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

In the Matter of the Petition to Revoke Probation Against: **LYNDA J. BUDMAN** **2700 Peterson Place, Apt. 26C** **Costa Mesa, CA 92626-5323** **Pharmacist License No. 52444** Respondent.	Case No. 4463 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about November 19, 2012, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Petition to Revoke Probation No. 4463 against Lynda J. Budman (Respondent) before the Board of Pharmacy. (Petition to Revoke Probation attached as Exhibit A.)

2. On or about March 29, 2001, the Board of Pharmacy (Board) issued Pharmacist License No. 52444 to Respondent. The Pharmacist License expired on September 30, 2012, and has not been renewed.

3. On or about December 3, 2012, Respondent was served by Certified and First Class Mail copies of the Petition to Revoke Probation No. 4463, Statement to Respondent, Notice of

Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code section 4100, is required to be reported and maintained with the Board. Respondent's address of record was and is: 2700 Peterson Place, Apt. 26C, Costa Mesa, CA 92626-5323.

4. Service of the Petition to Revoke Probation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c) and/or Business & Professions Code section 124.

5. The aforementioned documents were not returned by the U.S. Postal Service as of January 2, 2013.

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

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

7. Respondent failed to file a Notice of Defense within 15 days after service upon her of the Petition to Revoke Probation, and therefore waived her right to a hearing on the merits of Petition to Revoke Probation No. 4463.

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

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

9. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Board's offices regarding the allegations contained in Petition to Revoke Probation No. 4463, finds that the charges and allegations in Petition to Revoke Probation No. 4463, are separately and severally, found to be true and correct by clear and convincing evidence.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Lynda J. Budman has subjected her Pharmacist License No. 52444 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacist License based upon the following violations alleged in the Petition to Revoke Probation which are supported by the evidence contained in the Default Decision Evidence Packet in this case.:

a. Respondent's probation is subject to revocation because she failed to comply with Probation Condition 11, in that on September 30, 2102, Respondent's Pharmacist License No. RPH 52444 expired and has not been renewed.

b. Respondent's probation is subject to revocation because she failed to comply with Probation Condition 17, in that Respondent failed to successfully participate in and complete the treatment contract and/or addendums of the Pharmacists Recovery Program (PRP) program and was terminated from the PRP as a public safety risk on May 3, 2012.

c. Respondent's probation is subject to revocation because she failed to comply with Probation Condition 18, in that Respondent failed to participate in random drug testing as directed by the Board.

d. Respondent's probation is subject to revocation because she failed to comply with Probation Condition 20, in that Respondent failed to submit to the Board, for its prior approval, the name and qualifications of a single physician, nurse practitioner, physician assistant, or psychiatrist of Respondent's choice, to coordinate and monitor any prescriptions, within thirty days of the effective date of the Decision.

e. Respondent's probation is subject to revocation because she failed to comply with Probation Condition 24, in that Respondent failed to enroll in a course in ethics within sixty calendar days of the effective date of the Decision.

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ORDER

IT IS SO ORDERED that Pharmacist License No. 52444, heretofore issued to Respondent Lynda J. Budman, is revoked.

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

This Decision shall become effective on March 3, 2013.

It is so ORDERED ON January 31, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____
STANLEY C. WEISSER
Board President

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DOJ Matter ID:SD2012704374

Attachment:
Exhibit A: Petition to Revoke Probation

Exhibit A

Petition to Revoke Probation

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

In the Matter of the Petition to Revoke Probation Against: **LYNDA J. BUDMAN** **2700 Peterson Place, Apt. 26C** **Costa Mesa, CA 92626-5323** **Pharmacist License No. RPH 52444** Respondent.	Case No. 4463 PETITION TO REVOKE PROBATION

Complainant alleges:

PARTIES

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

2. On or about March 29, 2001, the Board of Pharmacy issued Pharmacist License Number 52444 to Lynda J. Budman (Respondent). The Pharmacist License expired on September 30, 2012, and has not been renewed.

3. In a disciplinary action entitled "In the Matter of Accusation Against Lynda J. Budman," Case No. 3849, the Board of Pharmacy, issued a decision, effective March 9, 2012, in which Respondent's Pharmacist License was revoked. However, the revocation was stayed and Respondent's Pharmacist License was placed on probation for a period of four (4) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

JURISDICTION

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

5. Section 118(b) provides, in pertinent part, that the expiration of a license issued by the board, shall not, during any period in which it may be renewed, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee.

