 Revoke Probation and will expire on July 31, 2015, unless renewed.

13 4. On or about March 1, 1990, the Board of Pharmacy issued Pharmacist License No.
14 RPH 43082 to Brandon Valor Brodt (Respondent Brodt). The Pharmacist License was in full
15 force and effect at all times relevant to the charges brought in this Accusation and Petition to
16 Revoke Probation and will expire on January 31, 2016, unless renewed.

17 5. On or about October 14, 2010, the Board of Pharmacy issued Pharmacist License No.
18 RPH 64877 to Think Phu Nguyen (Respondent Nguyen). The Pharmacist License was in full
19 force and effect at all times relevant to the charges brought in this Accusation and Petition to
20 Revoke Probation and will expire on September 30, 2014, unless renewed.

21 **PRIOR DISCIPLINARY ACTION**

22 6. In a disciplinary action entitled "*In the Matter of the Accusation against Four Fifty*
23 *Sutter, Brandon Brodt, and Elaine Chan*," Case No. 3797, the Board of Pharmacy issued a
24 Decision and Order, effective June 20, 2013. The Board revoked Respondent FFSP's Pharmacy
25 Permit. However, the Board stayed the revocation and placed Respondent FFSP's Pharmacy
26 Permit on probation for five years with certain terms and conditions. The Board revoked
27 Respondent Brodt's Pharmacist License. However, the Board stayed the revocation and placed
28 Respondent's Pharmacist License on probation for four years with certain terms and conditions.

1 The Board issued a citation against Respondent Chan. A copy of that Decision and Order is
2 attached as exhibit A and is incorporated by reference.

3 **JURISDICTION**

4 7. The Board of Pharmacy (Board), Department of Consumer Affairs, brings this
5 Accusation and Petition to Revoke Probation under the authority of the following laws. All
6 section references are to the Business and Professions Code (Code) unless otherwise indicated.

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

10 9. Code section 4300 states, in part:

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

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

15 “(1) Suspending judgment.

16 “(2) Placing him or her upon probation.

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

18 “(4) Revoking his or her license.

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

21 ...

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

26 10. Code section 4300.1 states:

27 “The expiration, cancellation, forfeiture, or suspension of a board-issued license by
28 operation of law or by order or decision of the board or a court of law, the placement of a

1 license on a retired status, or the voluntary surrender of a license by a licensee shall not
2 deprive the board of jurisdiction to commence or proceed with any investigation of, or
3 action or disciplinary proceeding against, the licensee or to render a decision suspending or
4 revoking the license.”

5 **STATUTORY PROVISIONS**

6 11. Code section 4081 states, in part:

7 “(a) All records of manufacture and of sale, acquisition, or disposition of dangerous
8 drugs or dangerous devices shall be at all times during business hours open to inspection by
9 authorized officers of the law, and shall be preserved for at least three years from the date
10 of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy,
11 veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory,
12 clinic, hospital, institution, or establishment holding a currently valid and unrevoked
13 certificate, license, permit, registration, or exemption under Division 2 (commencing with
14 Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section
15 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of
16 dangerous drugs or dangerous devices.

17 “(b) The owner, officer, and partner of a pharmacy, wholesaler, or veterinary food-
18 animal drug retailer shall be jointly responsible, with the pharmacist-in-charge or
19 designated representative-in-charge, for maintaining the records and inventory described in
20 this section.

21 12. Code section 4105, subdivision (a), states:

22 “All records or other documentation of the acquisition and disposition of dangerous
23 drugs and dangerous devices by any entity licensed by the board shall be retained on the
24 licensed premises in a readily retrievable form.

25 13. Code section 4113, subdivision (c), states that the pharmacist-in-charge “shall be
26 responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining
27 to the practice of pharmacy.”

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14. Code section 4125, subdivision (a), provides:

“Every pharmacy shall establish a quality assurance program that shall, at a minimum, document medication errors attributable, in whole or in part, to the pharmacy or its personnel. The purpose of the quality assurance program shall be to assess errors that occur in the pharmacy in dispensing or furnishing prescription medications so that the pharmacy may take appropriate action to prevent a recurrence.”

15. Code section 4301, states, in part:

“The board shall take action against any holder of a license who is guilty of unprofessional conduct Unprofessional conduct shall include, but is not limited to, any of the following:

...

“(c) Gross negligence.

...

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

...

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

16. Code section 4342 states:

“(a) The board may institute any action or actions as may be provided by law and that, in its discretion, are necessary, to prevent the sale of pharmaceutical preparations and drugs that do not conform to the standard and tests as to quality and strength, provided in the latest edition of the United States Pharmacopoeia or the National Formulary, or that violate any provision of the Sherman Food, Drug and Cosmetic Law (Part 5 (commencing with Section 109875) of Division 104 of the Health and Safety Code).

1 “(b) Any knowing or willful violation of any regulation adopted pursuant to Section
2 4006 shall be subject to punishment in the same manner as is provided in Sections 4336 and
3 4321.”

4 17. Health and Safety Code section 11164 states, in part:

5 “Except as provided in Section 11167, no person shall prescribe a controlled
6 substance, nor shall any person fill, compound, or dispense a prescription for a controlled
7 substance, unless it complies with the requirements of this section.

8 “(a) Each prescription for a controlled substance classified in Schedule II, III, IV,
9 or V, except as authorized by subdivision (b), shall be made on a controlled substance
10 prescription form as specified in Section 11162.1 and shall meet the following
11 requirements:

12 ...

13 “(1) The prescription shall be signed and dated by the prescriber in ink . . .”

14 18. Health and Safety Code section 11165, subdivision (d), states:

15 “For each prescription for a Schedule II, Schedule III, or Schedule IV controlled
16 substance, as defined in the controlled substances schedules in federal law and regulations,
17 specifically Sections 1308.12, 1308.13, and 1308.14, respectively, of Title 21 of the Code
18 of Federal Regulations, the dispensing pharmacy, clinic, or other dispenser shall report the
19 following information to the Department of Justice as soon as reasonably possible, but not
20 more than seven days after the date a controlled substance is dispensed, in a format
21 specified by the Department of Justice:

22 “(1) Full name, address, and, if available, telephone number of the ultimate user or
23 research subject, or contact information as determined by the Secretary of the United States
24 Department of Health and Human Services, and the gender, and date of birth of the ultimate
25 user.

26 “(2) The prescriber's category of licensure, license number, national provider
27 identifier (NPI) number, if applicable, the federal controlled substance registration number,
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1 and the state medical license number of any prescriber using the federal controlled
2 substance registration number of a government-exempt facility.

