

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

In the Matter of the Accusation Against:

**NORTH BAY CUSTOM CARE
PHARMACY
NANCY KONG CHAO, PRES/PIC
1460 N. Camino Alto, Ste. 101
Vallejo, CA 94589-2567**

Pharmacy License No. PHY 49934

**NANCY KONG CHAO
23 Railroad Avenue #366
Danville, CA 94526**

Pharmacist License No. RPH 48087

Case No. 5207

OAH No. 2016060194

Respondents.

DECISION AND ORDER

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

This Decision shall become effective at 5:00 p.m. on December 22, 2016.

It is so ORDERED on November 22, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____

Amy Gutierrez, Pharm.D.
Board President

1 KAMALA D. HARRIS
Attorney General of California
2 JOSHUA A. ROOM
Supervising Deputy Attorney General
3 NICHOLAS TSUKAMAKI
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7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 5207

13 **NORTH BAY CUSTOM CARE**
14 **PHARMACY**
15 **NANCY KONG CHAO, PRES/PIC**
16 **1460 N. Camino Alto, Ste. 101**
17 **Vallejo, CA 94589-2567**

OAH No. 2016060194

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

20 **Pharmacy License No. PHY 49934**

21 **and**

22 **NANCY KONG CHAO**
23 **23 Railroad Avenue #366**
24 **Danville, CA 94526**

25 **Pharmacist License No. RPH 48087**

26 Respondents.

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

PARTIES

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

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1 Kamala D. Harris, Attorney General of the State of California, by Nicholas Tsukamaki, Deputy
2 Attorney General.

3 2. Respondents North Bay Custom Care Pharmacy (Respondent North Bay) and Nancy
4 Kong Chao (Respondent Chao) are represented in this proceeding by attorney Benjamin Fenton,
5 whose address is: Fenton Law Group, LLP, 1990 S. Bundy Dr., Suite 777, Los Angeles, CA
6 90025.

7 3. On or about June 5, 2009, the Board of Pharmacy issued Original Pharmacy Permit
8 Number PHY 49934 to Respondent North Bay. The Original Pharmacy Permit was in full force
9 and effect at all times relevant to the charges brought herein. It expired on June 1, 2014 and was
10 cancelled on July 22, 2014.

11 4. On or about August 10, 1995, the Board of Pharmacy issued Pharmacist License No.
12 RPH 48087 to Respondent Chao. The Pharmacist License was in full force and effect at all times
13 relevant to the charges brought herein and will expire on November 30, 2016, unless renewed.

14 JURISDICTION

15 5. On or about January 7, 2016, Accusation No. 5207 was filed before the Board against
16 Respondents. The Accusation and all other statutorily required documents were properly served
17 on Respondents on February 12, 2016. Respondents timely filed a Notice of Defense contesting
18 the Accusation. On or about October 13, 2016, First Amended Accusation No. 5207 was filed
19 before the Board and is currently pending against Respondents. The First Amended Accusation
20 and all other statutorily required documents were properly served on Respondents on October 14,
21 2016.

22 6. A copy of First Amended Accusation No. 5207 is attached as exhibit A and
23 incorporated herein by reference.

24 ADVISEMENT AND WAIVERS

25 7. Respondents have carefully read, fully discussed with counsel, and understand the
26 charges and allegations in First Amended Accusation No. 5207. Respondents have also carefully
27 read, fully discussed with counsel, and understand the effects of this Stipulated Settlement and
28 Disciplinary Order.

1 time the application or petition is filed, and all of the charges and allegations contained in First
2 Amended Accusation No. 5207 shall be deemed to be true, correct and admitted by Respondent
3 North Bay when the Board determines whether to grant or deny the application or petition.

4 6. Prior to the issuance of a new or reinstated license to Respondent North Bay,
5 Respondent North Bay shall pay to the Board costs of investigation and enforcement in the
6 amount of \$38,316.00. Respondent North Bay is jointly and severally liable with Respondent
7 Chao for payment of those costs.