6. This Petition to Revoke Probation is brought pursuant to Paragraph 15 of the Disciplinary Order in Case No. Case No. 3849 referenced in paragraph 3, which states:

VIOLATION OF PROBATION

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

FIRST CAUSE TO REVOKE PROBATION

(Status of License)

7. At all times after the effective date of Respondent's probation, Condition 11 stated:

STATUS OF LICENSE

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

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

8. Respondent's probation is subject to revocation because she failed to comply with Probation Condition 11, referenced above, in that on September 30, 2102, Respondent's Pharmacist License No. RPH 52444 expired and has not been renewed.

SECOND CAUSE TO REVOKE PROBATION

(Pharmacists Recovery Program)

9. At all times after the effective date of Respondent's probation, Condition 17 stated:

PHARMACISTS RECOVERY PROGRAM

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

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

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

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

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

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

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

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

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

10. Respondent's probation is subject to revocation because she failed to comply with Probation Condition 17, referenced above, in that Respondent failed to successfully participate in

and complete the treatment contract and/or addendums of the PRP program and was terminated from the PRP as a public safety risk on May 3, 2012.

THIRD CAUSE TO REVOKE PROBATION

(Random Drug Screening)

11. At all times after the effective date of Respondent's probation, Condition 18 stated:

RANDOM DRUG SCREENING

Respondent, at her own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the Board or its designee. Respondent may be required to participate in testing for the entire probation period and the frequency of testing will be determined by the Board or its designee. At all times, Respondent shall fully cooperate with the Board or its designee, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the Board or its designee may direct. Failure to timely submit to testing as directed shall be considered a violation of probation. Upon request of the Board or its designee, Respondent shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of the Respondent. Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result in the automatic suspension of practice of pharmacy by Respondent. Respondent may not resume the practice of pharmacy until notified by the Board in writing.

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

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

12. Respondent's probation is subject to revocation because she failed to comply with Probation Condition 18, referenced above, in that Respondent failed to participate in random drug testing as directed by the Board.

FOURTH CAUSE TO REVOKE PROBATION

(Prescription Coordination and Monitoring of Prescription Use)

13. At all times after the effective date of Respondent's probation, Condition 20 stated:

PRESCRIPTION COORDINATION AND MONITORING OF PRESCRIPTION USE

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

If at any time an approved practitioner determines that Respondent is unable to practice safely or independently as a pharmacist, the practitioner shall notify the Board immediately by telephone and follow up by written letter within three (3)

working days. Upon notification from the Board or its designee of this determination, Respondent shall be automatically suspended and shall not resume practice until notified by the Board that practice may be resumed.

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

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

14. Respondent's probation is subject to revocation because she failed to comply with Probation Condition 20, referenced above, in that Respondent failed to submit to the Board, for its prior approval, the name and qualifications of a single physician, nurse practitioner, physician assistant, or psychiatrist of Respondent's choice, to coordinate and monitor any prescriptions, within thirty days of the effective date of the Decision.

FIFTH CAUSE TO REVOKE PROBATION

(Ethics Course)

15. At all times after the effective date of Respondent's probation, Condition 24 stated:

ETHICS COURSE

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

Respondent shall submit a certificate of completion to the Board or its designee within five (5) days after completing the course.

16. Respondent's probation is subject to revocation because she failed to comply with Probation Condition 24, referenced above, in that Respondent failed to enroll in a course in ethics within sixty calendar days of the effective date of the Decision.

PRAYER

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

1. Revoking the probation that was granted by the Board of Pharmacy in Case No. 3849 and imposing the disciplinary order that was stayed thereby revoking Pharmacist License No. RPH 52444 issued to Lynda J. Budman;

2. Revoking or suspending Pharmacist License No. RPH 52444, issued to Lynda J. Budman;

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

DATED: 11/19/12

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

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EXHIBIT A

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

In the Matter of the Accusation Against: **LYNDA J. BUDMAN** **9114 Adams Ave #112** **Huntington Beach, CA 92646** **Pharmacist License No. RPH 52444** Respondent.	Case No. 3849

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 9, 2012.

It is so ORDERED on February 8, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____
STANLEY C. WEISSER
Board President

relevant to the charges brought in Accusation No. 3849 and will expire on September 30, 2012, unless renewed.

