

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

In the Matter of the Accusation Against:

MARK SEY, Respondent

Pharmacist License No. RPH 35514

Agency Case No. 6613

OAH No. 2019041087

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 15, 2020.

It is so ORDERED on March 16, 2020.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Greg Lippe
Board President

1 XAVIER BECERRA
Attorney General of California
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9 **BEFORE THE**
10 **BOARD OF PHARMACY**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

14 **MARK SEY**
15 **255 Alameda Blvd.**
Coronado, CA 92118

16 **Pharmacist License No. RPH 35514,**

17 Respondent.

Case No. 6613

OAH No. 2019041087

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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. Anne Sodergren (Complainant) is the Interim Executive Officer of the Board of
23 Pharmacy (Board). She brought this action solely in her official capacity and is represented in
24 this matter by Xavier Becerra, Attorney General of the State of California, by Daniel J. Cross,
25 Deputy Attorney General.
- 26 2. Respondent Mark Sey (Sey) is represented in this proceeding by attorneys Marilyn R.
27 Moriarty, Timothy R. Windham, and Helen H. Lee of the firm Lewis Brisbois Bisgaard & Smith
28 LLP, whose address is 701 B Street, Suite 1900, San Diego, CA 92101.

CONTINGENCY

1
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 his counsel. By signing the stipulation, Respondent
6 understands and agrees that he may not withdraw his 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 all prior or contemporaneous agreements, understandings, discussions, negotiations,
17 and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be
18 altered, amended, modified, supplemented, or otherwise changed except by a writing executed by
19 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:

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1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Pharmacist License No. RPH 35514 issued to Respondent
3 Mark Sey is revoked. However, the revocation is stayed and respondent is placed on probation
4 for two (2) years on the following terms and conditions.

5 1. **Obey All Laws**

6 Respondent shall obey all state and federal laws and regulations. Respondent shall report
7 any of the following occurrences to the board, in writing, within seventy- two (72) hours of such
8 occurrence:

- 9 an arrest or issuance of a criminal complaint for violation of any provision of the
10 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
11 substances laws;
12 a plea of guilty, or nolo contendere, no contest, or similar, in any state or federal
13 criminal proceeding to any criminal complaint, information or indictment;
14 a conviction of any crime; or
15 the filing of a disciplinary pleading, issuance of a citation, or initiation of another
16 administrative action filed by any state or federal agency which involves respondent’s
17 pharmacy permit, or which is related to the practice of pharmacy or the manufacturing,
18 obtaining, handling, distributing, billing, or charging for any drug, device or controlled
19 substance.

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

21 2. **Report to the Board**

22 Respondent shall report to the board quarterly, on a schedule as directed by the board or its
23 designee. The report shall be made either in person or in writing, as directed. Among other
24 requirements, respondent shall state in each report under penalty of perjury whether there has
25 been compliance with all the terms and conditions of probation.

26 Failure to submit timely reports in a form as directed shall be considered a violation of
27 probation. Any period(s) of delinquency in submission of reports as directed may be added to the
28 total period of probation. Moreover, if the final probation report is not made as directed,

1 probation shall be automatically extended until such time as the final report is made and accepted
2 by the board.

3 **3. Interview with the Board**

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

9 **4. Cooperate with Board Staff**

10 Respondent shall timely cooperate with the board's inspection program and with the board's
11 monitoring and investigation of respondent's compliance with the terms and conditions of
12 probation, including but not limited to: timely responses to requests for information by board
13 staff; timely compliance with directives from board staff regarding requirements of any term or
14 condition of probation; and timely completion of documentation pertaining to a term or condition
15 of probation. Failure to timely cooperate shall be considered a violation of probation.

16 **5. Continuing Education**

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

19 **6. Reporting of Employment and Notice to Employers**

20 During the period of probation, respondent shall notify all present and prospective
21 employers of the decision in case number 6347 and the terms, conditions and restrictions imposed
22 on respondent by the decision, as follows:

23 Within thirty (30) days of the effective date of this decision, and within ten (10) days of
24 undertaking any new employment, respondent shall report to the board in writing the name,
25 physical address, and mailing address of each of his employer(s), and the name(s) and telephone
26 number(s) of all of his direct supervisor(s), as well as any pharmacist(s)-in-charge, designated
27 representative(s)-in-charge, responsible manager, or other compliance supervisor(s) and the work
28 schedule, if known. Respondent shall also include the reason(s) for leaving the prior

1 employment. Respondent shall sign and return to the board a written consent authorizing the
2 board or its designee to communicate with all of Respondent's employer(s) and supervisor(s), and
3 authorizing those employer(s) or supervisor(s) to communicate with the board or its designee,
4 concerning respondent's work status, performance, and monitoring. Failure to comply with the
5 requirements or deadlines of this condition shall be considered a violation of probation.