3 “(3) Pharmacy prescription number, license number, NPI number, and federal
4 controlled substance registration number.

5 “(4) National Drug Code (NDC) number of the controlled substance dispensed.

6 “(5) Quantity of the controlled substance dispensed.

7 “(6) International Statistical Classification of Diseases, 9th revision (ICD-9) or 10th
8 revision (ICD-10) Code, if available.

9 “(7) Number of refills ordered.

10 “(8) Whether the drug was dispensed as a refill of a prescription or as a first-time
11 request.

12 “(9) Date of origin of the prescription.

13 “(10) Date of dispensing of the prescription.

14 **REGULATORY PROVISIONS**

15 19. California Code of Regulations, title 16, section 1711, states, in part:

16 “(a) Each pharmacy shall establish or participate in an established quality assurance
17 program which documents and assesses medication errors to determine cause and an
18 appropriate response as part of a mission to improve the quality of pharmacy service and
19 prevent errors.

20 “(b) For purposes of this section, “medication error” means any variation from a
21 prescription or drug order not authorized by the prescriber, as described in Section 1716.
22 Medication error, as defined in the section, does not include any variation that is corrected
23 prior to furnishing the drug to the patient or patient's agent or any variation allowed by law.

24 “(c)(1) Each quality assurance program shall be managed in accordance with
25 written policies and procedures maintained in the pharmacy in an immediately retrievable
26 form.

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1 "The pharmacy shall inform pharmacy personnel of changes to pharmacy policy,
2 procedure, systems, or processes made as a result of recommendations generated in the
3 quality assurance program.

4 "(f) The record of the quality assurance review, as provided in subdivision (e) shall
5 be immediately retrievable in the pharmacy for at least one year from the date the record
6 was created.

7 "(g) The pharmacy's compliance with this section will be considered by the board
8 as a mitigating factor in the investigation and evaluation of a medication error."

9 20. California Code of Regulations, title 16, section 1714, states, in part:

10 "(b) Each pharmacy licensed by the board shall maintain its facilities, space,
11 fixtures, and equipment so that drugs are safely and properly prepared, maintained, secured
12 and distributed. The pharmacy shall be of sufficient size and unobstructed area to
13 accommodate the safe practice of pharmacy.

14 "(c) The pharmacy and fixtures and equipment shall be maintained in a clean and
15 orderly condition. The pharmacy shall be dry, well-ventilated, free from rodents and
16 insects, and properly lighted. The pharmacy shall be equipped with a sink with hot and cold
17 running water for pharmaceutical purposes."

18 21. California Code of Regulations, title 16, section 1715, states, in part:

19 "(a) The pharmacist-in-charge of each pharmacy as defined under section 4029 or
20 section 4037 of the Business and Professions Code shall complete a self-assessment of the
21 pharmacy's compliance with federal and state pharmacy law. The assessment shall be
22 performed before July 1 of every odd-numbered year. The primary purpose of the self-
23 assessment is to promote compliance through self-examination and education.

24 "(b) In addition to the self-assessment required in subdivision (a) of this section, the
25 pharmacist-in-charge shall complete a self-assessment within 30 days whenever:

26 "(1) A new pharmacy permit has been issued, or

27 "(2) There is a change in the pharmacist-in-charge, and he or she becomes the new
28 pharmacist-in-charge of a pharmacy."

1 22. California Code of Regulations, title 16, section 1716, states, in part:

2 “Pharmacists shall not deviate from the requirements of a prescription except upon
3 the prior consent of the prescriber or to select the drug product in accordance with Section
4 4073 of the Business and Professions Code.”

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

6 “‘Current Inventory’ as used in Sections 4081 and 4332 of the Business and
7 Professions Code shall be considered to include complete accountability for all dangerous
8 drugs handled by every licensee enumerated in Sections 4081 and 4332.

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

12 24. California Code of Regulations, title 16, section 1735.2, states, in part:

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

21 . . .

22 “(j) Prior to allowing any drug product to be compounded in a pharmacy, the
23 pharmacist-in-charge shall complete a self-assessment for compounding pharmacies
24 developed by the board. (Incorporated by reference is “Community Pharmacy & Hospital
25 Outpatient Pharmacy Compounding Self-Assessment” Form 17M-39 Rev. 02/12.) That
26 form contains a first section applicable to all compounding, and a second section applicable
27 to sterile injectable compounding. The first section must be completed by the pharmacist-
28 in-charge before any compounding is performed in the pharmacy. The second section must

1 be completed by the pharmacist-in-charge before any sterile injectable compounding is
2 performed in the pharmacy. The applicable sections of the self-assessment shall
3 subsequently be completed before July 1 of each odd-numbered year, within 30 days of the
4 start of a new pharmacist-in-charge, and within 30 days of the issuance of a new pharmacy
5 license. The primary purpose of the self-assessment is to promote compliance through self-
6 examination and education.”

7 25. California Code of Regulations, title 16, section 1735.3, subdivision (a), states, in
8 part:

9 “For each compounded drug product, the pharmacy records shall include:

10 ...

11 “(6) The manufacturer, expiration date and lot number of each component. If the
12 manufacturer name is demonstrably unavailable, the name of the supplier may be
13 substituted.”

14 26. California Code of Regulations, title 16, section 1774, subdivision (b), states:

15 “When the circumstances of the case so require, the Board may impose conditions
16 of probation in addition to those enumerated herein by the terms of its decision in an
17 administrative case or by stipulation of the parties.”

18 27. Federal Code of Regulations, title 21, section 1304.04, states, in part:

19 “(a) Except as provided in paragraphs (a)(1) and (a)(2) of this section, every
20 inventory and other records required to be kept under this part must be kept by the
21 registrant and be available, for at least 2 years from the date of such inventory or records,
22 for inspection and copying by authorized employees of the Administration.

23 ...

24 “(h) Each registered pharmacy shall maintain the inventories and records of
25 controlled substances as follows:

26 “(1) Inventories and records of all controlled substances listed in Schedule I and II
27 shall be maintained separately from all other records of the pharmacy.

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1 “(2) Paper prescriptions for Schedule II controlled substances shall be maintained
2 at the registered location in a separate prescription file.

3 “(3) Inventories and records of Schedules III, IV, and V controlled substances
4 shall be maintained either separately from all other records of the pharmacy or in such
5 form that the information required is readily retrievable from ordinary business records of
6 the pharmacy.