JURISDICTION

4. Accusation No. 3849 was filed before the Board and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on November 15, 2010. Respondent timely filed her Notice of Defense contesting the Accusation. A true and correct copy of Accusation No. 3849 is attached hereto, marked Exhibit A, and incorporated herein by this reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. 3849. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 3849.

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

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RESERVATION

10. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board of Pharmacy or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

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

12. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

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

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

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DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Pharmacist License No. RPH 52444 issued to Respondent Lynda J. Budman ("Respondent") is revoked. However, the revocation is stayed and Respondent is placed on probation for four (4) years on the following terms and conditions.

1. **Suspension**

As part of probation, Respondent is suspended from working as a pharmacist for sixty (60) days beginning the effective date of this Decision.

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 licensed by the Board, or any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not perform any of the duties of a designated representative, nor do any act involving drug selection, selection of stock, manufacturing, dispensing; 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 devices and controlled substances. Respondent shall not resume work until notified by the Board.

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

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

2. **Obey All Laws**

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:

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

b. A plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment;

c. A conviction of any crime;

d. Discipline, citation, or other administrative action filed by any state or federal agency which involves Respondent's pharmacist license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

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

3. **Report to the Board**

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

4. **Interview with the Board**

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

5. **Cooperate with Board Staff**

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

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6. **Continuing Education**

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

7. **Notice to Employers**

During the period of probation, Respondent shall notify all present and prospective employers of the Decision in Case No. 3849 and the terms, conditions and restrictions imposed on Respondent by the Decision, as follows:

Within thirty (30) days of the effective date of this Decision, and within fifteen (15) days of Respondent undertaking any new employment, Respondent shall cause her direct supervisor, pharmacist-in-charge ("PIC") (including each new PIC employed during Respondent's tenure of employment) and owner to report to the Board in writing acknowledging that the listed individual(s) has/have read the Decision in Case No. 3849, and 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.

If Respondent works for or is employed by or through a pharmacy employment service, Respondent must notify her direct supervisor, PIC, and owner at every entity licensed by the Board of the terms and conditions of the Decision in Case No. 3849 in advance of the Respondent commencing work at each licensed entity. A record of this notification must be provided to the Board upon request.

Furthermore, within thirty (30) days of the effective date of this Decision, and within fifteen (15) days of 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 No. 3849 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.

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

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

8. **No Supervision of Interns, Serving as PIC, Serving as Designated Representative-in-Charge, or Serving as a Consultant**

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

9. **Reimbursement of Board Costs**

As a condition precedent to successful completion of probation, Respondent shall pay to the Board its costs of investigation and prosecution in the amount of $2,677.50. Respondent shall make said payments as approved by the Board.

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

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

10. **Probation Monitoring Costs**

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

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11. **Status of License**

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

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

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

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

Upon acceptance of the surrender, Respondent shall relinquish her pocket and wall license to the Board within ten (10) days of notification by the Board that the surrender is accepted. Respondent may not re-apply for any license from the Board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board, including any outstanding costs.

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

Respondent shall notify the Board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if known. Respondent

shall further notify the Board in writing within ten (10) days of a change in name, residence address, mailing address, or phone number.

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

14. **Tolling of Probation**

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

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

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

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

15. **Violation of Probation**

If a Respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over Respondent, and probation shall automatically be extended, until all terms and conditions have been satisfied or the Board has taken other action as deemed

appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If 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.

16. **Completion of Probation**

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

17. **Pharmacists Recovery Program**

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

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

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

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

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

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

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

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

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

18. **Random Drug Screening**

Respondent, at her own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the Board or its designee. Respondent may be required to participate in testing for the entire probation period and the frequency of testing will be determined by the Board or its designee. At all times, Respondent shall fully cooperate with the Board or its designee, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the Board or its designee may direct. Failure to timely submit to testing as directed shall be considered a violation of probation. Upon request of the Board or its designee, Respondent shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of the Respondent. Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result in the automatic suspension of practice of pharmacy by Respondent. Respondent may not resume the practice of pharmacy until notified by the Board in writing.

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

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

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

Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon request of the Board or its designee, 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.

