

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA L. SUN
Supervising Deputy Attorney General
3 ZACHARY T. FANSELOW
Deputy Attorney General
4 State Bar No. 274129
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2562
6 Facsimile: (213) 897-2804
Attorneys for Complainant
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8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

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

Case No. 5440

12 **MEDRX, INC. DBA MEDRX**
13 **PHARMACY, IRENE NAYGAS, MARK**
NAYGAS AND DMITRY NAYGAS,
14 **OWNERS**

ACCUSATION AND PETITION TO
REVOKE PROBATION

15 18356 Oxnard St., Ste. 1
Tarzana, CA 91356
16 JULIE DAKOV, Pharmacist-in-Charge

17 **Original Permit No. PHY 49209**

18 **IRENE NAYGAS**
19 19120 Sprague Street
Tarzana, CA 91356

20 **Original Pharmacist License No. RPH 58720**

21 Respondent.

22
23
24 Complainant alleges:

25 **PARTIES**

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

1 jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding
2 against, the licensee or to render a decision suspending or revoking the license."

3 8. Probation Condition 15 of the Decision and Order in the disciplinary action entitled "*In*
4 *the Matter of the Accusation Against Irene Naygas*," Case No. 4432, states:

5 **Violation of Probation**

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

9 If Respondent violates probation in any respect, the board, after giving Respondent notice
10 and an opportunity to be heard, may revoke probation and carry out the disciplinary order
11 stating that a violation thereof may lead to automatic termination of the stay and/or
12 revocation of the license. If a petition to revoke probation or an accusation is filed against
Respondent during probation, the board shall have continuing jurisdiction and the period of
probation shall be automatically extended until the petition to revoke probation or
accusation is heard and decided.

13 **ACCUSATION**

14 **STATUTORY PROVISIONS**

15 9. Section 4022 states

16 "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in
17 humans or animals, and includes the following:

18 "(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without
19 prescription," "Rx only," or words of similar import.

20 "(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by
21 or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in
22 with the designation of the practitioner licensed to use or order use of the device.

23 "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
24 prescription or furnished pursuant to Section 4006."

25 10. Section 4036.5 states: "Pharmacist-in-charge" means a pharmacist proposed by a
26 pharmacy and approved by the board as the supervisor or manager responsible for ensuring the
27 pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of
28 pharmacy."

1 11. Section 4104, subdivision (b), states:

2 “Every pharmacy shall have written policies and procedures for addressing chemical, mental,
3 or physical impairment, as well as theft, diversion, or self-use of dangerous drugs, among licensed
4 individuals employed by or with the pharmacy.”

5 12. Section 4301 states:

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

9

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

14 13. Section 4307 states, in pertinent part:

15 "(a) Any person who has been denied a license or whose license has been revoked or is
16 under suspension, or who has failed to renew his or her license while it was under suspension, or
17 who has been a manager, administrator, owner, member, officer, director, associate, or partner of
18 any partnership, corporation, firm, or association whose application for a license has been denied
19 or revoked, is under suspension or has been placed on probation, and while acting as the manager,
20 administrator, owner, member, officer, director, associate, or partner had knowledge of or
21 knowingly participated in any conduct for which the license was denied, revoked, suspended, or
22 placed on probation, shall be prohibited from serving as a manager, administrator, owner, member,
23 officer, director, associate, or partner of a licensee as follows:

24 “(1) Where a probationary license is issued or where an existing license is placed on
25 probation, this prohibition shall remain in effect for a period not to exceed five years.

26 “(2) Where the license is denied or revoked, the prohibition shall continue until the license is
27 issued or reinstated.”

28 14. Section 4369 states:

1 “(1) Obey all laws and regulations substantially related to the practice of Pharmacy...”

2 **COST RECOVERY**

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

7 **CONTROLLED SUBSTANCES AND DANGEROUS DRUGS**

8 19. Norco, a combination product containing the controlled substance hydrocodone and
9 non-narcotic acetaminophen, is a Schedule III controlled substance pursuant to Health and Safety
10 Code section 11056, subdivision (e)(4), and a dangerous drug pursuant to Business and
11 Professions Code section 4022.

12 20. Vicodin, a combination product containing the controlled substance hydrocodone and
13 non-narcotic acetaminophen, is a Schedule III controlled substance pursuant to Health and Safety
14 Code section 11056, subdivision (e)(4), and a dangerous drug pursuant to Business and
15 Professions Code section 4022.

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Failure to Maintain Pharmacy to Prevent Theft)**

18 21. Respondent Pharmacy and Respondent Naygas (collectively, “Respondents”) are
19 subject to disciplinary action under California Code of Regulations, title 16, section 1714,
20 subdivision (b), in conjunction with section 4301, subdivision (o), in that a Board inspector
21 discovered discrepancies of controlled substance medication contained at Respondent Pharmacy
22 during a site inspection. Specifically, between November 30, 2012, and May 23, 2014,
23 Respondents could not account for various strengths of the controlled substance and dangerous
24 drug, Hydrocodone/APAP (brand names Norco and Vicodin), as follows:

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Drug	Beginning Inventory	Purchases	Sales / Returns	Ending Inventory	Discrepancy
Hydrocodone /APAP 5/325	840	32,100	26,777	720	5,443 short
Hydrocodone /APAP 5/500	147	4,000	4,018	0	129 short
Hydrocodone /APAP 10/325	710	20,200	13,852	482	6,576 short
Hydrocodone /APAP 7.5/325	1,500	18,900	12,889	563	6,948 short
Hydrocodone /APAP 7.5/500	80	200	30	0	250 short

SECOND CAUSE FOR DISCIPLINE

(Lack of Policies and Procedures for Employee Theft or Impairment)

22. Respondents are subject to disciplinary action under section 4104, subdivision (b), in that during the Board’s site inspection on April 28, 2014, Respondent Pharmacy did not have written policies and procedures for addressing employee theft and impairment for licensed individuals employed by or with Respondent Pharmacy.

THIRD CAUSE FOR DISCIPLINE

(Lack of Operational Standards and Security)

23. Respondent Naygas is subject to disciplinary action under California Code of Regulations, title 16, section 1714, subdivision (d), in conjunction with section 4301, subdivision (o), in that Respondent Naygas failed to maintain the security of Respondent Pharmacy’s prescription department against theft or diversion of controlled substances and dangerous drugs. The circumstances are set forth in additional detail in paragraph 21, including the attached table, above, which is hereby incorporated by reference as though set forth fully.