7 “(4) Paper prescriptions for Schedules III, IV, and V controlled substances shall
8 be maintained at the registered location either in a separate prescription file for Schedules
9 III, IV, and V controlled substances only or in such form that they are readily retrievable
10 from the other prescription records of the pharmacy. Prescriptions will be deemed readily
11 retrievable if, at the time they are initially filed, the face of the prescription is stamped in
12 red ink in the lower right corner with the letter "C" no less than 1 inch high and filed
13 either in the prescription file for controlled substances listed in Schedules I and II or in the
14 usual consecutively numbered prescription file for noncontrolled substances. However, if
15 a pharmacy employs a computer application for prescriptions that permits identification
16 by prescription number and retrieval of original documents by prescriber name, patient's
17 name, drug dispensed, and date filled, then the requirement to mark the hard copy
18 prescription with a red "C" is waived.

19 “(5) Records of electronic prescriptions for controlled substances shall be
20 maintained in an application that meets the requirements of part 1311 of this chapter. The
21 computers on which the records are maintained may be located at another location, but the
22 records must be readily retrievable at the registered location if requested by the
23 Administration or other law enforcement agent. The electronic application must be
24 capable of printing out or transferring the records in a format that is readily
25 understandable to an Administration or other law enforcement agent at the registered
26 location. Electronic copies of prescription records must be sortable by prescriber name,
27 patient name, drug dispensed, and date filled.”

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1 **COST RECOVERY**

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

5 **JUNE 11, 2012, INSPECTION**

6 29. From on or about November 4, 2004, to January 1, 2013, Respondent Brodt was the
7 Pharmacist-in-Charge (PIC) at Respondent FFSP.

8 30. On February 3, 2012, Respondent Brodt and Respondent FFSP dispensed prescription
9 number 6431311 to Patient A¹ for orphenadrine 100 mg extended release instead of orphenadrine
10 100 mg immediate release as prescribed.

11 31. On or about June 11, 2012, a Board investigator conducted an inspection at
12 Respondent FFSP after the Board received an online complaint from Patient A that the pharmacy
13 charged patient A for unwanted medication and dispensed orphenadrine 100 mg that was not in
14 accordance with a physician's written prescription.

15 32. During the inspection, the investigator observed the following:

16 a. The premises was cluttered and disorganized despite written notice in 2009 and 2010.

17 b. Respondent FFSP and Respondent Brodt did not conduct a quality assurance report
18 and review of the February 3, 2012, medication error for prescription number 6431311 for
19 orphenadrine 100 mg.

20 c. Respondent FFSP and Respondent Brodt could not provide a dispensing record for
21 prescription number 6431311.

22 d. Multiple expired products were on Respondent FFSP's pharmacy shelves including,
23 but not limited to, the following: glycerin (January 2006), alcohol (June 2009), ether (December
24 1992), water (March 2012), hydrogen peroxide (July 2004), bismuth subgallate (November 30,
25 2010), and sodium borate (March 31, 2010).

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27
28 ¹ Patients are identified by number to protect their privacy.

1 e. When Patient A complained to Respondent Chan about the February 3, 2012,
2 medication error for prescription number 6431311 for orphenadrine. Respondent Chan did not
3 acknowledge the error, and, instead, insisted that Respondent FFSP dispensed the prescription
4 correctly.

5 33. On or about August 27, 2012, a Board investigator issued notices of noncompliance
6 to Respondent FFSP and Respondent Brodt.

7 DRUGS

8 34. Fortesta is the brand name for testosterone gel. It is a Schedule III controlled
9 substance pursuant to Health and Safety Code section 11056, subdivision (f)(30), and a dangerous
10 drug pursuant to Code section 4022.

11 35. Orphenadrine is the generic name for trade drug Norflex. It is a dangerous drug
12 pursuant to Code section 4022.

13 36. Valacyclovir is the generic name for Valtrex and is a dangerous drug pursuant to
14 Code section 4022.

15 ACCUSATION

16 FIRST CAUSE FOR DISCIPLINE

17 (Failure to Maintain Premises)

18 37. Respondent FFSP's license is subject to discipline for not maintaining the premises in
19 a manner suitable for the safe practice of pharmacy. (Bus. & Prof. Code, § 4301, subd. (o); Cal.
20 Code Regs., tit. 16, §1714, subd. (c).) During a Board inspection on or about June 11, 2012,
21 Respondent FFSP's facilities were cluttered and disorganized. The underlying facts are set forth
22 more particularly in paragraphs 29, 31, and 32, above.

23 SECOND CAUSE FOR DISCIPLINE

24 (Variation from Prescription)

25 38. Respondent FFSP's license is subject to discipline for deviating from the
26 requirements of a prescription. (Bus. & Prof. Code, § 4301, subd. (o); Cal. Code Regs., tit. 16, §
27 1716.) On or about February 3, 2012, Respondent FFSP dispensed orphenadrine 100 mg
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1 extended release instead of orphenadrine 100 mg immediate release, as prescribed. The
2 underlying facts are set forth more particularly in paragraphs 29 through 32, above.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Missing Quality Assurance Review Report)**

5 39. Respondent FFSP's license is subject to discipline for failing to prepare a medication
6 error quality assurance review report in the pharmacy for the present year. (Bus. & Prof. Code, §
7 4301, subds. (j) and (o); Cal. Code Regs., tit. 16, §1711.) On or about February 3, 2012,
8 Respondent FFSP committed a medication error regarding prescription number 6431311 for
9 orphenadrine 100 mg. Respondent FFSP was required to prepare a report within two days of the
10 date of the discovery of the error. However, during a Board inspection on or about June 11, 2012,
11 Respondent FFSP did not have available a quality assurance review report on file and
12 immediately retrievable. The underlying facts are set forth more particularly in paragraphs 29
13 through 32, above.

14 **FOURTH CAUSE FOR DISCIPLINE**

15 **(Failure to Maintain Records of Dangerous Drugs)**

16 40. Respondent FFSP's license is subject to discipline for failing to maintain records of
17 dangerous drugs. (Bus. & Prof. Code, §§ 4301, subds. (j) and (o) and 4081, subd. (a).) During a
18 Board inspection on or about June 11, 2012, Respondent FFSP did not have any dispensing
19 records for prescription number 6431311 for orphenadrine available for Board review. The
20 underlying facts are set forth more particularly in paragraphs 29 through 32, above.