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

Within thirty (30) days of the effective date of this Decision, Respondent shall submit to the Board, for its prior approval, the name and qualifications of a single physician, nurse practitioner, physician assistant, or psychiatrist of Respondent's choice, who shall be aware of the Respondent's history with the use of controlled substances and who will coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled substances or mood-altering drugs. The approved practitioner shall be provided with a copy of the Board's Accusation and Decision. A record of this notification must be provided to the Board upon request. Respondent shall sign a release authorizing the practitioner to communicate with the Board about Respondent's treatment(s). The coordinating physician, nurse practitioner, physician assistant, or

psychiatrist shall report to the Board on a quarterly basis for the duration of probation regarding Respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances. The Board may require that the single coordinating physician, nurse practitioner, physician assistant or psychiatrist be a specialist in addictive medicine, or consult a specialist in addictive medicine. Should Respondent, for any reason, cease supervision by the approved practitioner, Respondent shall notify the Board immediately and, within thirty (30) days of ceasing treatment, submit the name of a replacement physician, nurse practitioner, physician assistant, or psychiatrist of Respondent's choice to the Board or its designee for its prior approval. Failure to timely submit the selected practitioner or replacement practitioner to the Board for approval, or to ensure the required reporting thereby on the quarterly reports, shall be considered a violation of probation.

If at any time an approved practitioner determines that Respondent is unable to practice safely or independently as a pharmacist, the practitioner shall notify the Board immediately by telephone and follow up by written letter within three (3) working days. Upon notification from the Board or its designee of this determination, Respondent shall be automatically suspended and shall not resume practice until notified by the Board that practice may be resumed.

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

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

21. **Supervised Practice**

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

a. Continuous – At least 75% of a work week;

b. Substantial - At least 50% of a work week;

c. Partial - At least 25% of a work week; or

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

Within thirty (30) days of the effective date of this Decision, Respondent shall have her supervisor submit notification to the Board in writing stating that the supervisor has read the Decision in Case No. 3849, and is familiar with the required level of supervision as determined by the Board or its designee. It shall be the Respondent's responsibility to ensure that her employer(s), PIC and/or supervisor(s) submit timely acknowledgement(s) to the Board. Failure to cause the direct supervisor and the PIC to submit timely acknowledgements to the Board shall be considered a violation of probation.

If Respondent changes employment, it shall be the Respondent's responsibility to ensure that her employer(s), PIC and/or supervisor(s) submit timely acknowledgement(s) to the Board. Respondent shall have her new supervisor, within fifteen (15) days after employment commences, submit notification to the Board in writing stating the direct supervisor and PIC have

read the Decision in Case No. 3849, and is familiar with the level of supervision as determined by the Board. Respondent shall not practice pharmacy and her license shall be automatically suspended until the Board or its designee approves a new supervisor. Failure to cause the direct supervisor and the PIC to submit timely acknowledgements to the Board shall be considered a violation of probation.

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

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

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

22. **No Ownership of Licensed Premises**

Respondent shall not own, have any legal or beneficial interest in, or serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the Board. Respondent shall sell or transfer any legal or beneficial interest in any entity licensed by the Board within ninety (90) days following the effective date of this Decision and shall immediately thereafter provide written

proof thereof to the Board. Failure to timely divest any legal or beneficial interest(s) or provide documentation thereof shall be considered a violation of probation.

23. **Tolling of Suspension**

During the period of suspension, Respondent shall not leave California for any period exceeding ten (10) days, regardless of purpose (including vacation). Any such absence in excess of the (10) days during suspension shall be considered a violation of probation. Moreover, any absence from California during the period of suspension exceeding ten (10) days shall toll the suspension, i.e., the suspension shall be extended by one (1) day for each day over ten (10) days Respondent is absent from California. During any such period of tolling of suspension, Respondent must nonetheless comply with all terms and conditions of probation.

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

24. **Ethics Course**

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

Respondent shall submit a certificate of completion to the Board or its designee within five (5) days after completing the course.

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ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. 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: 9.24.11

LYNDA J. BUDMAN
Respondent

ENDORSEMENT

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

DATED: 10/11/11

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General

NICOLE R. COOK
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 3849

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

In the Matter of the Accusation Against: **LYNDA J. BUDMAN** 641 Balsa Drive Castle Rock, CO 80104 Original Pharmacist License No. RPH 52444 Respondent.	Case No. 3849 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about March 29, 2001, the Board of Pharmacy issued Pharmacist License Number RPH 52444 to Lynda J. Budman (Respondent). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2010, unless renewed.

