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

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

13 **WENDY RE BRODY**
14 **6207 Lake Ariana Ave.**
San Diego, CA 92119

15 **Pharmacist License No. RPH 42050**

16 Respondent.

Case No. 6302

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

17
18 Complainant alleges:

19 PARTIES

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

23 2. On or about August 10, 1988, the Board of Pharmacy issued Pharmacist License
24 Number RPH 42050 to Wendy Re Brody (Respondent). The Pharmacist License was in effect at
25 all times relevant to the charges brought herein and will expire on August 31, 2018, unless
26 renewed.

27 3. In a prior disciplinary action entitled "In the Matter of Accusation Against Wendy Re
28 Brody," Case No. 5286, the Board of Pharmacy issued a decision, effective April 26, 2017, in

1 which Respondent's Pharmacist License was revoked. However, the revocation was stayed and
2 Respondent's Pharmacist License was placed on probation for a period of five (5) years with
3 certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated
4 by reference.

5 JURISDICTION FOR ACCUSATION

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

9 5. Section 4300 of the Code states:

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

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12 6. Section 4300.1 of the Code states:

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

17 STATUTORY PROVISIONS FOR ACCUSATION

18 7. Section 4022 of the Code states

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

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

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

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

26 8. Section 4026 of the Code states: 'Furnish' means to supply by any means, by sale or
27 otherwise.

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1 9. Section 4059 of the Code states, in pertinent part, that a person may not furnish any
2 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,
3 veterinarian, or naturopathic doctor.

4 10. Section 4060 of the Code states, in pertinent part, that a person may not possess any
5 controlled substance, except that furnished to a person upon the prescription of a physician,
6 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor.

7 11. Section 4301 of the Code states, in pertinent part:

8 The board shall take action against any holder of a license who is guilty of
unprofessional conduct or whose license has been issued by mistake.

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

10

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

13

(h) The administering to oneself, of any controlled substance

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15 (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.

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17 12. Health and Safety Code section 11170 states in pertinent part that no person shall
18 prescribe, administer, or furnish a controlled substance for himself.

19 13. Health and Safety Code section 11173, subdivision (a) states:

20 No person shall obtain or attempt to obtain controlled substances, or procure
21 or attempt to procure the administration of or prescription for controlled substances,
(1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of
22 a material fact.

23 **COSTS**

24 14. Section 125.3 of the Code states, in pertinent part, that the Board may request the
25 administrative law judge to direct a licentiate found to have committed a violation or violations of
26 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
27 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being

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1 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
2 included in a stipulated settlement.

3 DRUGS

4 15. Belladonna-opium is a Schedule II controlled substance under Health and Safety
5 Code section 11055, subdivision (b)(3). It is a dangerous drug pursuant to Business and
6 Professions Code section 4022 and used to treat moderate to severe pain.

7 16. Codeine sulfate is a Schedule II controlled substance under Health and Safety Code
8 section 11055, subdivision (b)(1)(G). It is a dangerous drug pursuant to Business and Professions
9 Code section 4022 and used to treat moderate pain.

10 17. Hydrocodone/acetaminophen (brand name Vicodin) is a Schedule II controlled
11 substance under Health and Safety Code section 11055, subdivision (b)(1)(I). It is a dangerous
12 drug pursuant to Business and Professions Code section 4022 and used to treat severe pain.

13 18. Hydromorphone (brand name Dilaudid) is a Schedule II controlled substance under
14 Health and Safety Code section 11055, subdivision (b)(1)(J). It is a dangerous drug pursuant to
15 Business and Professions Code section 4022 and used to treat severe pain.

16 19. Morphine is a Schedule II controlled substance under Health and Safety Code section
17 11055, subdivision (b)(1)(L). It is a dangerous drug pursuant to Business and Professions Code
18 section 4022 and used to treat severe pain.

19 20. Dextroamp-amphetamine (brand name Adderall) is a Schedule II controlled substance
20 under Health and Safety Code section 11055, subdivision (d)(1). It is a dangerous drug pursuant
21 to Business and Professions Code section 4022 and used to treat attention deficit hyperactivity
22 disorder.

23 FACTS

24 21. At all times mentioned herein, Respondent was working as a pharmacist at Palomar
25 Hospital at two different locations in Escondido, California.