8 7. Should Respondent North Bay ever apply or reapply for a new license or certification,
9 or petition for reinstatement of a license, by any other health care licensing agency in the State of
10 California, all of the charges and allegations contained in First Amended Accusation No. 5207
11 shall be deemed to be true, correct, and admitted by Respondent North Bay for the purpose of any
12 Statement of Issues or any other proceeding seeking to deny or restrict licensure.

13 **AS TO RESPONDENT CHAO**

14 IT IS HEREBY ORDERED that Pharmacist License No. RPH 48087 issued to Respondent
15 Nancy Kong Chao (Respondent Chao) is revoked. However, the revocation is stayed and
16 Respondent Chao is placed on probation for five (5) years on the following terms and conditions.

17 **1. Suspension**

18 As part of probation, Respondent Chao is suspended from the practice of pharmacy for
19 ninety (90) days beginning on the effective date of this decision.

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

28 ///

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

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

6 **2. Obey All Laws**

7 Respondent Chao shall obey all state and federal laws and regulations.

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

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

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

21 **3. Report to the Board**

22 Respondent Chao shall report to the Board quarterly, on a schedule as directed by the Board
23 or its designee. The report shall be made either in person or in writing, as directed. Among other
24 requirements, Respondent Chao shall state in each report under penalty of perjury whether there
25 has been compliance with all the terms and conditions of probation. Failure to submit timely
26 reports in a form as directed shall be considered a violation of probation. Any period(s) of
27 delinquency in submission of reports as directed may be added to the total period of probation.

28 ///

1 Moreover, if the final probation report is not made as directed, probation shall be automatically
2 extended until such time as the final report is made and accepted by the Board.

3 **4. Interview with the Board**

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

9 **5. Cooperate with Board Staff**

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

13 **6. Continuing Education**

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

16 **7. Notice to Employers**

17 During the period of probation, Respondent Chao shall notify all present and prospective
18 employers of the decision in case number 5207 and the terms, conditions, and restrictions
19 imposed on Respondent Chao by the decision, as follows:

20 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
21 Respondent Chao undertaking any new employment, Respondent Chao shall cause her direct
22 supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during
23 Respondent Chao's tenure of employment), and owner to report to the Board in writing
24 acknowledging that the listed individual(s) has/have read the decision in case number 5207 and
25 the terms and conditions imposed thereby. It shall be Respondent Chao's responsibility to ensure
26 that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

27 If Respondent Chao works for or is employed by or through a pharmacy employment
28 service, Respondent Chao must notify her direct supervisor, pharmacist-in-charge, and owner at

1 every entity licensed by the Board of the terms and conditions of the decision in case number
2 5207 in advance of Respondent Chao commencing work at each licensed entity. A record of this
3 notification must be provided to the Board upon request.

4 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
5 (15) days of Respondent Chao undertaking any new employment by or through a pharmacy
6 employment service, Respondent Chao shall cause her direct supervisor with the pharmacy
7 employment service to report to the Board in writing acknowledging that he or she has read the
8 decision in case number 5207 and the terms and conditions imposed thereby. It shall be
9 Respondent Chao's responsibility to ensure that her employer(s) and/or supervisor(s) submit
10 timely acknowledgment(s) to the Board.

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

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

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

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

24 **9. Reimbursement of Board Costs**

25 As a condition precedent to successful completion of probation, Respondent Chao shall pay
26 to the Board its costs of investigation and prosecution in the amount of \$38,316.00. Respondent
27 Chao is jointly and severally liable with Respondent North Bay for payment of those costs.
28 Respondent Chao shall be permitted to make payments on a plan approved by the Board or its

1 designee, so long as payment in full is made within four (4) years from the effective date of the
2 Decision and Order. There shall be no deviation from the approved schedule absent prior written
3 approval by the Board or its designee. Failure to pay costs by the deadline(s) as directed shall be
4 considered a violation of probation. The filing of bankruptcy by Respondent Chao shall not
5 relieve Respondent Chao of her responsibility to reimburse the Board its costs of investigation
6 and prosecution.