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JURISDICTION

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

4. Section 4300, subdivision (a), of the Code states that every license issued by the Board may be suspended or revoked.

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

STATUTORY PROVISIONS

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

> The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:
>
> (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.
>
> (g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.
>
> (h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.
>
> (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 provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(n) The revocation, suspension, or other discipline by another state of a license to practice pharmacy, operate a pharmacy, or do any other act for which a license is required by this chapter.

7. Section 4060 of the Code states, in pertinent part:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, 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.

8. Health and Safety code section 11170 states that no person shall prescribe, administer, or furnish a controlled substance for herself.

9. Health and Safety Code section 11173 provides, in pertinent part:

(a) No person shall obtain or attempt to obtain controlled substances, or procure 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 a material fact.

(b) No person shall make a false statement in any prescription, order, report, or record, required by this division.

CONTROLLED SUBSTANCES

10. **Hydrocodone bitartrate** is a Schedule III controlled substance as designated by Health and Safety Code section 11056, subdivision (e)(4).

11. **Lortab, Norco, and Vicodin** are combination drugs containing hydrocodone bitartrate and acetaminophen and each is a Schedule III controlled substance as designated by Health and Safety Code section 11056, subdivision (e)(4).

12. **Marijuana** is a Schedule I controlled substance as designated in Health and Safety Code section 11054, subdivision (d)(13).

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.

FIRST CAUSE FOR DISCIPLINE

(Out of State Discipline)

14. Respondent is subject to disciplinary action under section Code section 4301, subdivision (n), on the grounds of unprofessional conduct in that on or about September 26, 2007, in the case titled *In the Matter of Disciplinary Proceedings Regarding the License to Practice Pharmacy in the State of Colorado of Lynda Jo Budman, R.PH., License No. 15314, Respondent*, Case Nos. 2006-4032, 2007-787, and 2007-2765, the State Board of Pharmacy, State of Colorado (Colorado Board), Respondent's Colorado Pharmacist License No. 15314 was placed on five years probation. A true and correct copy of the Colorado Board's disciplinary decision is attached hereto, marked Exhibit A, and incorporated herein by this reference. The circumstances are as follows:

a. On or about March 16, 2006, Respondent left the building of her employer, Safeway Pharmacy #1548, 9229 East Lincoln Avenue, Littleton, Colorado, 80124, to go across the parking lot to get lunch at a fast food outlet. During her absence, Respondent left a pharmacy technician in charge of the pharmacy and no other pharmacist was present.

b. On or around November 1, 2006, through on or about March 20, 2007, Respondent, while employed as a pharmacist at Walgreen's Store #6987, 355 So. Wilcox, Castle Rock, Colorado, 80104, diverted controlled substances, that is Vicodin, Lortab, Norco and hydrocodone, for her own use.

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c. On or about March 20, 2007, Respondent was arrested by the Castle Rock Police, and was subsequently charged with felony theft and unlawful possession of controlled substances.

d. Respondent entered into a Stipulation and Final Agency Order with the Colorado Board whereby she agreed to, among other things: license probation for five years; contract with Peer Assistance Services (PAS) for a minimum period of five years or until successful completion of the Board's probationary terms and conditions, whichever occurs later; submit to urine/blood screens during participation in PAS; restricted practice to not serve as a manager, supervisor, preceptor or consultant pharmacist in Colorado at any time during probation; take and pass the jurisprudence examination within one year of the effective date of the Final Agency Order; enroll in, complete, and receive a passing grade in 90 hours of ACPE-approved continuing education; disclose and provide a copy of the Final Agency Order to her employer(s) during probation; submit written reports and quarterly status reports; pay her own fees and costs associated with the Final Agency Order.

SECOND CAUSE FOR DISCIPLINE

(Conviction of Crime)

15. Respondent is subject to disciplinary action under Code section 4301, subdivision (l), on the grounds of unprofessional conduct in that on or about October 10, 2007, Respondent was convicted in the case titled *People of the State of Colorado v. Lynda Budman*, District Court, Douglas County, Colorado, Case No. 07CR338, on her guilty plea to the added count of possessing eight ounces of Marijuana [Schedule I controlled substance], a misdemeanor. The crime substantially relates to the qualifications, functions, and duties of a licensed pharmacist. The original criminal complaint against Respondent charged her with violation of Colorado Criminal Code sections 18-18-405(1) and (2)(a)(I)(A) [possession of schedule 2 controlled substances] and 18-4-401(1) and (2)(c) [theft in the amount of $500 - $15,000.00]. The circumstances are as follows:

a. In and between November 1, 2006, and March 19, 2007, on numerous occasions while working as a licensed pharmacist for Walgreens #6987, 355 So. Wilcox, Castle