26 22. On May 15, 2017, the Board received two employment verification forms for
27 Respondent. On both forms, Palomar Medical Center located at 2185 Citracado Parkway, in
28 Escondido, California (Palomar Medical location), was identified as the physical location where

1 Respondent worked. The forms were signed by Respondent's immediate supervisor, the
2 Pharmacist in Charge (PIC) at the Palomar Medical location; and by the Pharmacy Director at the
3 Palomar Medical location. Each person acknowledged that they had read the Board's Decision in
4 Case No. 5286, which became effective April 26, 2017, and placed Respondent on probation for
5 five years.

6 23. During this time period, Respondent also worked at a second Palomar Hospital
7 location in the pharmacy department at Palomar Health Downtown Campus located at 555 East
8 Valley Parkway, Escondido, California (Palomar Health). Respondent did not notify the Board
9 that she was also working at the Palomar Health location. Respondent did not notify the PIC at
10 Palomar Health that her pharmacist license was on probation and did not provide the PIC with a
11 copy of the Board's Decision in Case No. 5286, that placed Respondent on probation.

12 24. In June 2017, the PIC at the Palomar Health location discovered a discrepancy in the
13 counts of some of the expired Schedule II medications while preparing them for disposal. The
14 actual on-hand inventory did not match what was listed in the report of the expired Schedule II
15 medications, and several medications were missing.

16 25. In reviewing the pharmacy records to determine the source of the discrepancy of the
17 expired Schedule II medications, the PIC at Palomar Health noted that Respondent accessed the
18 expired drug compartment numerous times, and on some occasions, multiple times on the same
19 day.

20 26. On July 10, 2017, the PIC at Palomar Medical and the PIC at Palomar Health, along
21 with the pharmacy director interviewed Respondent regarding the missing controlled substances
22 from both locations. Respondent admitted that for the past five months, she has taken controlled
23 substances from the expired medication compartments from both the Palomar Medical and
24 Palomar Health locations, for her personal use.

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1 27. The controlled substance losses for the Palomar Health location are as follows:

Drug Name	Quantity Lost/Stolen
Acetaminophen-codeine 120-12mg/5ml	3 ml
Belladonna-opium 16.2-60 suppository	6
Codeine sulfate 30mg tablet	45
Dextroamp-amphetamine 10mg tablet	10
Hydrocodone-acetaminophen 10-325mg tablet	10
Hydromorphone 1mg/ml syringe	13 ml
Hydromorphone 10mg/ml vial	28 ml
Morphine 4mg/ml carpject	3 ml

7
8 28. The controlled substance losses for the Palomar Medical location are as follows:

Drug Name	Quantity Lost/Stolen
Hydrocodone-acetaminophen 5/325mg tablet	5
Hydrocodone-acetaminophen 10/325mg tablet	47

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12 29. The PIC at Palomar Health contacted the Board to report Respondent's theft of
13 expired controlled substances and found out that Respondent's pharmacist license was on
14 probation. The PIC at Palomar Health was not aware that Respondent was on probation with the
15 Board.

16 30. On July 13, 2017, Respondent emailed Board staff and informed the staff that she had
17 disobeyed pharmacy law by diverting narcotics from her workplace and admitted that she took
18 the narcotics for self use.

19 **ACCUSATION**

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct: Acts Involving Dishonesty and Deceit)**

22 31. Respondent has subjected her Pharmacist license to disciplinary action for
23 unprofessional conduct under Code section 4301(f), in that she committed acts that were
24 dishonest and deceitful when she stole controlled substances from her employer as more fully set
25 forth in paragraphs 21 through 30 above, and incorporated herein by reference.

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SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Obtaining Controlled Substances by Deceit and Subterfuge)

32. Respondent has subjected her Pharmacist license to disciplinary action for unprofessional conduct under Code section 4301(j) in conjunction with Health and Safety Code section 11173(a), in that Respondent obtained controlled substances by deceit and subterfuge, when she stole controlled substances from her employer as more particularly alleged in paragraphs 21 through 30 above, and incorporated herein by reference.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Possession of a Controlled Substance W/O Prescription)

33. Respondent has subjected her Pharmacist license to disciplinary action for unprofessional conduct under Code section 4301(j) in conjunction with Code section 4060 for possession of controlled substances without a prescription, when she stole controlled substances from her employer as more particularly alleged in paragraphs 21 through 30 above, and incorporated herein by reference.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Illegal Furnishing of a Controlled Substance to Oneself)

34. Respondent has subjected her Pharmacist license to disciplinary action for unprofessional conduct under Code section 4301(j) in conjunction with Health and Safety Code section 11170, in that she admitted that she illegally furnished controlled substances to herself when she stole controlled substances from her employer as more particularly alleged in paragraphs 21 through 30 above, and incorporated herein by reference.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Self-Administration of a Controlled Substance)

35. Respondent has subjected her Pharmacist license to disciplinary action for unprofessional conduct under Code section 4301(h) in that she self-administered controlled substances to herself that she had stolen from her employer as more particularly alleged in paragraphs 21 through 30 above, and incorporated herein by reference.