FOURTH CAUSE FOR DISCIPLINE

(Entering the Pharmacy Area while Under Suspension)

24. Respondent Naygas is subject to disciplinary action under California Code of Regulations, title 16, section 1772, in conjunction with section 4301, subdivision (o), in that Respondent Naygas entered Respondent Pharmacy while she was under a probationary suspension that prohibited her from entering the pharmacy. The circumstances of this violation include that

1 Respondent Naygas was placed on five years probation that included a ninety (90) day suspension
2 effective March 4, 2014. While under suspension, Respondent Naygas entered Respondent
3 Pharmacy on multiple occasions to, amongst other activities, instruct staff, complete paperwork
4 and interview pharmacists.

5 **FIFTH CAUSE FOR DISCIPLINE**

6 **(Failure to Comply with Treatment Program)**

7 25. Respondent Naygas is subject to disciplinary action under section 4369, subdivision
8 (a), and California Code of Regulations, title 16, section 1773, subdivision (a)(1), in conjunction
9 with section 4301, subdivision (o), in that Respondent Naygas failed to comply with a Board
10 ordered treatment program by testing positive for alcohol, controlled substances and failing out of
11 Maximus, the Board's designated treatment program. The circumstances of this violation include
12 that Respondent Naygas was placed on five years probation effective March 4, 2014, that included
13 a pharmacist recovery program, where she was required to abstain from alcohol and any drugs not
14 lawfully prescribed by a physician. Respondent Naygas, while still on probation, failed to comply
15 with the treatment program as follows:

16 a. Respondent Naygas tested positive for cocaine, its metabolite benzoylecgonine and
17 hydrocodone from a random drug test collected on or about April 18, 2014. When asked to
18 produce a prescription for hydrocodone or benzoylecgonine, Respondent Naygas was unable to.

19 b. Respondent Naygas tested positive for cocaine, hydrocodone and hydromorphone
20 from a random drug test collected on or about April 25, 2014.

21 c. Respondent Naygas tested positive for cocaine, reported by Promises Treatment
22 Center, while Respondent Naygas was undergoing inpatient treatment at that facility.

23 d. Respondent Naygas tested positive for alcohol from a random drug test collected on
24 or about October 6, 2014.

25 e. Respondent Naygas tested positive for cocaine from a random drug test collected on
26 or about November 7, 2015.

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28 ///

1 **PETITION TO REVOKE PROBATION**

2 26. Grounds exist to revoke Respondent Naygas' probation and re-impose revocation of
3 Respondent Naygas' Original Pharmacist License Number RPH 58720 in that Respondent Naygas
4 did not comply with the terms and conditions of her probation, as set forth below:

5 **FIRST CAUSE TO REVOKE PROBATION**

6 **(Failure to Comply with Suspension Requirement)**

7 27. At all times after the effective date of Respondent Naygas's probation, Condition 1
8 stated:

9 **Suspension**

10 As part of probation, Respondent is suspended from the practice of pharmacy for 90 days
11 beginning the effective date of this decision.

12 During suspension, Respondent shall not enter any pharmacy area or any portion of the
13 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other
14 distributor of drugs which is licensed by the board, or any manufacturer, or where dangerous
15 drugs and devices or controlled substances are maintained. Respondent shall not practice
16 pharmacy nor do any act involving drug selection, selection of stock, manufacturing,
17 compounding, dispensing or patient consultation; nor shall Respondent manage, administer,
18 or be a consultant to any licensee of the board, or have access to or control the ordering,
19 manufacturing or dispensing of dangerous drugs and devices or controlled substances.

20 Respondent shall not engage in any activity that requires the professional judgment of a
21 pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy.
22 Respondent shall not perform the duties of a pharmacy technician or a designated
23 representative for any entity licensed by the board.

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

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

28 28. Respondent Naygas's probation is subject to revocation because she failed to comply
with Probation Condition 1, referenced above. The facts and circumstances regarding this
violation include that Respondent Naygas, while serving her ninety (90) day suspension, entered
Respondent Pharmacy on multiple occasions to, amongst other activities, instruct staff, complete
paperwork and interview pharmacists.

1 **SECOND CAUSE TO REVOKE PROBATION**

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

3 29. At all times after the effective date of Respondent Naygas's probation, Condition 2
4 stated:

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

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

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

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

19 30. Respondent Naygas's probation is subject to revocation because she failed to comply
20 with Probation Condition 2, referenced above. The facts and circumstances regarding this
21 violation include:

22 a. Respondent Naygas failed to maintain Respondent Pharmacy to prevent theft in
23 violation of California Code of Regulations, title 16, section 1714, subdivision (b);

24 b. Respondent Naygas failed to create or maintain policies and procedures regulating
25 employee theft or impairment in violation of section 4104, subdivision (b);

26 c. Respondent Naygas failed to ensure operational standards and security in violation of
27 California Code of Regulations, title 16, section 1714, subdivision (d);

28 d. Respondent Naygas entered Respondent Pharmacy while under probationary
suspension in violation of California Code of Regulations, title 16, section 1772;

e. Respondent Naygas failed to comply with a Board ordered treatment program in
violation of section 4369, subdivision (a), and California Code of Regulations, title 16, section
1773, subdivision (a)(1); and,

///

1 f. The circumstances regarding these violations are set forth in additional detail in
2 paragraphs 21 through 25, inclusive, which are hereby incorporated by reference as though set
3 forth fully.

4 **THIRD CAUSE TO REVOKE PROBATION**

5 **(Failure to Comply with Pharmacists Recovery Program)**

6 31. At all times after the effective date of Respondent Naygas's probation, Condition 3
7 stated:

8 **Pharmacists Recovery Program (PRP)**

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

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

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

20 Probation shall be automatically extended until Respondent successfully completes the PRP.

21 Any person terminated from the PRP program shall be automatically suspended by the
22 board. Respondent may not resume the practice of pharmacy until notified by the board in
23 writing.