21 **FIFTH CAUSE FOR DISCIPLINE**

22 **(Expired Drugs in Inventory)**

23 41. Respondent FFSP's license is subject to discipline for maintaining expired drugs in its
24 inventory. (Bus. & Prof. Code, §§ 4301, subd. (o), and 4342, subd. (a).) During a Board
25 inspection on or about June 11, 2012, a board investigator observed that Respondent FFSP
26 maintained several expired pharmacy products. The underlying facts are set forth more
27 particularly in paragraphs 29, 31, and 32, above.

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SIXTH CAUSE FOR DISCIPLINE

(Failure to Maintain Premises)

42. Respondent Brodt’s license is subject to discipline for not maintaining the premises in a manner suitable for the safe practice of pharmacy. (Bus. & Prof. Code, § 4301, subd. (o); Cal. Code Regs., tit. 16, §1714, subd. (c).) During a Board inspection on or about June 11, 2012, Respondent Brodt was the PIC and Respondent FFSP’s facilities were cluttered and disorganized. The underlying facts are set forth more particularly in paragraphs 29, 31, and 32, above

SEVENTH CAUSE FOR DISCIPLINE

(Variation from Prescription)

43. Respondent Brodt’s license is subject to discipline for deviating from the requirements of a prescription. (Bus. & Prof. Code, § 4301, subds. (j) and (o); Cal. Code Regs., tit. 16, § 1716.) On or about February 3, 2012, Respondent Brodt dispensed orphenadrine 100 mg extended release instead of orphenadrine 100 mg immediate release, as prescribed. The underlying facts are set forth more particularly in paragraphs 29 through 32, above.

EIGHTH CAUSE FOR DISCIPLINE

(Missing Quality Assurance Review Report)

44. Respondent Brodt’s license is subject to discipline for failing to prepare a medication error quality assurance review report in the pharmacy for the present year. (Bus. & Prof. Code, § 4301, subds. (j) and (o); Cal. Code Regs., tit. 16, §1711.) On or about February 3, 2012, Respondent Brodt committed a medication error regarding prescription number 6431311 for orphenadrine 100 mg. Respondent Brodt was required to prepare a report within two days of the date of the discovery of the error. However, during a Board inspection on or about June 11, 2012, Respondent Brodt did not have available a quality assurance review report on file and immediately retrievable. The underlying facts are set forth more particularly in paragraphs 29 through 32, above.

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NINTH CAUSE FOR DISCIPLINE

(Failure to Maintain Records of Dangerous Drugs)

45. Respondent Brodt's license is subject to discipline for failing to maintain records of dangerous drugs. (Bus. & Prof. Code, §§ 4301, subds. (j) and (o), and 4081, subd. (a).) During a Board inspection on or about June 11, 2012, Respondent Brodt did not have any dispensing records for prescription number 6431311 for orphenadrine available for Board review. The underlying facts are set forth more particularly in paragraphs 29 through 32, above.

TENTH CAUSE FOR DISCIPLINE

(Expired Drugs in Inventory)

46. Respondent Brodt's license is subject to discipline for maintaining expired drugs in its inventory. (Bus. & Prof. Code, §§ 4301, subd. (o), and 4342, subd. (a).) During a Board inspection on or about June 11, 2012, a board investigator observed that Respondent Brodt maintained several expired pharmacy products. The underlying facts are set forth more particularly in paragraphs 29, 31 and 32, above.

JUNE 26, 2013, INSPECTION

47. From on or about January 1, 2013, to present, Respondent Nguyen was the PIC at FFSP.

48. On or about January 24, 2013, Respondent FFSP and Respondent Nguyen dispensed prescription number 4149633 for Patient B for a testosterone gel preparation and wrote an expiration date of July 2013. However, two ingredients expired on June 2013 and one ingredient did not have a documented expiration date.

49. On or about March 27, 2013, Respondent FFSP dispensed prescription number 4150016 for Patient B for Fortesta with directions to use four pumps a day, instead of the eight pumps a day as prescribed.

50. On or about April 19, 2013, Respondent FFSP dispensed prescription number 6143144 for Patient B for valacyclovir 1 gram once a day, instead of the prescribed 500 mg twice a day.

1 51. On or about May 13, 2013, Patient B informed Respondent FFSP of the medication
2 errors.

3 52. On or about June 26, 2013, a Board investigator conducted an inspection at
4 Respondent FFSP after the Board received an online complaint that the pharmacy dispensed
5 medications that were not in accordance with a physician's written prescriptions.

6 53. During the inspection, the investigator observed the following:

7 a. Respondent FFSP and Respondent Nguyen were unable to provide a compounding
8 log for prescription number 4146533 for Patient B for testosterone.

9 b. Respondent Nguyen admitted that he assigned an expiration date to the compounded
10 testosterone for prescription 4149633 for Patient B that was beyond the expiration date of
11 multiple ingredients.

12 c. On or about December 2 and 27, 2011, January 29, February 27, March 22, and April
13 17, 2012, Respondent FFSP dispensed testosterone gel to Patient B instead of testosterone
14 powder as ordered by the original prescription, dated November 7, 2011. Respondent FFSP also
15 dispensed the compound with incorrect directions for use, stating to use it once a day instead of
16 twice a day. Respondent FFSP and Respondent Nguyen were unable to provide any
17 documentation showing a change in dosage, form, or directions from the prescribing physician.

18 d. Respondent FFSP and Respondent Nguyen could not provide to the Board a current
19 biennial controlled substance inventory and a record of a biennial inventory for any time period.

20 e. Respondent FFSP and Respondent Nguyen did not conduct a self-assessment of the
21 pharmacy's compliance with federal and state pharmacy law within 30 days of January 1, 2013,
22 when Respondent Nguyen became the new PIC. Respondent FFSP and Respondent Nguyen
23 could not provide to the Board a copy of a completed current self-assessment that should have
24 been conducted in July 2011.

25 f. Respondent FFSP and Respondent Nguyen did not conduct a self-assessment of the
26 pharmacy's compliance with compounding laws within 30 days of January 1, 2013, when
27 Respondent Nguyen became the new PIC. Respondent FFSP and Respondent Nguyen could not
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1 provide to the Board a copy of a completed current compounding self-assessment that should
2 have been conducted in July 2011.

3 g. Respondent FFSP and Respondent Nguyen Respondent FFSP and Respondent
4 Nguyen did not conduct a quality assurance review report by May 15, 2013, within two business
5 days of the date that they discovered that they dispensed prescription number 4150016 to Patient
6 B for Fortesta with incorrect directions. Respondent FFSP and Respondent Nguyen were unable
7 to provide to the Board a copy of a quality assurance review report.