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JURISDICTION FOR PETITION TO REVOKE PROBATION

36. Code section 4300(d) states:

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

37. Grounds exist for revoking the probation and reimposing the order of revocation of Pharmacy License Number RPH 42050 issued to Respondent. The Board’s disciplinary order effective on April 26, 2017, contained Probation Condition 14, Violation of Probation, which provides as follows:

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

38. Respondent has violated the conditions of her probation as set forth in the following paragraphs.

FIRST CAUSE TO REVOKE PROBATION

(Failure to Obey All Laws)

39. The Board’s disciplinary order effective on April 26, 2017, contained Probation Condition 1, Obey All Laws, which required Respondent to do the following:

Respondent shall obey all state and federal laws and regulations.

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

-an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws.

-a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment

-a conviction of any crime

-discipline, citation, or other administrative action filed by any state and federal agency which involves Respondent’s Pharmacist License or which is related to the practice of pharmacy or the manufacturing, obtaining, handling or

1 distribution, billing, or charging for any drug, device or controlled substance.
2 Failure to timely report such occurrence shall be considered a violation of
3 probation.

4 40. Respondent's probation is subject to revocation because she failed to comply with
5 Probation Condition 1, referenced above. Respondent failed to obey all laws when she stole
6 controlled substances from her employer; and illegally obtained, possessed, furnished and self-
7 administered controlled substances without a prescription. The circumstances are set forth in
8 paragraphs 21 and 30 above, and incorporated herein by reference.

9 **SECOND CAUSE TO REVOKE PROBATION**

10 (Failure to Give Notice to Employers)

11 41. The Board's disciplinary order effective on April 26, 2017, contained Probation
12 Condition 6, Notice to Employers, which required Respondent to do the following:

13 During the period of probation, Respondent shall notify all present and
14 prospective employers of the decision in case number 5286 and the terms,
15 conditions and restrictions imposed on Respondent by the decision, as follows:

16 Within thirty (30) days of the effective date of this decision, and within
17 fifteen (15) days of Respondent undertaking any new employment, Respondent
18 shall cause her direct supervisor, pharmacist-in-charge (including each new
19 pharmacist-in-charge employed during Respondent's tenure of employment) and
20 owner to report to the board in writing acknowledging that the listed individual(s)
21 has/have read the decision in Case Number 5286, and terms and conditions
22 imposed thereby. It shall be Respondent's responsibility to ensure that her
23 employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

24 If Respondent works for or is employed by or through a pharmacy
25 employment service, Respondent must notify her direct supervisor, pharmacist-in-
26 charge, and owner at every entity licensed by the board of the terms and conditions
27 of the decision in Case Number 5286 in advance of the Respondent commencing
28 work at each licensed entity. A record of this notification must be provided to the
board upon request.

Furthermore, within thirty (30) days of the effective date of this decision,
and within fifteen (15) days of Respondent undertaking any new employment by
or through a pharmacy employment service, Respondent shall cause her direct
supervisor with the pharmacy employment service to report to the board in writing
acknowledging that she has read the decision in Case Number 5286 and the terms
and conditions imposed thereby. It shall be Respondent's responsibility to ensure
that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the
board.

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

1 "Employment" within the meaning of this provision shall include any full-
2 time, part-time, temporary, relief or pharmacy management service as a pharmacist
3 or any position for which a pharmacist license is a requirement or criterion for
4 employment, whether the respondent is an employee, independent contractor or
5 volunteer.

6 42. Respondent's probation is subject to revocation because she failed to comply with
7 Probation Condition 6, referenced above. Respondent failed to timely submit an employment
8 verification for Palomar Health Downtown Campus signed by the PIC at that location to
9 acknowledge that he had read the Board's decision in Case No. 5286 that placed Respondent on
10 probation. Respondent failed to provide verifications of employment for all of the pharmacies
11 where she worked as a pharmacist. The circumstances are set forth in paragraphs 21 and 30
12 above, and incorporated herein by reference.