7 **10. Probation Monitoring Costs**

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

12 **11. Status of License**

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

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

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

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

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

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

9 Respondent Chao shall notify the Board in writing within ten (10) days of any change of
10 employment. Said notification shall include the reasons for leaving, the address of the new
11 employer, the name of the supervisor and owner, and the work schedule if known. Respondent
12 Chao shall further notify the Board in writing within ten (10) days of a change in name, residence
13 address, mailing address, or phone number.

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

16 **14. Tolling of Probation**

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

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

28 ///

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

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

9 **15. Violation of Probation**

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

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

22 **16. Completion of Probation**

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

25 **17. Community Services Program**

26 Within sixty (60) days of the effective date of this decision, Respondent Chao shall submit
27 to the Board or its designee, for prior approval, a community service program in which
28 Respondent Chao shall provide free health-care related services on a regular basis to a community

1 or charitable facility or agency for at least seventy-two (72) hours per year for each year of
2 probation. Within thirty (30) days of Board approval thereof, Respondent Chao shall submit
3 documentation to the Board demonstrating commencement of the community service program. A
4 record of this notification must be provided to the Board upon request. Respondent Chao shall
5 report on progress with the community service program in the quarterly reports. Failure to timely
6 submit, commence, or comply with the program shall be considered a violation of probation.

7 **18. Remedial Education**

8 Within sixty (60) days of the effective date of this decision, Respondent Chao shall submit
9 to the Board or its designee, for prior approval, an appropriate program of remedial education
10 related to pharmacy laws and pharmacy management. The program of remedial education shall
11 consist of at least ten (10) hours per year for the first three years of probation, and which shall be
12 completed within three years at Respondent Chao's own expense. All remedial education shall be
13 in addition to, and shall not be credited toward, continuing education (CE) courses used for
14 license renewal purposes.

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

19 Following the completion of each course, the Board or its designee may require Respondent
20 Chao, at her own expense, to take an approved examination to test Respondent Chao's knowledge
21 of the course. If Respondent Chao does not achieve a passing score on the examination, this
22 failure shall be considered a violation of probation. Any such examination failure shall require
23 Respondent Chao to take another course approved by the Board in the same subject area.

24 **19. Supervised Practice**

25 During the period of probation, Respondent Chao shall practice only under the supervision
26 of a licensed pharmacist not on probation with the Board. Upon and after the effective date of
27 this decision, Respondent Chao shall not practice as a pharmacist and her license shall be
28 automatically suspended until a supervisor is approved by the Board or its designee. The

1 supervision shall be, as required by the Board or its designee, either:

2 Continuous - At least 75% of a work week;

3 Substantial - At least 50% of a work week;

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

5 Daily Review – Supervisor’s review of probationer’s daily activities within 24 hours.

6 Within thirty (30) days of the effective date of this decision, Respondent Chao shall have
7 her supervisor submit notification to the Board in writing stating that the supervisor has read the
8 decision in case number 5207 and is familiar with the required level of supervision as determined
9 by the Board or its designee. It shall be Respondent Chao’s responsibility to ensure that her
10 employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the
11 Board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
12 acknowledgements to the Board shall be considered a violation of probation.

13 If Respondent Chao changes employment, it shall Respondent Chao’s responsibility to
14 ensure that her employer(s), pharmacist-in-charge and/or supervisor(s) submit timely
15 acknowledgement(s) to the Board. Respondent Chao shall have her new supervisor, within
16 fifteen (15) days after employment commences, submit notification to the Board in writing stating
17 the direct supervisor and pharmacist-in-charge have read the decision in case number 5207 and is
18 familiar with the level of supervision as determined by the Board. Respondent Chao shall not
19 practice pharmacy and her license shall be automatically suspended until the Board or its
20 designee approves a new supervisor. Failure to cause the direct supervisor and the pharmacist-in-
21 charge to submit timely acknowledgements to the Board shall be considered a violation of
22 probation.