8 h. Respondent FFSP and Respondent Nguyen were unable to provide an original copy to
9 the Board of prescription number 6423645 to Patient B for valacyclovir 500 mg with directions to
10 take one tablet twice a day.

11 i. Respondent FFSP's premises was cluttered and disorganized despite written notice in
12 2009, 2010, and 2012.

13 j. A Notice of Probation was not posted at Respondent FFSP as required by Condition
14 Number 11, of the Decision and Order *In the Matter of the Accusation against Four Fifty Sutter*,
15 Case No. 3797.

16 54. On or about June 26, 2013, a Board investigator issued a notice of noncompliance to
17 Respondent FFSP. The Board issued a citation against Respondent Nguyen, as set forth more
18 particularly in paragraph 87, below.

19 **ELEVENTH CAUSE FOR DISCIPLINE**

20 **(Failure to Provide Controlled Substance Inventories)**

21 55. Respondent FFSP's license is subject to discipline for not providing controlled
22 substance inventories during an inspection. (Bus. & Prof. Code, § 4301, subs. (j) and (o); Cal.
23 Code Regs., tit. 16, § 1718; and 21 C.F.R. § 1304.04.) During a Board inspection on or about
24 June 26, 2013, Respondent FFSP did not have available a current biennial inventory and there
25 was no record of a biennial inventory for any time period. The underlying facts are set forth more
26 particularly in paragraphs 47, 52, and 53, above.

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1 **TWELFTH CAUSE FOR DISCIPLINE**

2 **(Failure to Prepare Controlled Substance Inventory Self-Assessment)**

3 56. Respondent FFSP's license is subject to discipline for not providing controlled
4 substance inventory self-assessments during an inspection. (Bus. & Prof. Code, § 4301, subds. (j)
5 and (o); Cal. Code Regs., tit. 16, § 1715, subds. (a) and (b)(2).) By January 31 and July 1, 2013,
6 Respondent FFSP was required to conduct controlled substance inventory self-assessments.
7 During a Board inspection on or about June 26, 2013, Respondent FFSP did not have these self-
8 assessments available for Board review. The underlying facts are set forth more particularly in
9 paragraphs 37, 52, and 53, above.

10 **THIRTEENTH CAUSE FOR DISCIPLINE**

11 **(Failure to Prepare Compounding Self-Assessment)**

12 57. Respondent FFSP's license is subject to discipline for not providing copies of
13 compounding self-assessments during an inspection. (Bus. & Prof. Code, § 4301, subd. (o); Cal.
14 Code Regs., tit. 16, § 1735.2, subd. (j).) By January 31, 2013 and July 1, 2013, Respondent FFSP
15 was required to conduct compounding self-assessments. During a Board inspection on or about
16 June 26, 2013, Respondent FFSP did not have these assessments available for Board review. The
17 underlying facts are set forth more particularly in paragraphs 37, 52, and 53, above.

18 **FOURTEENTH CAUSE FOR DISCIPLINE**

19 **(Failure to Maintain Premises – Safe Practice of Pharmacy)**

20 58. Respondent FFSP's license is subject to discipline for not maintaining the premises in
21 a manner suitable for the safe practice of pharmacy. (Bus. & Prof. Code, § 4301, subd. (o); Cal.
22 Code Regs., tit. 16, § 1714, subd. (b).) During a Board inspection on or about June 26, 2013,
23 Respondent FFSP's facilities were cluttered and disorganized. The underlying facts are set forth
24 more particularly in paragraphs 47, and 52 through 54, above.

25 **FIFTEENTH CAUSE FOR DISCIPLINE**

26 **(Missing Quality Assurance Review Report)**

27 59. Respondent FFSP's license is subject to discipline for failing to prepare a quality
28 assurance review report in the pharmacy for the present year. (Bus. & Prof. Code, § 4301, subds.
20

1 (j) and (o); Cal. Code Regs., tit. 16, §1711.) On May 13, 2013, Respondent FFSP discovered that
2 it made a medication error regarding prescription number 4150016 for Fortesta. Respondent
3 FFSP was required to investigate and prepare a report. During a Board inspection on or about
4 June 26, 2013, Respondent FFSP did not have available a quality assurance review report on file
5 and immediately retrievable. The underlying facts are set forth more particularly in paragraphs
6 47 through 54, above.

7 **SIXTEENTH CAUSE FOR DISCIPLINE**

8 **(Missing Original Prescription for Dangerous Drug)**

9 60. Respondent FFSP's license is subject to discipline for failing to retain original
10 documentation for the disposition of dangerous drugs. (Bus. & Prof. Code, §§ 4301, subds. (j)
11 and (o) and 4105, subd. (a).) During a Board inspection on or about June 26, 2013, Respondent
12 FFSP did not have available in readily retrievable form the original prescription number 6423645
13 for valacyclovir. The underlying facts are set forth more particularly in paragraphs 47 through
14 54, above.

15 **SEVENTEENTH CAUSE FOR DISCIPLINE**

16 **(Expiration Date Error)**

17 61. Respondent FFSP's license is subject to discipline for assigning an expiration date to
18 a compounded drug product that was beyond the use date. (Bus. & Prof. Code, §§ 4301, subds.
19 (j) and (o); Cal. Code Regs., tit. 16, § 1735.2, subd. (h).) On or about January 24, 2013,
20 Respondent FFSP assigned an expiration date of July 2013 for a testosterone gel when the
21 shortest expiration date of several of the gel's components was June 2013. The underlying facts
22 are set forth more particularly in paragraphs 47 through 54, above.

23 **EIGHTEENTH CAUSE FOR DISCIPLINE**

24 **(Labeling Error)**

25 62. Respondent FFSP's license is subject to discipline for dispensing medication with
26 instructions that deviated from the prescription as written by a physician. (Bus. & Prof. Code, §
27 4301, subds. (j) and (o); Cal. Code Regs., tit. 16, § 1716.) Respondent FFSP dispensed
28 prescription number 4146533 as a testosterone gel to be used once a day instead of the

1 testosterone powder to be used twice a day. The underlying facts are set forth more particularly
2 in paragraphs 47 through 54, above.

3 **OCTOBER 8, 2013, INSPECTION**

4 63. On or about October 8, 2013, Board investigators conducted an inspection at
5 Respondent FFSP. Board investigators requested copies of transmission of controlled substance
6 dispensing data to Controlled Substance Utilization Review and Evaluation System (CURES) for
7 2012 through 2013. Respondent FFSP, Respondent Brodt, and Respondent Nguyen were unable
8 to provide proof of transmission of CURES reports.