13 **PRAYER**

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

- 16 1. Revoking the probation that was granted by the Board of Pharmacy in Case No. 5286
17 and imposing the disciplinary order that was stayed thereby revoking Pharmacist License No.
18 RPH 42050 issued to Wendy Re Brody;
- 19 2. Revoking Pharmacist License No. RPH 42050 issued to Wendy Re Brody;
- 20 3. Ordering Wendy Re Brody to pay the Board of Pharmacy the reasonable costs of the
21 investigation and enforcement of this case, pursuant to Business and Professions Code section
22 125.3; and
- 23 4. Taking such other and further action as deemed necessary and proper.

24 DATED: _____

1/2/18



25 VIRGINIA HEROLD
26 Executive Officer
27 Board of Pharmacy
28 Department of Consumer Affairs
State of California
Complainant

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Exhibit A

Decision and Order

Board of Pharmacy Case No. 5286

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

In the Matter of the Accusation Against:

**WENDY RE BRODY
6207 Lake Ariana Ave.
San Diego, CA 92119**

Pharmacist License No. RPH 42050

Respondent.

Case No. 5286

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 at 5:00 p.m. on April 26, 2017.

It is so ORDERED on March 27, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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Supervising Deputy Attorney General
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Attorneys for Complainant

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

11
12 In the Matter of the Accusation Against:

Case No. 5286

13 **WENDY RE BRODY**
6207 Lake Ariana Ave.
14 San Diego, CA 92119

OAH No. 2016100822

15 **Pharmacist License No. RPH 42050**

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

16 Respondent.

17
18
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 PARTIES

22 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy
23 (Board). She brought this action solely in her official capacity and is represented in this matter by
24 Xavier Becerra, Attorney General of the State of California, by Rita M. Lane, Deputy Attorney
25 General.

26 2. Respondent Wendy Re Brody (Respondent) is represented in this proceeding by
27 attorney Jeffrey S. Kravitz, of the Kravitz Law Office, whose address is: 6747 Fair Oaks
28 Boulevard, Carmichael, CA 95608.

1 3. On or about August 10, 1988, the Board issued Pharmacist License No. RPH 42050
2 to Respondent. The Pharmacist License was in full force and effect at all times relevant to the
3 charges brought in Accusation No. 5286, and will expire on August 31, 2018, unless renewed.

4 JURISDICTION

5 4. Accusation No. 5286 was filed before the Board, and is currently pending against
6 Respondent. The Accusation and all other statutorily required documents were properly served
7 on Respondent on May 16, 2016. Respondent timely filed her Notice of Defense contesting the
8 Accusation.

9 5. A copy of Accusation No. 5286 is attached as Exhibit A and incorporated herein by
10 reference.

11 ADVISEMENT AND WAIVERS

12 6. Respondent has carefully read, fully discussed with counsel, and understands the
13 charges and allegations in Accusation No. 5286. Respondent has also carefully read, fully
14 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
15 Order.

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

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

24 CULPABILITY

25 9. Respondent admits the truth of each and every charge and allegation in Accusation
26 No. 5286.

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

1 CONTINGENCY

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

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

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

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

23 **DISCIPLINARY ORDER**

24 IT IS HEREBY ORDERED that Pharmacist License No. RPH 42050 issued to Respondent
25 Wendy Re Brody is revoked. However, the revocation is stayed and Respondent is placed on
26 probation for five (5) years on the following terms and conditions.

27 1. **Obey All Laws**

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

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

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

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

14 2. Report to the Board

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

23 3. Interview with the Board

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

1 4. **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 5. **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 6. **Notice to Employers**

9 During the period of probation, Respondent shall notify all present and prospective
10 employers of the decision in case number 5286 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 5286, 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 5286 in
22 advance of the Respondent commencing work at each licensed entity. A record of this
23 notification must 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 5286 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 **7. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as**
11 **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 **8. 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 \$2,160. Respondent shall be
19 allowed to make payments as approved by the board.

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 **9. 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

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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 **10. 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 **11. 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 **12. 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 13. 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 40 hours per calendar month. Any
9 month during which this minimum is not met shall toll the period of probation, i.e., the period of
10 probation shall be extended by one month for each month during which this minimum is not met.
11 During any such period of tolling of probation, Respondent must nonetheless comply with all
12 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 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 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 40 hours as a
25 pharmacist as defined by Business and Professions Code section 4000 et seq.

26 14. Violation of Probation

27 If a respondent has not complied with any term or condition of probation, the board shall
28 have continuing jurisdiction over Respondent, and probation shall automatically be extended.

1 until all terms and conditions have been satisfied or the board has taken other action as deemed
2 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and
3 to impose the penalty that was stayed.