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

28 During suspension, Respondent shall not enter any pharmacy area or any portion of the
licensed premises of a wholesaler, veterinary food-animal drug retailer or any other
distributor of drugs which is licensed by the board, or any manufacturer, or where dangerous
drugs and devices or controlled substances are maintained. Respondent shall not practice
pharmacy nor do any act involving drug selection, selection of stock, manufacturing,
compounding, dispensing or patient consultation; nor shall Respondent manage, administer,
or be a consultant to any licensee of the board, or have access to or control the ordering,
manufacturing or dispensing of dangerous drugs and controlled substances. Respondent
shall not resume practice until notified by the board.

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

Subject to the above restrictions, Respondent may continue to own or hold an interest in any

1 licensed premises in which she holds an interest at the time this decision becomes effective
2 unless otherwise specified in this order.

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

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

8 Respondent shall work in a pharmacy setting with access to controlled substances for six (6)
9 consecutive months before successfully completing probation. If Respondent fails to do so,
10 probation shall be automatically extended until this condition has been met. Failure to satisfy
11 this condition within six (6) months beyond the original date of expiration of the term of
12 probation shall be considered a violation of probation.

13 32. Respondent Naygas's probation is subject to revocation because she failed to comply
14 with Probation Condition 17, referenced above. The facts and circumstances regarding this
15 violation include that Respondent Naygas tested positive for cocaine and hydrocodone on or about
16 April 18, 2014, and April 25, 2014; Respondent Naygas tested positive for cocaine while being
17 treated at Promises Treatment Center and again on or about November 7, 2015; and, Respondent
18 Naygas tested positive for alcohol on or about October 6, 2014. The circumstances regarding this
19 violation is set forth in additional detail in paragraph 25, subparagraphs (a) through (e) inclusive,
20 which is hereby incorporated by reference as though set forth fully.

21 **FOURTH CAUSE TO REVOKE PROBATION**

22 **(Failure to Abstain from Alcohol, Dangerous Drugs and Controlled Substances)**

23 33. At all times after the effective date of Respondent Naygas's probation, Condition 19
24 stated:

25 **Abstain from Drugs and Alcohol Use**

26 Respondent shall completely abstain from the possession or use of alcohol, controlled
27 substances, dangerous drugs and their associated paraphernalia except when the drugs are
28 lawfully prescribed by a licensed practitioner as part of a documented medical treatment.
Upon request of the board or its designee, Respondent shall provide documentation from the
licensed practitioner that the prescription for the drug was legitimately issued and is a
necessary part of the treatment of the Respondent. Failure to timely provide such
documentation shall be considered a violation of probation. Respondent shall ensure that
she is not in the same physical location as individuals who are using illicit substances even if
Respondent is not personally ingesting the drugs. Any possession or use of alcohol,
controlled substances, or their associated paraphernalia not supported by the documentation
timely provided, and/or any physical proximity to persons using illicit substances, shall be
considered a violation of probation.

1 34. Respondent Naygas's probation is subject to revocation because she failed to comply
2 with Probation Condition 19, referenced above. The facts and circumstances regarding this
3 violation include that Respondent Naygas tested positive for cocaine and hydrocodone on or about
4 April 18, 2014, and April 25, 2014; Respondent Naygas tested positive for cocaine while being
5 treated at Promises Treatment Center and again on or about November 7, 2015; and, Respondent
6 Naygas tested positive for alcohol on or about October 6, 2014. The circumstances regarding this
7 violation is set forth in additional detail in paragraph 25, subparagraphs (a) through (e) inclusive,
8 which is hereby incorporated by reference as though set forth fully.

9 **OTHER MATTERS**

10 35. Pursuant to section 4307, if discipline is imposed on Original Permit Number PHY
11 49209 issued to MedRX, Inc. doing business as MedRX Pharmacy, MedRX, Inc. shall be
12 prohibited from serving as a manager, administrator, owner, member, officer, director, associate,
13 or partner of a licensee for five years if Original Permit Number PHY 49209 is placed on probation
14 or until Original Permit Number PHY 49209 is reinstated if the license is revoked.

15 36. Pursuant to section 4307, if discipline is imposed on Original Permit Number PHY
16 49209 issued to MedRX, Inc. doing business as MedRX Pharmacy, while Irene Naygas, Mark
17 Naygas, and Dmitry Naygas have been officers and owners and had knowledge of, or knowingly
18 participated in, any conduct for which MedRX, Inc. was disciplined, Irene Naygas, Mark Naygas,
19 and/or Dmitry Naygas shall be prohibited from serving as a manager, administrator, owner,
20 member, officer, director, associate, or partner of a licensee for five years if Original Permit
21 Number PHY 49209 is placed on probation or until Original Permit Number PHY 49209 is
22 reinstated if the license is revoked.

23 **PRAYER**

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

27 1. Revoking or suspending Pharmacy Permit No. PHY 49209, issued to MedRX, Inc.
28 doing business as MedRX Pharmacy with Irene Naygas as the Pharmacist-in-Charge, President and

1 75% owner, Mark Naygas as the Vice President and 12% owner, and Dmitry Naygas as the
2 Secretary and 12% owner;

3 2. Revoking the probation that was granted by the Board of Pharmacy in Case No. 4432
4 and imposing the disciplinary order that was stayed thereby revoking Original Pharmacist License
5 Number RPH 58720 issued to Irene Naygas;

6 3. Revoking or suspending Original Pharmacist License Number RPH 58720 issued to
7 Irene Naygas;

8 4. Prohibiting MedRX, Inc. doing business as MedRX Pharmacy from serving as a
9 manager, administrator, owner, member, officer, director, associate, or partner of a licensee for
10 five years if Original Permit Number PHY 49209 is placed on probation or until Original Permit
11 Number PHY 49209 is reinstated if Original Permit Number PHY 49209 issued to MedRX, Inc.
12 doing business as MedRX Pharmacy is revoked;

13 5. Prohibiting Irene Naygas from serving as a manager, administrator, owner, member,
14 officer, director, associate, or partner of a licensee for five years if Original Permit Number PHY
15 49209 is placed on probation or until Original Permit Number PHY 49209 is reinstated if Original
16 Permit Number PHY 49209 issued to MedRX, Inc. doing business as MedRX Pharmacy is
17 revoked;

18 6. Prohibiting Mark Naygas from serving as a manager, administrator, owner, member,
19 officer, director, associate, or partner of a licensee for five years if Original Permit Number PHY
20 49209 is placed on probation or until Original Permit Number PHY 49209 is reinstated if Original
21 Permit Number PHY 49209 issued to MedRX, Inc. doing business as MedRX Pharmacy is
22 revoked;