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

25 During suspension, Respondent Chao shall not enter any pharmacy area or any portion of
26 the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor
27 of drugs which is licensed by the Board, or any manufacturer, or where dangerous drugs and
28 devices or controlled substances are maintained. Respondent Chao shall not practice pharmacy

1 nor do any act involving drug selection, selection of stock, manufacturing, compounding,
2 dispensing or patient consultation; nor shall Respondent Chao manage, administer, or be a
3 consultant to any licensee of the Board, or have access to or control the ordering, manufacturing
4 or dispensing of dangerous drugs and controlled substances. Respondent Chao shall not resume
5 practice until notified by the Board.

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

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

11 **20. No Ownership of Licensed Premises**

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

19 **21. Tolling of Suspension**

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

27 Respondent Chao must notify the Board in writing within ten (10) days of departure, and
28 must further notify the Board in writing within ten (10) days of return. The failure to provide

1 such notification(s) shall constitute a violation of probation. Upon such departure and return,
2 Respondent Chao shall not resume the practice of pharmacy until notified by the Board that the
3 period of suspension has been satisfactorily completed.

4 **22. Ethics Course**


5 Within sixty (60) calendar days of the effective date of this decision, Respondent Chao
6 shall enroll in a course in ethics, at Respondent Chao's expense, approved in advance by the
7 Board or its designee. Failure to initiate and complete the course during the first year of
8 probation is a violation of probation. The ethics course may not be used toward CE credit for
9 license renewal purposes.

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

12
13 ACCEPTANCE

14 I am authorized to act on behalf of Respondent North Bay. I have carefully read the above
15 Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney,
16 Benjamin Fenton. I understand the stipulation and the effect it will have on my Pharmacy
17 License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly,
18 and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

19
20 DATED: 10/24/16


21 _____
22 NANCY KONG CHAO, President and Pharmacist in
Charge, for
NORTH BAY CUSTOM CARE PHARMACY
Respondent

23 ///

24 ///

25 ///

26 ///

27 ///

28

1 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
2 discussed it with my attorney, Benjamin Fenton. I understand the stipulation and the effect it will
3 have on my pharmacist license. I enter into this Stipulated Settlement and Disciplinary Order
4 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
5 Board of Pharmacy.

6
7 DATED: 10/24/16


NANCY KONG CHAO
Respondent

9
10 I have read and fully discussed with Respondents North Bay Custom Care Pharmacy and
11 Nancy Kong Chao the terms and conditions and other matters contained in the above Stipulated
12 Settlement and Disciplinary Order. I approve its form and content.

13
14 DATED: 10/24/16


BENJAMIN FENTON
Attorney for Respondents

15
16
17 ENDORSEMENT

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

20 Dated: October 25, 2016

Respectfully submitted,

21 KAMALA D. HARRIS
22 Attorney General of California
23 JOSHUA A. ROOM
Supervising Deputy Attorney General



25 NICHOLAS TSUKAMAKI
26 Deputy Attorney General
Attorneys for Complainant

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28 41618992.doc

Exhibit A

First Amended Accusation No. 5207

1 KAMALA D. HARRIS
Attorney General of California
2 JOSHUA A. ROOM
Supervising Deputy Attorney General
3 ROSAILDA PEREZ
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455 Golden Gate Avenue, Suite 11000
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Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

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12 **PHARMACY**
13 **NANCY KONG CHAO, PRES/PIC**
14 **1460 N. Camino Alto, Ste. 101**
Vallejo, CA 94589-2567

FIRST AMENDED ACCUSATION

15 **Pharmacy License No. PHY 49934**

16 **and**

17 **NANCY KONG CHAO**
18 **23 Railroad Avenue #366**
Danville, CA 94526

19 **Pharmacist License No. RPH 48087**

20 Respondents.

21
22 Complainant alleges:

23 **PARTIES**

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

27 2. On or about June 5, 2009, the Board of Pharmacy issued Original Pharmacy Permit
28 Number PHY 49934 to North Bay Custom Care Pharmacy dba North Bay Custom Care

1 Pharmacy, Nancy Kong Chao, PRES/PIC (Respondent Pharmacy). The Original Pharmacy
2 Permit was in full force and effect at all times relevant to the charges brought herein. It expired
3 on June 1, 2014 and was cancelled on July 22, 2014.