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

11 **15. Completion of Probation**

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

14 **16. Community Services Program**

15 Within sixty (60) days of the effective date of this decision, Respondent shall submit to the
16 board or its designee, for prior approval, a community service program in which Respondent shall
17 provide free health-care related services on a regular basis to a community or charitable facility or
18 agency for at least 80 hours per year for the first three (3) years of probation. Within thirty (30)
19 days of board approval thereof, Respondent shall submit documentation to the board
20 demonstrating commencement of the community service program. A record of this notification
21 must be provided to the board upon request. Respondent shall report on progress with the
22 community service program in the quarterly reports. Failure to timely submit, commence, or
23 comply with the program shall be considered a violation of probation.

24 **17. Supervised Practice**

25 During the period of probation, Respondent shall practice only under the supervision of a
26 licensed pharmacist not on probation with the board. Upon and after the effective date of this
27 decision, Respondent shall not practice pharmacy and her license shall be automatically

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1 suspended until a supervisor is approved by the board or its designee. The supervision shall be,
2 as required by the board or its designee, either:

3 Continuous – At least 75% of a work week

4 Substantial - At least 50% of a work week

5 Partial - At least 25% of a work week

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

7 Within thirty (30) days of the effective date of this decision, Respondent shall have her
8 supervisor submit notification to the board in writing stating that the supervisor has read the
9 decision in Case Number 5286 and is familiar with the required level of supervision as
10 determined by the board or its designee. It shall be the Respondent's responsibility to ensure that
11 her employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to
12 the board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
13 acknowledgements to the board shall be considered a violation of probation.

14 If Respondent changes employment, it shall be the respondent's responsibility to ensure
15 that her employer(s), pharmacist-in-charge and/or supervisor(s) submit timely
16 acknowledgement(s) to the board. Respondent shall have her new supervisor, within fifteen (15)
17 days after employment commences, submit notification to the board in writing stating the direct
18 supervisor and pharmacist-in-charge have read the decision in Case Number 5286 and is familiar
19 with the level of supervision as determined by the board. Respondent shall not practice pharmacy
20 and her license shall be automatically suspended until the board or its designee approves a new
21 supervisor. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
22 acknowledgements to the board shall be considered a violation of probation.

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

24 During suspension, Respondent shall not enter any pharmacy area or any portion of the
25 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
26 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices
27 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
28 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient

1 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the
2 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
3 and controlled substances. Respondent shall not resume practice until notified by the board.

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

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

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

12 **18. No Ownership of Licensed Premises**

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

20 **19. Ethics Course**

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

25 Respondent shall submit a certificate of completion to the board or its designee within five
26 days after completing the course.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Jeffrey S. Kravitz. 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: 2/17/17 Wendy Re Brody
WENDY RE BRODY
Respondent

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

DATED: 2/17/17 J Kravitz
JEFFREY S. KRAVITZ
Attorney for Respondent

ENDORSEMENT

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

DATED: 2-17-17 Respectfully submitted,
XAVIER BECERRA
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General
Rita M. Lane
RITA M. LANE
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 5286

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 RITA M. LANE
Deputy Attorney General
4 State Bar No. 171352
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6 San Diego, CA 92186-5266
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7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11
12 In the Matter of the Accusation Against:

Case No. 5286

13 **WENDY RE BRODY**
6207 Lake Ariana Ave.
14 San Diego, CA 92119

A C C U S A T I O N

15 **Pharmacist License No. RPH 42050**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about August 10, 1988, the Board of Pharmacy issued Pharmacist License
23 Number RPH 42050 to Wendy Re Brody (Respondent). The Pharmacist License was in full force
24 and effect at all times relevant to the charges brought herein and will expire on August 31, 2016,
25 unless renewed.

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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 4300 of the Code states:

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

7 5. Section 4300.1 of the Code states:

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

12 STATUTORY PROVISIONS

13 6. Section 4301 of the Code states:

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

18

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

23 7. Section 4060 of the Code states:

24 No person shall possess any controlled substance, except that furnished to a
25 person upon the prescription of a physician, dentist, podiatrist, optometrist,
26 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
27 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
28 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant
pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a
pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv)
of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This
section shall not apply to the possession of any controlled substance by a
manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
practitioner, or physician assistant, when in stock in containers correctly labeled
with the name and address of the supplier or producer.

1 Nothing in this section authorizes a certified nurse-midwife, a nurse
2 practitioner, a physician assistant, or a naturopathic doctor, to order his or her own
3 stock of dangerous drugs and devices.