6 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
7 respondent undertaking any new employment, respondent shall cause (a) his direct supervisor, (b)
8 his pharmacist-in-charge, designated representative-in-charge, responsible manager, or other
9 compliance supervisor, and (c) the owner or owner representative of his employer, to report to the
10 board in writing acknowledging that the listed individual(s) has/have read the decision in case
11 number 6347, and terms and conditions imposed thereby. If one person serves in more than one
12 role described in (a), (b), or (c), the acknowledgment shall so state. It shall be the respondent's
13 responsibility to ensure that these acknowledgment(s) are timely submitted to the board. In the
14 event of a change in the person(s) serving the role(s) described in (a), (b), or (c) during the term
15 of probation, respondent shall cause the person(s) taking over the role(s) to report to the board in
16 writing within fifteen (15) days of the change acknowledging that he or she has read the decision
17 in case number 6347, and the terms and conditions imposed thereby.

18 If respondent works for or is employed by or through an employment service, respondent
19 must notify the person(s) described in (a), (b), and (c) above at every entity licensed by the board
20 of the decision in case number 6347, and the terms and conditions imposed thereby in advance of
21 respondent commencing work at such licensed entity. A record of this notification must be
22 provided to the board upon request.

23 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
24 (15) days of undertaking any new employment by or through an employment service, respondent
25 shall cause the person(s) described in (a), (b), and (c) above at the employment service to report
26 to the board in writing acknowledging that he or she has read the decision in case number 6347,
27 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure
28 that these acknowledgment(s) are timely submitted to the board.

1 Failure to timely notify present or prospective employer(s) or failure to cause the identified
2 person(s) with that/those employer(s) to submit timely written acknowledgments to the board
3 shall be considered a violation of probation.

4 "Employment" within the meaning of this provision includes any full-time, part-time,
5 temporary, relief, or employment/management service position as a Licensed Pharmacist, or any
6 position for which a Pharmacist License is a requirement or criterion for employment, whether
7 the respondent is an employee, independent contractor or volunteer.

8 **7. Notification of Change in Name, Address, or Phone Number**

9 Respondent shall further notify the board in writing within ten (10) days of any change in
10 name, residence address, mailing address, e-mail address or phone number.

11 Failure to timely notify the board of any change in employer, name, address, or phone
12 number shall be considered a violation of probation.

13 **8. Restrictions on Supervision and Oversight of Licensed Facilities**

14 During the period of probation, respondent shall not supervise any intern pharmacist or
15 serve as a consultant to any entity licensed by the board. Respondent may be a pharmacist-in-
16 charge, designated representative-in-charge, responsible manager or other compliance supervisor
17 of any single entity licensed by the board, but only if respondent or that entity retains, at his/its
18 expense, an independent consultant who shall be responsible for reviewing the operations of the
19 entity on a monthly basis for compliance by respondent and the entity with state and federal laws
20 and regulations governing the practice of the entity, and compliance by respondent with the
21 obligations of his supervisory position. Respondent may serve in such a position at only one
22 entity licensed by the board, only upon approval by the board or its designee. Any such approval
23 shall be site specific. The consultant shall be a pharmacist licensed by and not on probation with
24 the board, who has been approved by the board or its designee to serve in this position.

25 Respondent shall submit the name of the proposed consultant to the board or its designee for
26 approval within thirty (30) days of the effective date of the decision or prior to assumption of
27 duties allowed in this term. Assumption of any unauthorized supervision responsibilities shall be
28 considered a violation of probation. In addition, failure to timely seek approval for, timely retain,

1 or ensure timely reporting by the consultant shall be considered a violation of probation. During
2 the period of probation, the Board or its designee, retains the discretion to reduce the frequency of
3 the independent pharmacist consultant's review.