9 64. On October 24, 2013, a Board investigator discovered that Respondent FFSP,
10 Respondent Brodt, and Respondent Nguyen submitted controlled substance dispensing data to
11 CURES on February 27, 2012, April 6, 2012, January 21, 2013, July 10, 2013, August 21, 22,
12 and 29, 2013, and October 15, 22, and 23, 2013, instead of on a weekly basis as required.
13 Respondent FFSP and Respondent Nguyen did not file a report for February 2013.

14 65. On or about November 5, 2013, a Board investigator issued a notice of
15 noncompliance to Respondent FFSP and Respondent Nguyen.

16 66. On or about November 12, 2013, a Board investigator issued a notice of
17 noncompliance to Respondent Brodt.

18 **NINETEENTH CAUSE FOR DISCIPLINE**

19 **(Failure to Transmit CURES Dispensing Data)**

20 67. Respondent FFSP's license is subject to discipline for failing to comply with
21 controlled substance laws. (Bus. & Prof. Code, § 4301, subds. (j) and (o), and Health & Saf.
22 Code § 11165, subd. (d).) During a Board inspection on or about October 8, 2013, Respondent
23 FFSP did not have available controlled substance dispensing data for Board review. Respondent
24 FFSP failed to submit controlled substance data to CURES within seven days after the date of
25 dispensing controlled substances, as required. The underlying facts are set forth more particularly
26 in paragraphs 63 through 65, above.

27 ////

28 ////

1 **TWENTIETH CAUSE FOR DISCIPLINE**

2 **(Failure to Transmit CURES Dispensing Data)**

3 68. Respondent Brodt's license is subject to discipline for failing to comply with
4 controlled substance laws. (Bus. & Prof. Code, § 4301, subs. (j) and (o), and Health & Saf.
5 Code § 11165, subd. (d).) While acting as PIC, Respondent Brodt failed to submit controlled
6 substance data to CURES within seven days after the dispensing controlled substances, as
7 required. The underlying facts are set forth more particularly in paragraphs 63, 64, and 66, above.

8 **TWENTY FIRST CAUSE FOR DISCIPLINE**

9 **(Failure to Transmit CURES Dispensing Data)**

10 69. Respondent Nguyen's license is subject to discipline for failing to comply with
11 controlled substance laws. (Bus. & Prof. Code, § 4301, subs. (j) and (o), and Health & Saf.
12 Code § 11165, subd. (d).) During a Board inspection on or about October 8, 2013, Respondent
13 Nguyen did not have available controlled substance dispensing data for Board review. While
14 acting as PCI, Respondent Nguyen failed to submit controlled substance data to CURES within
15 seven days after dispensing controlled substances, as required. The underlying facts are set forth
16 more particularly in paragraphs 63, 64, and 66, above.

17 **JANUARY 21, 2015 INSPECTION**

18 70. On or about November 25, 2014, the Board discovered that Respondent FFSP had
19 failed to include all prescriptions in its CURES report and was not transmitting data consistently
20 on a weekly basis as required. On or about January 21, 2015, a Board investigator conducted an
21 inspection at Respondent FFSP. The Board investigator asked Respondent's staff to logon to the
22 CURES Prescription Drug Monitoring Program (PDMP) to confirm that randomly selected
23 prescription documents for controlled substances that were dispensed from December 15, 2014 to
24 January 12, 2015 were documented in the CURES database. Board investigators found that, of
25 fifteen selected prescriptions, information for ten were not in the CURES PDMP. Ultimately, the
26 Board investigator found that, from December 2013 to September 2014, Respondent FFSP failed
27 to transmit controlled substance data consistently on a weekly basis, and had failed to transmit
28 data for controlled substances dispensed on December 22, 23, 24, 30 and 31, 2014. When asked,

1 Respondent Nguyen stated that Respondent Chan was responsible for submitted the CURES data
2 at Respondent FFSP.

3 71. On or about January 21, 2015, a Board investigator issued a notice of noncompliance
4 to Respondent FFSP and Respondent Nguyen.

5 **TWENTY SECOND CAUSE FOR DISCIPLINE**

6 **(Failure to Transmit CURES Dispensing Data)**

7 72. Respondent FFSP's license is subject to discipline for failing to comply with
8 controlled substance laws. (Bus. & Prof. Code, § 4301, subds. (j) and (o), and Health & Saf.
9 Code § 11165, subd. (d).) During an inspection on or about January 21, 2015, a Board
10 investigator found that Respondent FFSP failed to submit controlled substance data to CURES
11 within seven days after the date of dispensing controlled substances as required. The underlying
12 facts are set forth more particularly in paragraphs 70 through 71, above.

13 **TWENTY THIRD CAUSE FOR DISCIPLINE**

14 **(Gross Negligence)**

15 73. Respondent FFSP's license is subject to discipline for gross negligence. (Bus. &
16 Prof. Code, § 4301, subd. (c).) The underlying facts are set forth more particularly in paragraphs
17 70 through 71, above.

18 **TWENTY FOURTH CAUSE FOR DISCIPLINE**

19 **(Failure to Transmit CURES Dispensing Data)**

20 74. Respondent Nguyen's license is subject to discipline for failing to comply with
21 controlled substance laws. (Bus. & Prof. Code, § 4301, subds. (j) and (o), and Health & Saf.
22 Code § 11165, subd. (d).) During an inspection on or about January 21, 2015, a Board
23 investigator found that, while acting as PCI, Respondent Nguyen failed to submit controlled
24 substance data to CURES within seven days after dispensing controlled substances, as required.
25 The underlying facts are set forth more particularly in paragraphs 70 through 71, above.

26 ////

27 ////

28 ////

1 **TWENTY FIFTH CAUSE FOR DISCIPLINE**

2 **(Gross Negligence)**

3 75. Respondent Nguyen's license is subject to discipline for gross negligence. (Bus. &
4 Prof. Code, § 4301, subd. (c).) The underlying facts are set forth more particularly in paragraphs
5 70 through 71, above.

6 **TWENTY SIXTH CAUSE FOR DISCIPLINE**

7 **(Failure to Transmit CURES Dispensing Data)**

8 76. Respondent Chan's license is subject to discipline for failing to comply with
9 controlled substance laws. (Bus. & Prof. Code, § 4301, subds. (j) and (o), and Health & Saf.
10 Code § 11165, subd. (d).) During an inspection on or about January 21, 2015, a Board
11 investigator found that, while acting as the individual licensed owner of Respondent FFSP,
12 Respondent FFSP failed to submit controlled substance data to CURES within seven days after
13 dispensing controlled substances, as required. The underlying facts are set forth more particularly
14 in paragraphs 70 through 71, above.