23 7. Prohibiting Dmitry Naygas from serving as a manager, administrator, owner, member,
24 officer, director, associate, or partner of a licensee for five years if Original Permit Number PHY
25 49209 is placed on probation or until Original Permit Number PHY 49209 is reinstated if Original
26 Permit Number PHY 49209 issued to MedRX, Inc. doing business as MedRX Pharmacy is
27 revoked;

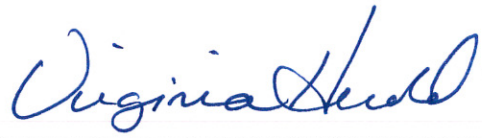
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8. Ordering MedRX, Inc. doing business as MedRX Pharmacy and Irene Naygas to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: 6/13/16



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. 4432

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

In the Matter of the Accusation Against:

IRENE NAYGAS
1342 N. Fuller Ave., #104
Los Angeles, CA 90046

Pharmacist License No. RPH 58720

Respondent.

Case No. 4432

OAH No. 2013040760

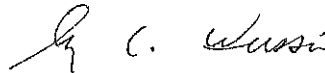
DECISION AND ORDER

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 March 4, 2014.

It is so ORDERED on February 25, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER
Board President

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 KAREN L. GORDON
Deputy Attorney General
4 State Bar No. 137969
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2073
7 Facsimile: (619) 645-2061
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:

12 **IRENE NAYGAS**
13 **1342 N. Fuller Avenue, #104**
14 **Los Angeles, CA 90046**

15 **Pharmacist License No. RPH 58720**

16 Respondent.

Case No. 4432

OAH No. 2013040760

17
18 **STIPULATED SETTLEMENT AND**
19 **DISCIPLINARY ORDER**

20 In the interest of a prompt and speedy settlement of this matter, consistent with the public
21 interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs,
22 the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will
23 be submitted to the Board for approval and adoption as the final disposition of the Accusation.

24 **PARTIES**

25 1. Virginia Herold ("Complainant") is the Executive Officer of the Board of Pharmacy.
26 She brought this action solely in her official capacity and is represented in this matter by Kamala
27 D. Harris, Attorney General of the State of California, by Karen L. Gordon, Deputy Attorney
28 General.

1 2. Respondent Irene Naygas ("Respondent") is represented in this proceeding by
2 attorney Joshua Olander, Esq., whose address is: 9000 W. Sunset Blvd., Ste. 704,
3 West Hollywood, CA 90069

4 3. On or about September 8, 2006, the Board of Pharmacy issued Pharmacist License
5 No. RPH 58720 to Irene Naygas (Respondent). The Pharmacist License was in full force and
6 effect at all times relevant to the charges brought in Accusation No. 4432 and expired on
7 December 31, 2013.

8 **JURISDICTION**

9 4. Accusation No. 4432 was filed before the Board of Pharmacy (Board), Department of
10 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other
11 statutorily required documents were properly served on Respondent on March 11, 2013.
12 Respondent timely filed her Notice of Defense contesting the Accusation.

13 5. A copy of Accusation No. 4432 is attached as Exhibit A and incorporated herein by
14 reference.

15 **ADVISEMENT AND WAIVERS**

16 6. Respondent has carefully read, fully discussed with counsel, and understands the
17 charges and allegations in Accusation No. 4432. Respondent has also carefully read, fully
18 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
19 Order.

20 7. Respondent is fully aware of her legal rights in this matter, including the right to a
21 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
22 the witnesses against her; the right to present evidence and to testify on her own behalf; the right
23 to the issuance of subpoenas to compel the attendance of witnesses and the production of
24 documents; the right to reconsideration and court review of an adverse decision; and all other
25 rights accorded by the California Administrative Procedure Act and other applicable laws.

26 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
27 every right set forth above.

28 ///

1 **CULPABILITY**

2 9. Respondent admits the truth of each and every charge and allegation in Accusation
3 No. 4432.

4 10. Respondent agrees that her Pharmacist License is subject to discipline and she agrees
5 to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

6 **CONTINGENCY**

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

16 12. The parties understand and agree that Portable Document Format (PDF) and facsimile
17 copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format
18 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

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

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

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1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Pharmacist License No. RPH 58720 issued to Respondent
3 Irene Naygas (Respondent) is revoked. However, the revocation is stayed and Respondent is
4 placed on probation for five (5) years on the following terms and conditions.

5 1. **Suspension**

6 As part of probation, Respondent is suspended from the practice of pharmacy for 90 days
7 beginning the effective date of this decision.

8 During suspension, Respondent shall not enter any pharmacy area or any portion of the
9 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
10 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices
11 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
12 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
13 consultation; nor shall Respondent manage, administer, or be a consultant to any licensee of the
14 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
15 and devices or controlled substances.

16 Respondent shall not engage in any activity that requires the professional judgment of a
17 pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy.
18 Respondent shall not perform the duties of a pharmacy technician or a designated representative
19 for any entity licensed by the board.

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

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

24 2. **Obey All Laws**

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

26 Respondent shall report any of the following occurrences to the board, in writing, within
27 seventy-two (72) hours of such occurrence:
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- 1 • an arrest or issuance of a criminal complaint for violation of any provision of the
- 2 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
- 3 substances laws
- 4 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
- 5 criminal complaint, information or indictment
- 6 • a conviction of any crime
- 7 • discipline, citation, or other administrative action filed by any state or federal agency
- 8 which involves Respondent's Pharmacist's license or which is related to the practice
- 9 of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or
- 10 charging for any drug, device or controlled substance.

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

12 **3. Report to the Board**

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

21 **4. Interview with the Board**

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

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1 **5. Cooperate with Board Staff**

2 Respondent shall cooperate with the board's inspection program and with the board's
3 monitoring and investigation of Respondent's compliance with the terms and conditions of her
4 probation. Failure to cooperate shall be considered a violation of probation.

5 **6. Continuing Education**

6 Respondent shall provide evidence of efforts to maintain skill and knowledge as a
7 pharmacist as directed by the board or its designee.