4 **9. Reimbursement of Board Costs**

5 As a condition precedent to successful completion of probation, respondent shall pay to the
6 board its costs of investigation and prosecution in the amount of \$3,169.75. Respondent shall be
7 liable for payment of the full amount of these costs. Failure to pay costs by the deadline(s) as
8 directed shall be considered a violation of probation.

9 Respondent shall be permitted to pay these costs in a payment plan approved by the board
10 or its designee, so long as full payment is completed no later than one (1) year prior to the end
11 date of probation.

12 **10. Probation Monitoring Costs**

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

17 **11. Status of License**

18 Respondent shall, at all times while on probation, maintain active, current licensure with the
19 board, including any period during which suspension or probation is tolled. Failure to maintain
20 active, current licensure shall be considered a violation of probation.

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

25 **12. License Surrender While on Probation**

26 Following the effective date of this decision, should respondent cease practice due to
27 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
28 respondent may relinquish his Pharmacist License, including any indicia of licensure issued by

1 the board, along with a request to surrender the license. The board or its designee shall have the
2 discretion whether to accept the surrender or take any other action it deems appropriate and
3 reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be
4 subject to the terms and conditions of probation. This surrender constitutes a record of discipline
5 and shall become a part of the respondent's license history with the board.

6 Upon acceptance of the surrender, respondent shall relinquish his pocket and wall license,
7 including any indicia of licensure not previously provided to the board, within ten (10) days of
8 notification by the board that the surrender is accepted. Respondent may not reapply for any
9 license from the board for three (3) years from the effective date of the surrender. Respondent
10 shall meet all requirements applicable to the license sought as of the date the application for that
11 license is submitted to the board, including any outstanding costs.

12 **13. Practice Requirement – Extension of Probation**

13 Except during periods of suspension, respondent shall, at all times while on probation, be
14 employed as a Licensed Pharmacist in California for a minimum of 80 hours per calendar month.
15 Any month during which this minimum is not met shall extend the period of probation by one
16 month. During any such period of insufficient employment, respondent must nonetheless comply
17 with all terms and conditions of probation, unless he receives a waiver in writing from the board
18 or its designee.

19 If respondent does not practice as a Licensed Pharmacist in California for the minimum
20 number of hours in any calendar month, for any reason (including vacation), he shall notify the
21 board in writing within ten (10) days of the conclusion of that calendar month. This notification
22 shall include at least: the date(s), location(s), and hours of last practice; the reason(s) for the
23 interruption or reduction in practice; and the anticipated date(s) on which respondent will resume
24 practice at the required level. Respondent shall further notify the board in writing within ten (10)
25 days following the next calendar month during which respondent practices as a Licensed
26 Pharmacist in California for the minimum of hours. Any failure to timely provide such
27 notification(s) shall be considered a violation of probation.
28

1 It is a violation of probation for Respondent's probation to be extended pursuant to the
2 provisions of this condition for a total period, counting consecutive and non-consecutive months,
3 exceeding thirty-six (36) months. The board or its designee may post a notice of the extended
4 probation period on its website.

5 **14. Remedial Education**

6 Within 30 days of the effective date of this decision, respondent shall submit to the board or
7 its designee, for prior approval, an appropriate program of remedial education related to
8 pharmacy operations, pharmacy law, inventory control, and the role of a Pharmacist in Charge.
9 The program of remedial education shall consist of at least 10 hours per year, fifty percent (50%)
10 of which must be in-person training. The remedial education shall be completed at respondent's
11 own expense. All remedial education shall be in addition to, and shall not be credited toward,
12 continuing education (CE) courses used for license renewal purposes for pharmacists.

13 Failure to timely submit for approval or complete the approved remedial education shall be
14 considered a violation of probation. The period of probation will be automatically extended until
15 such remedial education is successfully completed and written proof, in a form acceptable to the
16 board, is provided to the board or its designee.

17 Following the completion of each course, the board or its designee may require the
18 respondent, at Entity own expense, to take an approved examination to test the respondent's
19 knowledge of the course. If the respondent does not achieve a passing score on the examination
20 that course shall not count towards satisfaction of this term. Respondent shall take another course
21 approved by the board in the same subject area.