15 **TWENTY SEVENTH CAUSE FOR DISCIPLINE**

16 **(Gross Negligence)**

17 77. Respondent Chan's license is subject to discipline for gross negligence. (Bus. & Prof.
18 Code, § 4301, subd. (c).) The underlying facts are set forth more particularly in paragraphs 70
19 through 71, above.

20
21 **PETITION TO REVOKE PROBATION**

22 78. Grounds exist for revoking the probation and re-imposing the order of revocation of
23 Respondent FFSP's Pharmacy Permit and Respondent Brodt's Pharmacist License.

24 79. This Petition to Revoke Probation is brought before the Board under the probation
25 terms and conditions of the Decision and Order for *In the Matter of the Accusation against Four*
26 *Fifty Sutter, Brandon Brodt, and Elaine Chan*, Case No. 3797.

1 80. At all times after the effective date of Respondent FFSP's probation, Condition 1 of
2 the Disciplinary Order stated, in part, that: "Respondent shall obey all federal and state and
3 regulations."

4 81. At all times after the effective date of Respondent FFSP's probation, Condition 11 of
5 the Disciplinary Order stated that:

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

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

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

14 82. At all times after the effective date of Respondent FFSP's probation, Condition 12 of
15 the Disciplinary Order stated that:

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

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

1 **THIRD CAUSE TO REVOKE PROBATION**

2 **(Failure to Comply with Terms of Probation)**

3 87. Respondent FFSP's probation is subject to revocation because it failed to comply
4 with Probation Condition 12, referenced above, by failing to comply with any term or condition
5 of probation, as more particularly set forth in paragraphs 29 through 77, above.

6 **FOURTH CAUSE TO REVOKE PROBATION**

7 **(Failure to Obey All Laws)**

8 88. Respondent Brodt's probation is subject to revocation because he failed to comply
9 with Probation Condition 1, referenced above, by failing to comply with all laws and regulations,
10 as more particularly set forth in paragraphs 37 through 46, 55 through 62, 67 through 69, and 72
11 through 77, above.

12 **FIFTH CAUSE TO REVOKE PROBATION**

13 **(Failure to Comply with Terms of Probation)**

14 89. Respondent Brodt's probation is subject to revocation because he failed to comply
15 with Probation Condition 14, referenced above, by failing to comply with any term or condition
16 of probation, as more particularly set forth in paragraphs 85 through 88, above.

17 **DISCIPLINARY CONSIDERATIONS**

18 90. To determine the degree of discipline, if any, to be imposed on Respondent FFSP,
19 Complainant alleges that on or about June 15, 2007, in a prior action, the Board issued Citation
20 Number CI 06 33185. The Board ordered a \$2,500 fine against Respondent FFSP. That Citation
21 is now final and incorporated by reference as if fully set forth.

22 91. To determine the degree of discipline, if any, to be imposed on Respondent FFSP,
23 Complainant alleges that on or about July 8, 2009, in a prior action, the Board issued Citation
24 Number CI 08 38139. The Board and ordered a \$5,000.00 fine against Respondent FFSP. That
25 Citation is now final and incorporated by reference as if fully set forth.

26 92. To determine the degree of discipline, if any, to be imposed on Respondent Chan,
27 Complainant alleges that on or about May 21, 2013, in a disciplinary action entitled "*In the*
28 *Matter of the Accusation against Four Fifty Sutter, Brandon Brodt, and Elaine Chan,*" Case No.

1 3797, the Board issued a citation against Respondent Chan for subversion. The Board ordered a
2 \$5,000.00 fine against Respondent Chan. That Citation is now final and incorporated by
3 reference as if fully set forth.

4 93. To determine the degree of discipline, if any, to be imposed on Respondent Brodt,
5 Complainant alleges that on or about June 15, 2007, in a prior action, the Board issued Citation
6 Number CI 06 33851. The Board ordered a \$1,000.00 fine against Respondent Brodt. That
7 Citation is now final and incorporated by reference as if fully set forth.

8 94. To determine the degree of discipline, if any, to be imposed on Respondent Brodt,
9 Complainant alleges that on or about July 8, 2009, in a prior action, the Board issued Citation
10 Number CI 09 40780. The Board ordered a \$3,000.00 fine against Respondent Brodt. That
11 Citation is now final and incorporated by reference as if fully set forth.

12 95. To determine the degree of discipline, if any, to be imposed on Respondent Nguyen,
13 Complainant alleges that on or about March 13, 2014, in a prior action, the Board issued Citation
14 Number CI 2013 58775. The Board ordered a \$3,875.00 fine against Respondent Nguyen. That
15 Citation is now final and incorporated by reference as if fully set forth.

16 **PRAYER**

17 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
18 Accusation and Petition to Revoke Probation, and that following the hearing, the Board of
19 Pharmacy issue a decision:

20 1. Revoking the probation that was granted by the Board of Pharmacy in Case No. 3797
21 and imposing the disciplinary order that was stayed thereby revoking Pharmacy Permit No. PHY
22 45225 issued to Four Fifty Sutter Pharmacy and Elaine Chan, Owner;

23 2. Revoking the probation that was granted by the Board of Pharmacy in Case No. 3797
24 and imposing the disciplinary order that was stayed thereby revoking Pharmacist License Number
25 RPH 43082 issued to Brandon Valor Brodt;

26 3. Revoking or suspending Pharmacy Permit Number PHY 45225 issued to Four Fifty
27 Sutter Pharmacy and Elaine Chan, Owner;

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4. Revoking or suspending Pharmacy Technician License Number 367361 issued to Elaine Chan;

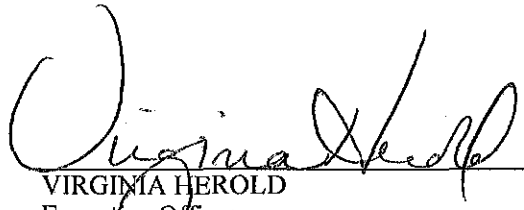
5. Revoking or suspending Pharmacist License Number RPH 43082 issued to Brandon Valor Brodt;

6. Revoking or suspending Pharmacist License Number RPH 64877 issued to Think Phu Nguyen;

7. Ordering Four Fifty Sutter Pharmacy, Elaine Chan, Brandon Valor Brodt, and Think Phu Nguyen 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

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

DATED: 10/16/15



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

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Exhibit A

Decision and Order

Board of Pharmacy Case No. 3797

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

In the Matter of the Accusation Against:

Case No. 3797

FOUR FIFTY SUTTER PHARMACY

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

BRANDON BRODT

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

ELAINE CHAN

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

Respondents.