4 REGULATIONS

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

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

13 COSTS

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

18 DRUGS

19 10. Marijuana is a Schedule I controlled substance pursuant to Health and Safety Code
20 section 11054, subdivision (d) and a dangerous drug as designated by Business and Professions
21 Code section 4022.

22 FACTS

23 11. On June 2, 2014, the Drug Enforcement Administration (DEA), San Diego Field
24 Division, executed a Federal search warrant at Respondent's residence. The DEA found 64
25 marijuana plants that were being cultivated inside and outside Respondent's residence and
26 5,106.9 gross grams of processed marijuana. The processed marijuana was found in various
27 locations throughout Respondent's residence, including the freezer, kitchen counter, spare
28 bedroom and master bedroom. An active Tetrahydrocannabinol (THC) extraction operation was
discovered in which butane gas was being utilized to manufacture concentrated cannabis. The
THC extraction operation was maintained in the attached garage and on the covered patio in the
backyard.

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1 12. Due to the presence of the active butane gas laboratory at Respondent's residence, the
2 San Diego Fire Department and the Hazardous Material Team were called and entered the
3 residence in order to evaluate the area for hazardous material including flammable gas. Using a
4 Combustible Gas Meter, the Fire Department determined that there were two containers of yellow
5 liquid that were actively emitting flammable gas. One container was found in the garage where a
6 gas water heater and gas dryer were located, both of which are potential ignition sources for
7 flammable gas. The Fire Department secured the area and blocked off the street in the
8 immediately vicinity of Respondent's residence. The two containers of yellow liquid were
9 removed from the residence and placed in the street in order to mitigate any damage from a
10 potential explosion due to the flammable gas the yellow liquid was emitting. The Fire
11 Department then ensured the flammable gas evaporated safely.

12 13. Respondent told DEA agents that KM lived with her at her residence and that KM's
13 son had previously lived at the residence with them until he moved out approximately 8-10
14 months ago. Respondent told DEA agents that KM's son was running the THC extraction
15 operation at her residence. Respondent admitted to the DEA agent that she knew about the THC
16 extraction operation and that she had assisted in the marijuana cultivation.

17 14. Respondent was arrested and booked for violation of California Health and Safety
18 Code sections 11366 (maintaining a place for sale of a controlled substance), 11379
19 (manufacturing of a controlled substance) and 11358 (cultivation of marijuana).

20 15. On or about March 30, 2015, Respondent entered into a Deferred Prosecution
21 Agreement in the case of the *United States of America v. Wendy Re Brody*, United States District
22 Court, Southern District of California, Case No. 14cr2059-L, wherein prosecution of Respondent
23 was deferred for a period of 60 months for the charge of managing and controlling a place, and
24 making available for use the place, for the purpose of unlawful manufacturing and storing
25 marijuana plants and tetrahydrocannabinols contained in hashish oil. Respondent agreed to pay a
26 \$25,000 forfeiture and abide by the terms and conditions of her pretrial release for a period of 18
27 months.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct)

3 16. Respondent is subject to disciplinary action under Code section 4301 in that she
4 engaged in unprofessional conduct when she made her residence available for use and allowed
5 the unlawful manufacture and storage of marijuana plants and tetrahydrocannabinols at her
6 residence, and for assisting in the cultivation of the marijuana plants. The circumstances are set
7 forth in detail in paragraphs 11 through 15, above, and are incorporated herein by reference.

8 SECOND CAUSE FOR DISCIPLINE

9 (Unprofessional Conduct: Possession of a Controlled Substance Without a Prescription)

10 17. Respondent is subject to discipline for unprofessional conduct under Code section
11 4301(o) in that on or about June 2, 2014, Respondent possessed a controlled substance without a
12 prescription in violation of Code section 4060, when she kept and stored marijuana plants and
13 tetrahydrocannabinols in her home. The circumstances are set forth in detail in paragraphs 11
14 through 15, above, and are incorporated herein by reference.

15 PRAYER

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

- 18 1. Revoking or suspending Pharmacist License Number RPH 42050, issued to Wendy
- 19 Re Brody;
- 20 2. Ordering Wendy Re Brody to pay the Board of Pharmacy the reasonable costs of the
- 21 investigation and enforcement of this case, pursuant to Business and Professions Code section
- 22 125.3; and
- 23 3. Taking such other and further action as deemed necessary and proper.

24
25 DATED: _____

5/3/16

Virginia Herold

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