22 **15. Diversion Training Program**

23 Within the first year of probation, respondent shall enroll in the board's diversion training
24 program, "Prescription Drug Abuse and Diversion What a Pharmacist Needs to Know," at
25 respondent's expense. Respondent shall provide proof of enrollment upon request. Within five
26 (5) days of completion, respondent shall submit a copy of the certificate of completion to the
27 board or its designee. Failure to timely enroll in the program, to initiate the program during the
28 first year of probation, to successfully complete it before the end of the second year of probation,

1 or to timely submit proof of completion to the board or its designee, shall be considered a
2 violation of probation. Respondent may satisfy the requirements set forth in this paragraph by
3 submitting proof he completed the program prior to the effective date of this decision but and on
4 or after July 1, 2018.

5 **16. Ethics Course**

6 Within 30 calendar days of the effective date of this decision, respondent shall enroll in a
7 course in ethics, at his own expense, approved in advance by the board or its designee that
8 complies with Title 16 California Code of Regulations section 1773.5. Respondent shall provide
9 proof of enrollment upon request. Within five (5) days of completion, respondent shall submit a
10 copy of the certificate of completion to the board or its designee. Failure to timely enroll in an
11 approved ethics course, to initiate the course during the first year of probation, to successfully
12 complete it before the end of the second year of probation, or to timely submit proof of
13 completion to the board or its designee, shall be considered a violation of probation. Respondent
14 may satisfy the requirements set forth in this paragraph by submitting proof he completed a
15 board-approved ethics course prior to the effective date of this decision but and on or after July 1,
16 2018.

17 **17. No Ownership or Management of Licensed Premises**

18 Respondent shall not acquire any new ownership, legal or beneficial interest nor serve as a
19 manager, administrator, member, officer, director, trustee, associate, or partner of any additional
20 business, firm, partnership, or corporation licensed by the board. If respondent currently owns or
21 has any legal or beneficial interest in, or serves as a manager, administrator, member, officer,
22 director, trustee, associate, or partner of any business, firm, partnership, or corporation currently
23 or hereinafter licensed by the board, respondent may continue to serve in such capacity or hold
24 that interest, but only to the extent of that position or interest as of the effective date of this
25 decision. Violation of this restriction shall be considered a violation of probation.

26 **18. Violation of Probation**

27 If respondent has not complied with any term or condition of probation, the board shall
28 have continuing jurisdiction over respondent, and the board shall provide notice to respondent

1 that probation shall automatically be extended, until all terms and conditions have been satisfied
2 or the board has taken other action as deemed appropriate to treat the failure to comply as a
3 violation of probation, to terminate probation, and to impose the penalty that was stayed. The
4 board or its designee may post a notice of the extended probation period on its website.

5 If respondent violates probation in any respect, the board, after giving respondent notice
6 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
7 was stayed. If a petition to revoke probation or an accusation is filed against respondent during
8 probation, or the preparation of an accusation or petition to revoke probation is requested from
9 the Office of the Attorney General, the board shall have continuing jurisdiction and the period of
10 probation shall be automatically extended until the petition to revoke probation or accusation is
11 heard and decided, and the charges and allegations in Accusation No. 6613 shall be deemed true
12 and correct.

13 **19. Completion of Probation**

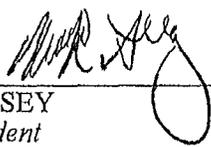
14 Upon written notice by the board or its designee indicating successful completion of
15 probation, respondent's license will be fully restored.

16 **ACCEPTANCE**

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

22
23
24 DATED: _____

1-8-2020

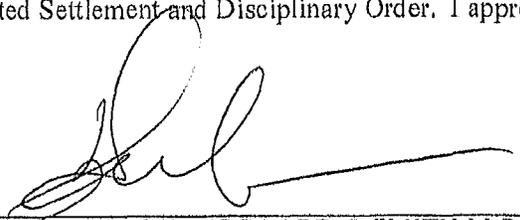


MARK SEY
Respondent

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

DATED: 1/8/20

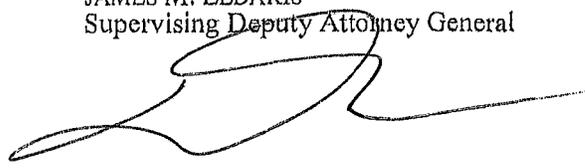

LEWIS BRISBOIS BISGAARD & SMITH LLP
Attorney for Respondent

ENDORSEMENT

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

DATED: 1/8/20

Respectfully submitted,
XAVIER BECERRA
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General