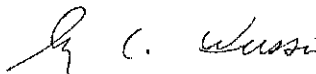
DECISION AND ORDER

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

This decision shall become effective on June 20, 2013.

It is so ORDERED on May 21, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 TIMOTHY J. McDONOUGH
Deputy Attorney General
4 State Bar No. 235850
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7 E-mail: Tim.McDonough@doj.ca.gov
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 3797

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

OAH No. 2012020427
STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

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

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

22 Respondents.

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

26 PARTIES

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

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

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

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

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

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

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

20 JURISDICTION

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

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

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28 ///

ADVISEMENT AND WAIVERS

1
2 7. Respondents have carefully read, fully discussed with counsel, and understand the
3 charges and allegations in Accusation No. 3797. Respondents have also carefully read, fully
4 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
5 Order.

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

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

CULPABILITY

15
16 10. Respondents understand that the charges and allegations in Accusation No. 3797, if
17 proven at a hearing, constitute cause for imposing discipline upon their Pharmacist, Pharmacy,
18 and Pharmacy Technician Licenses. For the purpose of resolving the Accusation without the
19 expense and uncertainty of further proceedings, Respondents agree that, at a hearing,
20 Complainant could establish a factual basis for the charges in the Accusation and that those
21 charges constitute cause for discipline. Respondents give up their right to contest that cause for
22 discipline exists based on those charges.

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

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

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

5 **DISCIPLINARY ORDER FOR 450 SUTTER PHARMACY**

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

9 **1. Obey All Laws**

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

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

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

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

24 **2. Report to the Board**

25 Respondent FFSP's owner shall report to the board quarterly, on a schedule as directed by
26 the board or its designee. The report shall be made either in person or in writing, as directed.

27 Among other requirements, Respondent FFSP's owner shall state in each report under penalty of
28 perjury whether there has been compliance with all the terms and conditions of probation. Failure

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

5 **3. Interview with the Board**

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

11 **4. Cooperate with Board Staff**

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

15 **5. Reimbursement of Board Costs**

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

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

23 **6. Probation Monitoring Costs**

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

28 ///

1 **7. Status of License**

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

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

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

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

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

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

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

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

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

12 **9. Notice to Employees**

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

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

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

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

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

5 **11. Posted Notice of Probation**

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

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

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

14 **12. Violation of Probation**

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

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

28 ///

1 **13. Completion of Probation**

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

4 **14. Community Services Program**

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

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

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

15 **15. Separate File of Records**

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

19 **16. Monetary Contribution to Community**

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

25 **DISCIPLINARY ORDER FOR PHARMACIST BRANDON BRODT**

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

1 **1. Suspension**

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

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

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

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

18 **2. Obey All Laws**

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

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

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

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

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

6 **3. Report to the Board**

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

15 **4. Interview with the Board**

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

22 **5. Cooperate with Board Staff**

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

26 ///

27 ///

28 ///

1 **6. Notice to Employers**

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

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

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

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

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

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

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

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

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

8 **8. Reimbursement of Board Costs**

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

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

16 **9. Probation Monitoring Costs**

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

21 **10. Status of License**

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

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

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

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

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

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

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

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

25 **13. Tolling of Probation**

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

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

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

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

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

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

18 **14. Violation of Probation**

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

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

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

3 **15. Completion of Probation**

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

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

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

14 **17. Community Services Program**

15 Within sixty (60) days of the effective date of this decision, Respondent Brodt shall submit
16 to the Board or its designee, for prior approval, a community service program in which
17 Respondent Brodt shall provide free health-care related services on a regular basis to a
18 community or charitable facility or agency for at least 30 hours per year while on probation.

19 Within thirty (30) days of board approval thereof, Respondent Brodt shall submit documentation
20 to the board demonstrating commencement of the community service program. A record of this
21 notification must be provided to the board upon request. Respondent Brodt shall report on
22 progress with the community service program in the quarterly reports. Failure to timely submit,
23 commence, or comply with the program shall be considered a violation of probation.

24 **18. Remedial Education**

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

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

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

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

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

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

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TO: SANDRA MCINTOSH

ACCEPTED

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

DATED:

12/6/12 Brandon Beodj
BRANDON BEODJ
Respondent

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

DATED:

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

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

DATED:

12/6/12 Elaine O
ELAINE O
Respondent

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

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

7 ENDORSEMENT

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

10 Dated: 12-7-12

11 Respectfully submitted,
12 KAMALA D. HARRIS
13 Attorney General of California
14 DIANN SOKOLOFF
15 Supervising Deputy Attorney General

16 *T. J. McDonough*
17 TIMOTHY J. MCDENOUGH
18 Deputy Attorney General
19 Attorneys for Complainant

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Exhibit A

Accusation No. 3797

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

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

11 In the Matter of the Accusation Against:

Case No. 3797

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

ACCUSATION

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

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

21 Respondents.

22
23
24 Complainant alleges:

25 PARTIES

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

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

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

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

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

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

11 ...

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

13 REGULATIONS

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

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

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

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

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

22 "(1) The master formula record.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 ...

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

28 ///

1 COST RECOVERY

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

6 FACTUAL BACKGROUND

7 *November 25, 2008 Inspection at FFSP.*

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

18 18. At the conclusion of the inspection, Investigator Nip issued a written notice for non-
19 compliance based on the following: 1) a prescription with an incorrect expiration date on its label
20 was in the will call area² and ready for patient pick-up; 2) a compounded product was found in
21 the pharmacy's inventory without a retrievable compounding record and formula during and after
22 the inspection; 3) a compounded product labeled with a 12 month expiration date from the date of
23 the preparation date was found in the will call area ready for patient pick-up; (4) numerous
24 compounded products--with expiration dates beyond the allowable 180 days-- were located on the
25 compounding shelves and inventory area; (5) lack of a Drug Enforcement Agency (DEA) power

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

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

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

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

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

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

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

28

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

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

23 *April 29, 2010 Inspection at FFSP*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 **DISCIPLINE CONSIDERATIONS**

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

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

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

3 DISCIPLINE CONSIDERATIONS

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

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

14 PRAYER

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

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

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

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

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

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

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

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