Rock, Colorado, Respondent admittedly diverted the controlled substance Norco and its generic (hydrocodone) from her employer, for her own use. In her handwritten statement, Respondent admitted to printing a duplicate label of any prescription recently filled, pretended to scan and weigh it, pretended to scan and check it, and then bagged it. She admittedly made sure the prescription was something already sold so the patient would not pick it up, rather than pick it up for herself. Respondent admitted that the filled prescription, described above, would be placed in the "MD call back" drawers so it could not be given to a patient. She also admitted that she would return the filled bottle of Norco to the shelf by the pharmacy's back door, and she would grab the bottle and pocket it on her way out. In the store's bathroom, she put the filled bottle of Norco in her own pocket and for her own use. Respondent believed she had diverted approximately 1,800 Norco and hydrocodone tablets. Respondent prepared her handwritten statement, dated and signed on March 19, 2007, admitting to the facts set forth hereinabove.

b. Walgreens CCTV captured Respondent removing the controlled substances from the shelf when no prescriptions had been filled. Walgreens conducted an investigation, interviewed Respondent where she made the above admissions and wrote her statement, and turned over the case to the Castle Rock PD for arrest and prosecution.

c. Respondent's employer confirmed that her theft of the Norco and hydrocodone totaled approximately 2,112 tablets and estimated the loss to Walgreens of $1,978.21. Respondent agreed to reimburse Walgreens the amount of $1,978.21.

THIRD CAUSE FOR DISCIPLINE

(Committed Act Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)

16. Respondent is subject to disciplinary action under Code section 4301, subdivision (f), on the grounds of unprofessional conduct in that Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption. The circumstances are set forth in paragraph 15, subparagraphs a through c, above, incorporated herein by this reference.

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FOURTH CAUSE FOR DISCIPLINE

(False Representation of a State of Facts)

17. Respondent is subject to disciplinary action under Code section 4301, subdivision (g), on the grounds of unprofessional conduct in that Respondent knowingly made or signed a certificate or document falsely representing the existence or non-existence of a state of facts in relation to the false prescription labels she created for controlled substances, as set forth in paragraph 16, subparagraph a, above, incorporated herein by this reference.

FIFTH CAUSE FOR DISCIPLINE

(Self-Administration of Controlled Substance)

18. Respondent is subject to disciplinary action under Code section 4301, subdivision (h), on the grounds of unprofessional conduct in that Respondent self-administered controlled substances to the extent or in a manner as to be dangerous or injurious to herself, other persons or the public, or to the extent the use impaired her ability to conduct with safety to the public the practice of pharmacy. The circumstances are set forth in paragraph 15, subparagraph a, above, incorporated herein by this reference.

SIXTH CAUSE FOR DISCIPLINE

(Violation of Laws Regulating Controlled Substances)

19. Respondent is subject to disciplinary action under Code section 4301, subdivision (j), on the grounds of unprofessional conduct in that Respondent violated laws regulating controlled substances and dangerous drugs. The circumstances are as follows:

a. On or about March 19 and 20, 2007, Respondent possessed controlled substances Lortab, Norco, Vicodin, and hydrocodone tablets without a prescription in violation of Code section 4060.

b. In and between November 1, 2006, and March 20, 2007, Respondent self-administered and self-furnished controlled substances in violation of Health and Safety Code section 11170.

c. In and between November 1, 2006, and March 20, 2007, Respondent obtained, attempted to obtain, procured or attempted to procure the administration of or prescription of

controlled substances by fraud, deceit, subterfuge, or misrepresentation, or by the concealment of a material fact, in violation of Health and Safety Code section 11173, subdivision (a).

d. In and between November 1, 2006, and March 20, 2007, Respondent made a false statement in a prescription, order, report, or record relating to controlled substances in violation of Health and Safety Code section 11173, subdivision (b).

PRAYER

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

a. Revoking or suspending Pharmacist License Number RPH 52444, issued to Lynda J. Budman

b. Ordering Lynda J. Budman 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;

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

DATED: 11/5/10

Virginia Herold

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

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