DANIEL J. CROSS
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 6613

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3 DESIREE I. KELLOGG
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Telephone: (619) 738-9429
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

13 In the Matter of the Accusation Against:

Case No. 6613

14 **RADY CHILDREN'S HOSPITAL SAN DIEGO,**
15 **DBA CHILDREN'S MEDICAL CENTER**
16 **PHARMACY**
3030 Children's Way, Ste. 108
San Diego, CA 92123

A C C U S A T I O N

17 **Pharmacy Permit No. PHY 37113,**

18 **MARK SEY**
19 **255 Alameda Blvd.**
Coronado, CA 92118

20 **Pharmacist License No. RPH 35514,**

21 **and**

22 **LAURA ANNETTE TROVATO**
23 **6779 Tuxedo Road**
San Diego, CA 92119

24 **Pharmacist License No. RPH 39463**

25 Respondents.

1 Complainant alleges:

2 **PARTIES**

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

6 2. On or about May 9, 1991, the Board issued Pharmacy Permit Number PHY 37113 to
7 Rady Children's Hospital San Diego, dba Children's Medical Center Pharmacy (Children's
8 Medical Center Pharmacy). The Pharmacy Permit was in full force and effect at all times
9 relevant to the charges brought herein and will expire on May 1, 2019, unless renewed.

10 3. On or about August 15, 1980, the Board issued Pharmacist License Number RPH
11 35514 to Mark Sey (Mark Sey). The Pharmacist License was in full force and effect at all times
12 relevant to the charges brought herein and will expire on January 31, 2020, unless renewed.

13 4. On or about August 27, 1985, the Board issued Pharmacist License Number RPH
14 39463 to Laura Annette Trovato (Laura Trovato). The Pharmacist License was in full force and
15 effect at all times relevant to the charges brought herein and will expire on February 28, 2021,
16 unless renewed.

17 **JURISDICTION**

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

20 6. Section 4011 of the Code provides that the Board shall administer and enforce both
21 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
22 Act [Health & Safety Code, § 11000 et seq.].

23 7. Section 4300(a) of the Code provides that every license issued by the Board may be
24 suspended or revoked.

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8. Section 4300.1 of the Code states:

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

STATUTORY AND REGULATORY PROVISIONS

9. Section 4081 of the Code states in pertinent part:

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

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

10. 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 issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

(c) Gross negligence.

...

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

...

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

...

1 11. Section 4113(c) of the Code states:

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

4 12. Section 4306.5 of the Code states, in pertinent part:

5 Unprofessional conduct for a pharmacist may include any of the following:

6 Acts or omissions that involve, in whole or in part, the inappropriate exercise of
7 his or her education, training, or experience as a pharmacist, whether or not the act or
8 omission arises in the course of the practice of pharmacy or the ownership,
9 management, administration, or operation of a pharmacy or other entity licensed by
10 the board.

11 Acts or omissions that involve, in whole or in part, the failure to consult
12 appropriate patient, prescription, and other records pertaining to the performance of
13 any pharmacy function.

14 ...

15 13. Section 4307(a) of the Code states that:

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

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

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

14. Sections 1714(b) and 1714(d) of title 16, California Code of Regulations state:

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

(d) Each pharmacist while on duty shall be responsible for the security of the
prescription department, including provisions for effective control against theft or
diversion of dangerous drugs and devices, and records for such drugs and devices.
Possession of a key to the pharmacy where dangerous drugs and controlled
substances are stored shall be restricted to a pharmacist.

1 15. Section 1718 of title 16, California Code of Regulations states:

2 "Current Inventory" as used in Section 4081 and 4332 of the Business and
3 Professions Code shall be considered to include complete accountability for all
4 dangerous drugs handled by every licensee enumerated in Section 4081 and 4332.

5 The controlled substances inventories required by Title 21, CFR, Section 1304
6 shall be available for inspection upon request for at least three years.

7 COSTS

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

12 DRUGS

13 17. Acetaminophen with codeine, sold under the brand name Tylenol #3, is a Schedule III
14 controlled substances pursuant to Health and Safety Code section 11056, subdivision (e)(2), and a
15 dangerous drug pursuant to Business and Professions Code section 4022.

16 18. Alprazolam, sold under the brand name Xanax, is a Schedule IV controlled substance
17 pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug
18 pursuant to Business and Professions Code section 4022.