8 **7. Notice to Employers**

9 During the period of probation, Respondent shall notify all present and prospective
10 employers of the decision in case number 4432 and the terms, conditions and restrictions imposed
11 on Respondent by the decision, as follows:

12 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
13 Respondent undertaking any new employment, Respondent shall cause her direct supervisor,
14 pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's
15 tenure of employment) and owner to report to the board in writing acknowledging that the listed
16 individual(s) has/have read the decision in case number 4432, and terms and conditions imposed
17 thereby. It shall be Respondent's responsibility to ensure that her employer(s) and/or
18 supervisor(s) submit timely acknowledgment(s) to the board.

19 If Respondent works for or is employed by or through a pharmacy employment service,
20 Respondent must notify her direct supervisor, pharmacist-in-charge, and owner at every entity
21 licensed by the board of the terms and conditions of the decision in case number 4432 in advance
22 of the Respondent commencing work at each licensed entity. A record of this notification must
23 be provided to the board upon request.

24 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
25 (15) days of Respondent undertaking any new employment by or through a pharmacy
26 employment service, Respondent shall cause her direct supervisor with the pharmacy
27 employment service to report to the board in writing acknowledging that she has read the decision
28 in case number 4432 and the terms and conditions imposed thereby. It shall be Respondent's

1 responsibility to ensure that her employer(s) and/or supervisor(s) submit timely
2 acknowledgment(s) to the board.

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

6 "Employment" within the meaning of this provision shall include any full-time,
7 part-time, temporary, relief or pharmacy management service as a pharmacist or any
8 position for which a pharmacist license is a requirement or criterion for employment,
9 whether the Respondent is an employee, independent contractor or volunteer.

10 **8. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC),**
11 **Serving as Designated Representative-in-Charge, or Serving as a Consultant**

12 During the period of probation, Respondent shall not supervise any intern pharmacist, be
13 the pharmacist-in-charge or designated representative-in-charge of any entity licensed by the
14 board nor serve as a consultant unless otherwise specified in this order. Assumption of any such
15 unauthorized supervision responsibilities shall be considered a violation of probation.

16 **9. Reimbursement of Board Costs**

17 As a condition precedent to successful completion of probation, Respondent shall pay to the
18 board its costs of investigation and prosecution in the amount of \$4,157.50. Respondent shall
19 make said payments pursuant to a payment plan established by the Board or its designee.

20 There shall be no deviation from this schedule absent prior written approval by the board or
21 its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of
22 probation.

23 The filing of bankruptcy by Respondent shall not relieve Respondent of her responsibility
24 to reimburse the board its costs of investigation and prosecution.

25 **10. Probation Monitoring Costs**

26 Respondent shall pay any costs associated with probation monitoring as determined by the
27 board each and every year of probation. Such costs shall be payable to the board on a schedule as
28

1 directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall
2 be considered a violation of probation.

3 **11. Status of License**

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

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

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

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

19 Upon acceptance of the surrender, Respondent shall relinquish her pocket and wall license
20 to the board within ten (10) days of notification by the board that the surrender is accepted.

21 Respondent may not reapply for any license from the board for three (3) years from the effective
22 date of the surrender. Respondent shall meet all requirements applicable to the license sought as
23 of the date the application for that license is submitted to the board, including any outstanding
24 costs.

25 **13. Notification of a Change in Name, Residence Address, Mailing Address or**
26 **Employment**

27 Respondent shall notify the board in writing within ten (10) days of any change of
28 employment. Said notification shall include the reasons for leaving, the address of the new

1 employer, the name of the supervisor and owner, and the work schedule if known. Respondent
2 shall further notify the board in writing within ten (10) days of a change in name, residence
3 address, mailing address, or phone number.

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

6 14. Tolling of Probation

7 Except during periods of suspension, Respondent shall, at all times while on probation, be
8 employed as a pharmacist in California for a minimum of forty (40) hours per calendar month.
9 Any month during which this minimum is not met shall toll the period of probation, i.e., the
10 period of probation shall be extended by one month for each month during which this minimum is
11 not met. During any such period of tolling of probation, Respondent must nonetheless comply
12 with all terms and conditions of probation.

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

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

21 "Cessation of practice" means any calendar month during which Respondent is
22 not practicing as a pharmacist for at least forty (40) hours, as defined by Business and
23 Professions Code section 4000 et seq. "Resumption of practice" means any calendar
24 month during which Respondent is practicing as a pharmacist for at least forty (40)
25 hours as a pharmacist as defined by Business and Professions Code section 4000 et
26 seq.

27 Respondent is required to practice as a pharmacist in a licensed pharmacy setting that
28 dispenses medication for a minimum of one year prior to the completion of probation. After the

1 first year of probation, the board or its designee may consider a modification of this requirement.
2 If Respondent fails to comply with this requirement or a subsequent modification thereto, such
3 failure shall be considered a violation of probation.

4 **15. Violation of Probation**

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

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

17 **16. Completion of Probation**

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

20 **17. Pharmacists Recovery Program (PRP)**

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

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

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

7 Probation shall be automatically extended until Respondent successfully completes the
8 PRP. Any person terminated from the PRP program shall be automatically suspended by the
9 board. Respondent may not resume the practice of pharmacy until notified by the board in
10 writing.

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

15 During suspension, Respondent shall not enter any pharmacy area or any portion of the
16 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
17 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices
18 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
19 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
20 consultation; nor shall Respondent manage, administer, or be a consultant to any licensee of the
21 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
22 and controlled substances. Respondent shall not resume practice until notified by the board.

23 During suspension, Respondent shall not engage in any activity that requires the
24 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
25 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
26 designated representative for any entity licensed by the board.

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

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

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

8 Respondent shall work in a pharmacy setting with access to controlled substances for six
9 (6) consecutive months before successfully completing probation. If Respondent fails to do so,
10 probation shall be automatically extended until this condition has been met. Failure to satisfy this
11 condition within six (6) months beyond the original date of expiration of the term of probation
12 shall be considered a violation of probation.