4 3. On or about August 10, 1995, the Board of Pharmacy issued Pharmacist License No.
5 RPH 48087 to Nancy Kong Chao (Respondent Pharmacist). The Pharmacist License was in full
6 force and effect at all times relevant to the charges brought herein and will expire on November
7 30, 2016, unless renewed, and for all time periods relevant to the charges herein, Respondent
8 Pharmacist served and/or was reflected in Board records as the Pharmacist in Charge (PIC) for
9 Respondent North Bay.

10 JURISDICTION

11 4. This First Amended Accusation is brought before the Board under the authority of the
12 following laws. All section references are to the Business and Professions Code unless otherwise
13 indicated.

14 5. Code section 4300 provides that every license issued by the Board may be suspended
15 or revoked.

16 6. Code section 4300.1 states:

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

22 STATUTORY AND REGULATORY PROVISIONS

23 7. Code section 4081 states:

24 "(a) All records of manufacture and of sale, acquisition, receipt, shipment, or disposition of
25 dangerous drugs or dangerous devices shall be at all times during business hours open to
26 inspection by authorized officers of the law, and shall be preserved for at least three years from
27 the date of making. A current inventory shall be kept by every manufacturer, wholesaler, third-
28 party logistics provider, pharmacy, veterinary food-animal drug retailer, physician, dentist,

1 podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a
2 currently valid and unrevoked certificate, license, permit, registration, or exemption under
3 Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4
4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who
5 maintains a stock of dangerous drugs or dangerous devices.

6 "..."

7 8. Code section 4105 states:

8 "(a) All records or other documentation of the acquisition and disposition of dangerous
9 drugs and dangerous devices by any entity licensed by the board shall be retained on the licensed
10 premises in a readily retrievable form.

11 "..."

12 9. Code section 4160 states:

13 "(a) A person shall not act as a wholesaler or third-party logistics provider of any dangerous
14 drug or dangerous device unless he or she has obtained a license from the board.

15 "..."

16 10. Code section 4301 states:

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

20 "..."

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

24 "(g) Knowingly making or signing any certificate or other document that falsely represents
25 the existence or nonexistence of a state of facts.

26 "..."

27 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
28 violation of or conspiring to violate any provision or term of this chapter or of the applicable

1 federal and state laws and regulations governing pharmacy, including regulations established by
2 the board or by any other state or federal regulatory agency.

3 "...

4 "(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the
5 board.

6 "..."

7 11. Code section 4342 states:

8 "(a) The board may institute any action or actions as may be provided by law and that, in its
9 discretion, are necessary, to prevent the sale of pharmaceutical preparations and drugs that do not
10 conform to the standard and tests as to quality and strength, provided in the latest edition of the
11 United States Pharmacopoeia or the National Formulary, or that violate any provision of the
12 Sherman Food, Drug, and Cosmetic Law (Part 5 (commencing with Section 109875) of Division
13 104 of the Health and Safety Code).

14 "..."

15 12. Health and Safety Code section 11165 provides, in pertinent part:

16 "...

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

24 "...

25 "(10) Date of dispensing of the prescription.

26 "..."

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28 ///

1 13. California Code of Regulations, Title 16, section 1707.2, provides, in pertinent part:

2 "...