19 19. Promethazine with codeine syrup, sold under the brand name Phenergan with
20 Codeine, is a Schedule V controlled substance pursuant to Health and Safety Code section 11058,
21 subdivision (c)(1), and is a dangerous drug pursuant to Business and Professions Code section
22 4022.

23 FACTUAL ALLEGATIONS

24 20. At all times referenced herein, Respondent Mark Sey was the Pharmacist-in-Charge
25 and Respondent Laura Trovato was the Pharmacist Manager of Respondent Children's Medical
26 Center Pharmacy located in San Diego, California. Respondent Children's Medical Center
27 Pharmacy dispensed drugs to children who were outpatients at Rady's Children's Hospital.

28 ///

///

1 21. Respondent Children’s Medical Center Pharmacy’s policies and procedures for the
2 ordering and security of controlled substances were inadequate and even those policies and
3 procedures were not adhered to by Respondents as described herein.

4 22. Respondent Children’s Medical Center Pharmacy did not have surveillance cameras
5 located in and about all of its premises, including the storage room. Security cameras were not
6 regularly reviewed for suspicious behavior exhibited by pharmacy staff.

7 23. Effective January 2016, Respondent Children’s Medical Center Pharmacy’s
8 Purchasing Procedures (OPRx 3010) provided that at the end of the day, drug purchase orders
9 would be “printed and reviewed by the pharmacist on duty. Once reviewed and deemed
10 acceptable, the pharmacist w[ould] sign the order and the technician w[ould] transmit the order.”
11 It further provided that a pharmacist would “confirm receipt of drug deliveries...[f]or security
12 measures, the pharmacy technician placing the current order cannot be the same technician that
13 puts away the order when it arrives.” The Pharmacy Manager was required to review daily the
14 drug purchase orders for “appropriateness.”

15 24. Effective January 2016, Respondent Children’s Medical Center Pharmacy’s Ordering
16 and Receiving Controlled Substances from Outside the Institution Policy (OPRx 5020) provided
17 that it would “order and receive controlled substances in a manner to adhere to all state and
18 federal regulations and allow for appropriate inventory levels.” There were no extra security
19 measures in place for the ordering of Schedules III-V controlled substances. No separate
20 inventory or log was required to be maintained for Schedules III-V controlled substances.

21 25. Promethazine with codeine and alprazolam were not controlled substances regularly
22 dispensed by Respondent Children’s Medical Center Pharmacy to children.

23 26. From approximately August 2017 through mid-June 2018, a pharmacy technician,
24 V.Q. diverted alprazolam and promethazine with codeine syrup for self-use from Respondent
25 Children’s Medical Center Pharmacy. She purchased 119 pints of promethazine with codeine
26 syrup and 53 bottles of alprazolam 2 mg tablets from Respondent Children’s Medical Center
27 Pharmacy’s wholesaler using the online ordering system, typically on Friday evenings, without a
28 pharmacist reviewing her orders and verifying them.

1 controlled substances, as set forth in paragraphs 20 through 31 above, which are incorporated
2 herein by reference.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Failure to Provide Adequate Security for Controlled Substances against Respondents)**

5 33. Respondents are subject to disciplinary action under Code section 4301(o), for
6 violating title 16, California Code of Regulations, sections 1714(b) and 1714(d), in that they did
7 not provide adequate security for controlled substances, as set forth in paragraphs 20 through 31
8 above, which are incorporated herein by reference.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Failure to Maintain Records of Acquisition and Disposition against Respondents)**

11 34. Respondents are subject to disciplinary action under Code section 4301(o), for
12 violating Code sections 4081(a) and 4105(a), in that they failed to maintain all the records of
13 acquisition and disposition for controlled substances, as set forth in paragraphs 20 through 31,
14 which are incorporated herein by reference.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 **(Failure to Exercise or Implement Best Professional Judgment or Corresponding
17 Responsibility when Dispensing Controlled Substances against Laura Trovato)**

18 35. Respondent Laura Trovato is subject to disciplinary action under Code section
19 4301(o), for violating Business and Professions Code section 4306.5, subdivisions (a) and (b), in
20 that she failed to exercise or implement her best professional judgment when she failed to
21 recognize the diversion of promethazine with codeine and alprazolam 2mg, as set forth in
22 paragraphs 20 through 31 above, which are incorporated herein by reference.