13 18. Random Drug Screening

14 Respondent, at her own expense, shall participate in random testing, including but not
15 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug
16 screening program as directed by the board or its designee. Respondent may be required to
17 participate in testing for the entire probation period and the frequency of testing will be
18 determined by the board or its designee. At all times, Respondent shall fully cooperate with the
19 board or its designee, and shall, when directed, submit to such tests and samples for the detection
20 of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its
21 designee may direct. Failure to timely submit to testing as directed shall be considered a violation
22 of probation. Upon request of the board or its designee, Respondent shall provide documentation
23 from a licensed practitioner that the prescription for a detected drug was legitimately issued and is
24 a necessary part of the treatment of the Respondent. Failure to timely provide such
25 documentation shall be considered a violation of probation. Any confirmed positive test for
26 alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented

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1 medical treatment shall be considered a violation of probation and shall result in the automatic
2 suspension of practice of pharmacy by Respondent. Respondent may not resume the practice of
3 pharmacy until notified by the board in writing.

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

12 During suspension. Respondent shall not engage in any activity that requires the
13 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
14 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
15 designated representative for any entity licensed by the board.

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

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

20 **19. Abstain from Drugs and Alcohol Use**

21 Respondent shall completely abstain from the possession or use of alcohol, controlled
22 substances, dangerous drugs and their associated paraphernalia except when the drugs are
23 lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon
24 request of the board or its designee, Respondent shall provide documentation from the licensed
25 practitioner that the prescription for the drug was legitimately issued and is a necessary part of the
26 treatment of the Respondent. Failure to timely provide such documentation shall be considered a
27 violation of probation. Respondent shall ensure that she is not in the same physical location as
28 individuals who are using illicit substances even if Respondent is not personally ingesting the

1 drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia
2 not supported by the documentation timely provided, and/or any physical proximity to persons
3 using illicit substances, shall be considered a violation of probation.

4 **20. Prescription Coordination and Monitoring of Prescription Use**

5 Within thirty (30) days of the effective date of this decision, Respondent shall submit to the
6 board, for its prior approval, the name and qualifications of a single physician, nurse practitioner,
7 physician assistant, or psychiatrist of Respondent's choice, who shall be aware of the
8 Respondent's history with the use of controlled substances and/or dangerous drugs and who will
9 coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled
10 substances or mood-altering drugs. The approved practitioner shall be provided with a copy of
11 the board's Accusation and decision. A record of this notification must be provided to the board
12 upon request. Respondent shall sign a release authorizing the practitioner to communicate with
13 the board about Respondent's treatment(s). The coordinating physician, nurse practitioner,
14 physician assistant, or psychiatrist shall report to the board on a quarterly basis for the duration of
15 probation regarding Respondent's compliance with this condition. If any substances considered
16 addictive have been prescribed, the report shall identify a program for the time limited use of any
17 such substances. The board may require that the single coordinating physician, nurse practitioner,
18 physician assistant or psychiatrist be a specialist in addictive medicine, or consult a specialist in
19 addictive medicine. Should Respondent, for any reason, cease supervision by the approved
20 practitioner, Respondent shall notify the board immediately and, within thirty (30) days of
21 ceasing treatment, submit the name of a replacement physician, nurse practitioner, physician
22 assistant, or psychiatrist of Respondent's choice to the board or its designee for its prior approval.
23 Failure to timely submit the selected practitioner or replacement practitioner to the board for
24 approval, or to ensure the required reporting thereby on the quarterly reports, shall be considered
25 a violation of probation.

26 If at any time an approved practitioner determines that Respondent is unable to practice
27 safely or independently as a pharmacist, the practitioner shall notify the board immediately by
28 telephone and follow up by written letter within three (3) working days. Upon notification from

1 the board or its designee of this determination, Respondent shall be automatically suspended and
2 shall not resume practice until notified by the board that practice may be resumed.

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

11 During suspension, Respondent shall not engage in any activity that requires the
12 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
13 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
14 designated representative for any entity licensed by the board.

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

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

19 **21. Supervised Practice**

20 During the period of probation, Respondent shall practice only under the supervision of a
21 licensed pharmacist not on probation with the board. Upon and after the effective date of this
22 decision, Respondent shall not practice pharmacy and her license shall be automatically
23 suspended until a supervisor is approved by the board or its designee. The supervision shall be,
24 as required by the board or its designee, either:

25 Continuous – At least 75% of a work week

26 Substantial - At least 50% of a work week

27 Partial - At least 25% of a work week

28 Daily Review - Supervisor's review of probationer's daily activities within 24 hours

1 Within thirty (30) days of the effective date of this decision, Respondent shall have her
2 supervisor submit notification to the board in writing stating that the supervisor has read the
3 decision in case number 4432 and is familiar with the required level of supervision as determined
4 by the board or its designee. It shall be the Respondent's responsibility to ensure that her
5 employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the
6 board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
7 acknowledgements to the board shall be considered a violation of probation.

8 If Respondent changes employment, it shall be the Respondent's responsibility to ensure
9 that her employer(s), pharmacist-in-charge and/or supervisor(s) submit timely
10 acknowledgement(s) to the board. Respondent shall have her new supervisor, within fifteen (15)
11 days after employment commences, submit notification to the board in writing stating the direct
12 supervisor and pharmacist-in-charge have read the decision in case number 4432 and is familiar
13 with the level of supervision as determined by the board. Respondent shall not practice pharmacy
14 and her license shall be automatically suspended until the board or its designee approves a new
15 supervisor. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
16 acknowledgements to the board shall be considered a violation of probation.

17 Within ten (10) days of leaving employment, Respondent shall notify the board in writing.

18 During suspension, Respondent shall not enter any pharmacy area or any portion of the
19 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
20 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices
21 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
22 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
23 consultation; nor shall Respondent manage, administer, or be a consultant to any licensee of the
24 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
25 and controlled substances. Respondent shall not resume practice until notified by the board.

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1 During suspension, Respondent shall not engage in any activity that requires the
2 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
3 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
4 designated representative for any entity licensed by the board.

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

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

9 **22. No Additional Ownership of Licensed Premises**

10 Respondent shall not acquire any new ownership, legal or beneficial interest nor serve as a
11 manager, administrator, member, officer, director, trustee, associate, or partner of any additional
12 business, firm, partnership, or corporation licensed by the board. If Respondent currently owns or
13 has any legal or beneficial interest in, or serves as a manager, administrator, member, officer,
14 director, trustee, associate, or partner of any business, firm, partnership, or corporation currently
15 or hereinafter licensed by the board, Respondent may continue to serve in such capacity or hold
16 that interest, but only to the extent of that position or interest as of the effective date of this
17 decision. Violation of this restriction shall be considered a violation of probation.