3 "(b)(1) In addition to the obligation to consult set forth in subsection (a), a pharmacist shall
4 provide oral consultation to his or her patient or the patient's agent in any care setting in which the
5 patient or agent is present:

6 "(A) whenever the prescription drug has not previously been dispensed to a patient; or

7 "(B) whenever a prescription drug not previously dispensed to a patient in the same dosage
8 form, strength or with the same written directions, is dispensed by the pharmacy.

9 "(2) When the patient or agent is not present (including but not limited to a prescription
10 drug that was shipped by mail) a pharmacy shall ensure that the patient receives written notice:

11 "(A) of his or her right to request consultation; and

12 "(B) a telephone number from which the patient may obtain oral consultation from a
13 pharmacist who has ready access to the patient's record.

14 "..."

15 14. California Code of Regulations, Title 16, section 1707.5, provides, in pertinent part:

16 "(a) Labels on drug containers dispensed to patients in California shall conform to the
17 following format:

18 "(1) Each of the following items, and only these four items, shall be clustered into one area
19 of the label that comprises at least 50 percent of the label. Each item shall be printed in at least a
20 12-point sans serif typeface, and listed in the following order:

21 "(A) Name of the patient

22 "(B) Name of the drug and strength of the drug. For the purposes of this section, "name of
23 the drug" means either the manufacturer's trade name of the drug, or the generic name and the
24 name of the manufacturer.

25 "(C) The directions for the use of the drug.

26 "(D) The condition or purpose for which the drug was prescribed if the condition or purpose
27 is indicated on the prescription.

28 "..."

1 15. California Code of Regulations, Title 16, section 1709, subdivision (a) states:

2 "Each permit to operate a pharmacy shall show the name and address of the pharmacy, the
3 form of ownership (individual, partnership or corporation) and the pharmacist-in-charge. Each
4 pharmacy shall, in its initial application on the annual renewal form, report the name of the
5 pharmacist-in-charge, the names of all owners and the names of the corporate officers (if a
6 corporation). Any changes in the pharmacist-in-charge, or the owners, or corporate officers shall
7 be reported to the Board within 30 days."

8 16. California Code of Regulations, Title 16, section 1711, provides, in pertinent part:

9 "...

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

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

20 "1. the date, location, and participants in the quality assurance review;

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

23 "3. the findings and determinations generated by the quality assurance review; and,

24 "4. recommend changes to pharmacy policy, procedure, systems, or processes, if any.

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

28 "..."

1 17. California Code of Regulations, Title 16, section 1714, provides, in pertinent part:

2 "...

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

7 "..."

8 **COST RECOVERY**

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

13 **FACTS**

14 19. On or about August 6, 2013 and August 29, 2013, two Board Inspectors inspected
15 Respondent Pharmacy after receiving a complaint. They were met and assisted by Respondent
16 Pharmacist. During the course of the inspections, the Inspectors discovered the following:

- 17 a. Respondents failed to reverse billing claims for prescriptions that were never
- 18 dispensed to patients;
- 19 b. Respondents misrepresented the drug manufacturer used (to fill prescriptions) to
- 20 insurance providers;
- 21 c. Respondents misrepresented prescription fill dates;
- 22 d. Respondents misrepresented dispensing dates of prescriptions to CURES;
- 23 e. Respondents accepted returned medications from patients for destruction;
- 24 f. Respondents did not refer patient L.W.¹ for a new medication consultation;
- 25 g. Respondents did not ensure patients received written notification of their right to
- 26 request a consultation and a telephone number to obtain the consultation;

27 _____
28 ¹ Patient name has been withheld to maintain confidentiality.

- 1 h. Respondents had expired medication in the pharmacy's drug inventory;
- 2 i. Respondents did not have patient-centered labeling on bubble packed medications;
- 3 j. Respondents did not have a written policy or procedure to assist patients with
- 4 limited English proficiency;
- 5 k. Respondents failed to report and investigate medication errors related to short-
- 6 counted prescriptions;
- 7 l. Respondent's pharmacy dispensing area was cluttered and disorganized.
- 8 20. Between approximately December 2013 and July 2014, a Board Inspector
- 9 investigated an additional complaint and discovered the following:
- 10 a. Respondents failed to maintain current drug inventory;
- 11 b. Respondents failed to maintain records of acquisition and disposition on a licensed
- 12 premise;
- 13 c. Respondents knowingly signed and filed a Discontinuation of Business form that
- 14 contained false statements; and
- 15 d. Respondents subverted the Board's investigation.