23 **FIFTH CAUSE FOR DISCIPLINE**

24 **(Gross Negligence Against Laura Trovato)**

25 36. Respondent Laura Trovato is subject to disciplinary action under Code section
26 4301(c), for gross negligence, in that she failed to recognize the diversion of promethazine with
27 codeine and alprazolam 2mg, as set forth in paragraphs 20 through 31 above, which are
28 incorporated herein by reference.

1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct against Respondents)**

3 37. Respondents are subject to disciplinary action under Code section 4301 for
4 unprofessional conduct in that they engaged in the activities described in paragraphs 20 through
5 31 above, which are incorporated herein by reference.

6 **OTHER MATTERS**

7 38. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit No.
8 PHY 37113 issued to to Rady Children's Hospital San Diego, dba Children's Medical Center
9 Pharmacy shall be prohibited from serving as a manager, administrator, owner, member, officer,
10 director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 37113
11 is placed on probation or until Pharmacy Permit Number PHY 37113 is reinstated if it is revoked.

12 39. Pursuant to Code section 4307, if discipline is imposed on Pharmacist License No.
13 RPH 35514 issued to Mark Sey, Mark Sey shall be prohibited from serving as a manager,
14 administrator, owner, member, officer, director, associate, or partner of a licensee for five years if
15 Pharmacist License Number RPH 45111 is placed on probation or until Pharmacist License
16 Number RPH 35514 is reinstated if it is revoked.

17 40. Pursuant to Code section 4307, if discipline is imposed on Pharmacist License No.
18 RPH 39463 issued to Laura Annette Trovato, Laura Annette Trovato shall be prohibited from
19 serving as a manager, administrator, owner, member, officer, director, associate, or partner of a
20 licensee for five years if Pharmacist License Number RPH 39463 is placed on probation or until
21 Pharmacist License Number RPH 39463 is reinstated if it is revoked.

22 **DISCIPLINARY CONSIDERATIONS**

23 41. To determine the degree of discipline, if any, to be imposed on Respondent
24 Children's Medical Center Pharmacy, Complainant alleges that on September 23, 2015, the Board
25 issued Citation number CI 2013 60617 against Respondent Children's Medical Center Pharmacy
26 for violating California Code of Regulations, title 16, section 1764 and Civil Code section 56.10,
27 subdivision (a) for the unauthorized release of protected healthcare information and the
28

1 unauthorized disclosure of prescription information. The Board issued a fine which Respondent
2 paid.

3 **PRAYER**

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

- 6 1. Revoking or suspending Pharmacy Permit Number PHY 37113, issued to Rady
7 Children's Hospital San Diego, dba Children's Medical Center Pharmacy;
- 8 2. Revoking or suspending Pharmacist License Number RPH 35514, issued to Mark
9 Sey;
- 10 3. Revoking or suspending Pharmacist License Number RPH 39463, issued to Laura
11 Annette Trovato;
- 12 4. Prohibiting Rady Children's Hospital San Diego, dba Children's Medical Center
13 Pharmacy from serving as a manager, administrator, owner, member, officer, director, associate,
14 or partner of a licensee for five years if Pharmacy Permit Number PHY 37113 is placed on
15 probation or until Pharmacy Permit Number PHY 37113 is reinstated if Pharmacy Permit Number
16 PHY 37113 issued to Rady Children's Hospital San Diego, dba Children's Medical Center
17 Pharmacy is revoked;
- 18 5. Prohibiting Mark Sey from serving as a manager, administrator, owner, member,
19 officer, director, associate, or partner of a licensee for five years if Pharmacist License Number
20 RPH 35514 is placed on probation or until Pharmacist License Number RPH 35514 is reinstated
21 if Pharmacist License Number RPH 35514 issued to Mark Sey is revoked;
- 22 6. Prohibiting Laura Annette Trovato from serving as a manager, administrator, owner,
23 member, officer, director, associate, or partner of a licensee for five years if Pharmacist License
24 Number RPH 39463 is placed on probation or until Pharmacist License Number RPH 39463 is
25 reinstated if Pharmacist License Number RPH 39463 issued to Laura Annette Trovato is revoked;
- 26 7. Ordering Children's Medical Center Pharmacy, Mark Sey and Laura Annette Trovato
27 to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this
28 case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: February 11, 2019



ANNE SODERGREN
Interim Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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