18 **23. Report of Controlled Substances**

19 Respondent shall submit quarterly reports to the board detailing the total acquisition and
20 disposition of such controlled substances as the board may direct. Respondent shall specify the
21 manner of disposition (e.g., by prescription, due to burglary, etc.) or acquisition (e.g., from a
22 manufacturer, from another retailer, etc.) of such controlled substances. Respondent shall report
23 on a quarterly basis or as directed by the board. The report shall be delivered or mailed to the
24 board no later than ten (10) days following the end of the reporting period. Failure to timely
25 prepare or submit such reports shall be considered a violation of probation.

26 **24. Consultant for Owner or Pharmacist-In-Charge**

27 During the period of probation, Respondent shall not supervise any intern pharmacist or
28 serve as a consultant to any entity licensed by the board. Respondent may be a pharmacist-in-

1 charge. However, if during the period of probation Respondent serves as a pharmacist-in-charge,
2 Respondent shall retain an independent consultant at her own expense who shall be responsible
3 for reviewing pharmacy operations on a monthly basis for compliance by Respondent with state
4 and federal laws and regulations governing the practice of pharmacy and for compliance by
5 Respondent with the obligations of a pharmacist-in-charge. The consultant shall be a pharmacist
6 licensed by and not on probation with the board and whose name shall be submitted to the board
7 or its designee, for prior approval, within thirty (30) days of the effective date of this decision.
8 Respondent shall not be a pharmacist-in-charge at more than one pharmacy or at any pharmacy of
9 which she is not the sole owner. Failure to timely retain, seek approval of, or ensure timely
10 reporting by the consultant shall be considered a violation of probation.

11 **25. Tolling of Suspension**

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

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

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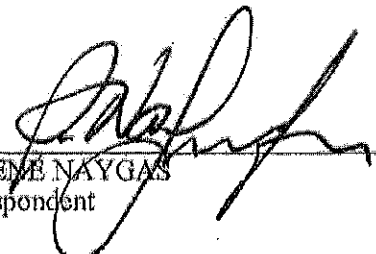
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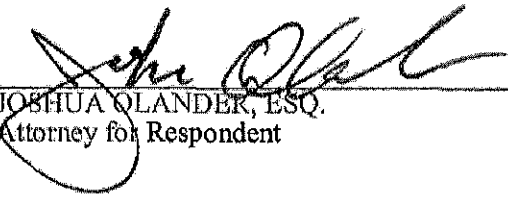
ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Joshua Olander, Esq. 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: 1-9-14 
IRENE NAYGAS
Respondent

APPROVAL

I have read and fully discussed with Respondent Irene Naygas the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 1/9/14 
JOSHUA OLANDER, ESQ.
Attorney for Respondent

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy.

Dated: 1-9-14

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General



KAREN L. GORDON
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 4432

1 KAMALA D. HARRIS
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
4 State Bar No. 101336
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-3037
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 4432

13 **IRENE NAYGAS**
14 **1342 N. Fuller Avenue #104**
Los Angeles, CA 90046

ACCUSATION

15 **Pharmacist License No. RPH 58720**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about September 8, 2006, the Board of Pharmacy issued Pharmacist
23 License Number RPH 58720 to Irene Naygas (Respondent). The Pharmacist License was in full
24 force and effect at all times relevant to the charges brought herein and will expire on December
25 31, 2013, unless renewed.

26 ///

27 ///

28 ///

1 **JURISDICTION**

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

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

9 5. Section 4300, subdivision (a), of the Code states that every license issued may be
10 suspended or revoked.

11 **STATUTORY PROVISIONS**

12 6. Section 482 of the Code states:

13 Each board under the provisions of this code shall develop criteria to
14 evaluate the rehabilitation of a person when:

15 (a) Considering the denial of a license by the board under Section 480; or

16 (b) Considering suspension or revocation of a license under Section 490.

17 Each board shall take into account all competent evidence of rehabilitation
18 furnished by the applicant or licensee.

19 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or
20 revoke a license on the ground that the licensee has been convicted of a crime substantially
21 related to the qualifications, functions, or duties of the business or profession for which the
22 license was issued.

23 8. Section 493 of the Code states:

24 Notwithstanding any other provision of law, in a proceeding conducted by
25 a board within the department pursuant to law to deny an application for a license
26 or to suspend or revoke a license or otherwise take disciplinary action against a
27 person who holds a license, upon the ground that the applicant or the licensee has
28 been convicted of a crime substantially related to the qualifications, functions, and
duties of the licensee in question, the record of conviction of the crime shall be
conclusive evidence of the fact that the conviction occurred, but only of that fact,
and the board may inquire into the circumstances surrounding the commission of
the crime in order to fix the degree of discipline or to determine if the conviction

///

1 is substantially related to the qualifications, functions, and duties of the licensee in
2 question.

3 As used in this section, 'license' includes 'certificate,' 'permit,'
4 'authority,' and 'registration.'

5 9. Section 4022 of the Code states

6 "Dangerous drug" or "dangerous device" means any drug or device unsafe
7 for self-use in humans or animals, and includes the following:

8 (a) Any drug that bears the legend: "Caution: federal law prohibits
9 dispensing without prescription," "Rx only," or words of similar import.

10 (b) Any device that bears the statement: "Caution: federal law restricts
11 this device to sale by or on the order of a _____," "Rx only," or words of
12 similar import, the blank to be filled in with the designation of the practitioner
13 licensed to use or order use of the device.

14 (c) Any other drug or device that by federal or state law can be
15 lawfully dispensed only on prescription or furnished pursuant to Section 4006.

16 10. Section 4301 of the Code states:

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

21

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

28

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

. . . .

(l) The conviction of a crime substantially related to the qualifications,
functions, and duties of a licensee under this chapter. The record of conviction of
a violation of Chapter 13 (commencing with section 801) of Title 21 of the United
States Code regulating controlled substances or of a violation of the statutes of
this state regulating controlled substances or dangerous drugs shall be conclusive
evidence of unprofessional conduct. In all other cases, the record of conviction
shall be conclusive evidence only of the fact that the conviction occurred. The
board may inquire into the circumstances surrounding the commission of the
crime, in order to fix the degree of discipline or, in the case of a conviction not
involving controlled substances or dangerous drugs, to determine if the conviction
is of an offense substantially related to the qualifications, functions, and duties of
a licensee under this chapter. A plea or verdict of guilty or a conviction following
a plea of *nolo contendere* is deemed to be a conviction within the meaning of this

1 provision. The board may take action when the time for appeal has elapsed, or the
2 judgment of conviction has been affirmed on appeal or when an order granting
3 probation is made suspending the imposition of sentence, irrespective of a
4 subsequent order under section 1203.4 of the Penal Code allowing the person to
5 withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
6 the verdict of guilty, or dismissing the accusation, information, or indictment.