16 21. When Original Pharmacy Permit Number PHY 49934 was issued to Respondent

17 Pharmacy on June 5, 2009, Nancy Wern-Swede Chao was listed as the President and Pharmacist-

18 in-Charge of Respondent Pharmacy, and Robert Kong was listed as Secretary and Treasurer/Chief

19 Financial Officer of Respondent Pharmacy.

20 22. On or about November 27, 2010, Respondent Pharmacist was elected as the

21 President, Secretary, and Treasurer of Respondent Pharmacy. Respondent Pharmacist did not

22 notify the Board of this change in Respondent Pharmacy's corporate officers until on or about

23 May 8, 2013.

24 **FIRST CAUSE FOR DISCIPLINE**

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

26 23. Respondents are subject to discipline under Code section 4301, subdivisions (f) and

27 (o), in that they were dishonest and committed fraud when they billed insurance providers for

28 medication that was not dispensed, as described in paragraph 18, above.

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SECOND CAUSE FOR DISCIPLINE

(Knowingly Make or Sign Certificate or Document Falsely Representing Existence or Nonexistence of a State of Facts)

24. Respondents are subject to disciplinary action under Code section 4301, subdivisions (g) and (o), in that they knowingly made misrepresentations when they billed insurance providers for the medications they did not dispense as described in paragraph 18, above.

THIRD CAUSE FOR DISCIPLINE

(Knowingly Make or Sign Certificate or Document Falsely Representing Existence or Nonexistence of a State of Facts)

25. Respondents are subject to disciplinary action under Code section 4301, subdivision (g) and (o), in that they knowingly falsified records indicating when a prescription was dispensed, as described in paragraph 18, above.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Comply with CURES Reporting)

26. Respondents are subject to disciplinary action under Code section 4301, subdivisions (g) and (o), and/or Health and Safety Code section 11165, subdivision (d)(10), in that they misrepresented the dispensing dates of prescriptions, as described in paragraph 18, above.

FIFTH CAUSE FOR DISCIPLINE

(Acting Like Wholesaler Without License)

27. Respondents are subject to disciplinary action under Code sections 4301, subdivision (o), and 4160, subdivision (a), in that Respondents accepted returned medication from patients for destruction without having the required license to do so, as described in paragraph 18, above.

SIXTH CAUSE FOR DISCIPLINE

(Failed to Refer Patient for New Medication Consultation)

28. Respondents are subject to disciplinary action under Code section 4301, subdivision (o), and California Code of Regulations, title 16, section 1707.2, subdivision (b)(1)(A), in that Respondents failed to refer patient L.W. for a new medication consultation, as described in paragraph 18, above.

1 **SEVENTH CAUSE FOR DISCIPLINE**

2 (Failed to Notify Patients of Right to Consultation)

3 29. Respondents are subject to disciplinary action under Code section 4301, subdivision
4 (o), and California Code of Regulations, title 16, section 1707.2, subdivision (b)(2), in that they
5 failed to ensure patients received written notification of their right to a consultation and a
6 telephone number to obtain the consultation, as described in paragraph 18, above.

7 **EIGHTH CAUSE FOR DISCIPLINE**

8 (Drugs Lacking Quality of Strength)

9 30. Respondents are subject to disciplinary action under Code sections 4301, subdivision
10 (o), and 4342, subdivision (a), because they had expired medications in their drug inventory, as
11 described in paragraph 18, above.