7

8 REGULATORY PROVISIONS

9 11. California Code of Regulations, title 16, section 1769, states:

10

11 (b) When considering the suspension or revocation of a facility or a
12 personal license on the ground that the licensee or the registrant has been
13 convicted of a crime, the board, in evaluating the rehabilitation of such person and
14 his present eligibility for a license will consider the following criteria:

15 (1) Nature and severity of the act(s) or offense(s).

16 (2) Total criminal record.

17 (3) The time that has elapsed since commission of the act(s) or
18 offense(s).

19 (4) Whether the licensee has complied with all terms of parole,
20 probation, restitution or any other sanctions lawfully imposed against the licensee.

21 (5) Evidence, if any, of rehabilitation submitted by the licensee.

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

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

COST RECOVERY

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

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DRUGS AT ISSUE

14. Alprazolam, is a depressant in the benzodiazepine family and is a Schedule IV controlled substance as designated by Health and Safety Code, section 11057, subdivision (d)(1). It is used to treat anxiety disorders, panic disorders, and anxiety.

15. Diazepam, is a depressant in the benzodiazepine family and is a Schedule IV controlled substance as designated by Health and Safety Code, section 11057, subdivision (d)(1). It is used to treat anxiety disorders, panic disorders, and anxiety.

16. Nordiazepam, is an active metabolite of Diazepam, a depressant in the benzodiazepine family and is a Schedule IV controlled substance as designated by Health and Safety Code, section 11057, subdivision (d)(1). It is used to treat anxiety disorders, panic disorders, and anxiety.

17. Temazepam, is a depressant in the benzodiazepine family and is a Schedule IV controlled substance as designated by Health and Safety Code, section 11057, subdivision (d)(1). It is used to treat anxiety disorders, panic disorders, and anxiety.

FIRST CAUSE FOR DISCIPLINE

(September 27, 2012 Criminal Conviction for DUI on January 15, 2012)

18. Respondent subjected her license to discipline under Code sections 490 and 4301, subdivision (l) in that she was convicted of a crime that is substantially related to the qualifications, functions, and duties of a Licensed Pharmacist. The circumstances are as follows:

a. On or about September 27, 2012, in a criminal proceeding entitled *The People of the State of California vs. Irene Naygas*, in Riverside County Superior Court Banning Courthouse, Case Number BAM1200814, Respondent was convicted on her plea of guilty to violating Vehicle Code (VC) 23152 subdivision (a), driving under the influence of alcohol and a drug and under their combined influence (DUI), a misdemeanor. Respondent was also charged with violating HSC section 11500, subdivision (a), unlawful use and being under the influence of a controlled substance, not having been administered by and under the direction of a person licensed by the State of California to prescribe and administer controlled substances, a misdemeanor, which was dismissed as a result of a plea bargain.

1 b. As a result of the conviction, on or about September 27, 2012, Respondent
2 was sentenced to summary probation for thirty six months, and committed to the custody of the
3 Riverside County Sheriff for four days with credit for two days served and two days for good
4 behavior. Respondent was also ordered to render 80 hours of community service; pay penalty
5 assessments, fines, and fees; and attend and satisfactorily complete a four-month first offender
6 DUI program.

7 c. The facts that led to the conviction are that on or about January 15, 2012,
8 an officer of the California Highway Patrol (CHP) spotted Respondent's stopped car with the
9 engine running and with hazard lights activated on the shoulder of interstate highway 10, west of
10 Oak Valley Parkway in Riverside County, California. Upon contact with Respondent, who was
11 at the driver's side of the vehicle, the officer immediately smelled alcohol emitting from inside
12 the car. Respondent denied having consumed alcohol but the officer noticed her red and watery
13 eyes. Respondent was unable to perform the field sobriety tests (FST) as explained and
14 demonstrated. Respondent was then transported to the San Geronio Pass CHP office, where a
15 forced blood draw was conducted on her. Results of Respondent's blood test provided by Bio-
16 Tox Laboratories in Beaumont, California indicated the presence of .04 percent alcohol in weight
17 per volume, cocaine, and benzodiazepines, including alprazolam, diazepam, nordiazepam, and
18 temazepam.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Unprofessional Conduct - Dangerous Use Of Drugs and Alcohol)**

21 19. Respondent subjected her license to discipline under Code sections 490 and 4301,
22 subdivision (h) in that on or about January 15, 2012, she used drugs and alcohol to the extent and
23 in a manner that was dangerous and injurious to herself and to the public, as described in the
24 cause above, which is incorporated by reference.

25 **THIRD CAUSE FOR DISCIPLINE**

26 **(Unprofessional Conduct - Violation of Drug Regulation Laws)**

27 20. Respondent subjected her license to discipline under Code sections 490 and 4301,
28 subdivision (j) in that on or about January 15, 2012, she violated HSC section 11500, subdivision

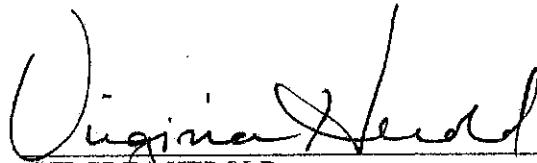
1 (a), unlawful use and being under the influence of a controlled substance, not having been
2 administered by and under the direction of a person licensed by the State of California to
3 prescribe and administer controlled substances, a statute of the State of California regulating
4 controlled substances and dangerous drugs.

5 **PRAYER**

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

- 8 1. Revoking or suspending Pharmacist License Number RPH 58720, issued to Irene
9 Naygas;
- 10 2. Ordering Irene Naygas to pay the Board of Pharmacy the reasonable costs of the
11 investigation and enforcement of this case, pursuant to Business and Professions Code section
12 125.3;
- 13 3. Taking such other and further action as deemed necessary and proper.

14
15
16 DATED: 2/27/13



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

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