12 **NINTH CAUSE FOR DISCIPLINE**

13 (Failed to Have Patient-Centered Labels)

14 31. Respondents are subject to disciplinary action under Code sections 4301, subdivision
15 (o), and California Code of Regulations, title 16, section 1707.5, subdivision (a), because the
16 pharmacy did not meet the patient-centered labeling requirements for bubble-packed medication
17 orders, as described in paragraph 18, above.

18 **TENTH CAUSE FOR DISCIPLINE**

19 (Failed to Have Translation Services)

20 32. Respondents are subject to disciplinary action under Code sections 4301, subdivision
21 (o), and California Code of Regulations, title 16, section 1707.5, subdivision (d), in that they did
22 not have written policies and procedures in place to assist patients with limited English
23 proficiency, as described in paragraph 18, above.

24 **ELEVENTH CAUSE FOR DISCIPLINE**

25 (Failed to Investigate Medication Errors)

26 33. Respondents are subject to disciplinary action under Code sections 4301, subdivision
27 (o), and California Code of Regulations, title 16, section 1711 subdivision (d)(e), in that
28 Respondents did not investigate medication errors through pharmacy's quality assurance

1 program, as described in paragraph 18, above.

2 **TWELFTH CAUSE FOR DISCIPLINE**

3 (Failed to Keep Record Quality Assurance Review)

4 34. Respondents are subject to disciplinary action under Code sections 4301, subdivision
5 (o), and California Code of Regulations, title 16, section 1711 subdivision (e), in that
6 Respondents did not keep a record of the quality assurance review related to the medication
7 errors, as described in paragraph 18, above.

8 **THIRTEENTH CAUSE FOR DISCIPLINE**

9 (Disorganized Dispensing Area)

10 35. Respondents are subject to disciplinary action under Code sections 4301, subdivision
11 (o), and California Code of Regulations, title 16, section 1714 subdivision (b), in that the
12 pharmacy's dispensing area was cluttered and disorganized, as described in paragraph 18, above.

13 **FOURTEENTH CAUSE FOR DISCIPLINE**

14 (Failure to Maintain Current Inventory)

15 36. Respondents are subject to disciplinary action under Code section 4081, subdivision
16 (a), because they failed to maintain a current inventory of drugs in the pharmacy, as described in
17 paragraph 19, above.

18 **FIFTEENTH CAUSE FOR DISCIPLINE**

19 (Failure to Maintain Records of Acquisition and Disposition on Licensed Premises)

20 37. Respondents are subject to disciplinary action under Code section 4105, subdivision
21 (a), in that they did not keep the records of acquisition and disposition on a licensed premise
22 between approximately January 18, 2014 and January 29, 2014, as described in paragraph 19,
23 above.

24 **SIXTEENTH CAUSE FOR DISCIPLINE**

25 (Knowingly Sign Document with False Statements)

26 38. Respondents are subject to disciplinary action under Code section 4301, subdivision
27 (g), in that they knowingly misrepresented where the records of acquisition and disposition were
28 maintained in the Discontinuation of Business form, as described in paragraph 19, above.

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SEVENTEENTH CAUSE FOR DISCIPLINE

(Subverting an Investigation)

39. Respondents are subject to disciplinary action under Code section 4301, subdivision (q), in that they were untruthful about the location of the records of acquisition and disposition, as described in paragraph 19, above.

EIGHTEENTH CAUSE FOR DISCIPLINE

(Failure to Timely Report Change of Corporate Officers to Board)

40. Respondents are subject to disciplinary action under Code section 4301, subdivision (o) and California Code of Regulations, Title 16, section 1709, subdivision (a), in that Respondent Pharmacist failed to report to the Board within 30 days a change in Respondent Pharmacy's corporate officers, as described in paragraphs 21 and 22, above.

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 or suspending Original Pharmacy Permit Number PHY 49934 issued to North Bay Custom Care Pharmacy dba North Bay Custom Care Pharmacy, Nancy Kong Chao, PRES/PIC (Respondent Pharmacy);

2. Revoking or suspending Pharmacist License No. RPH 48087 issued to Nancy Kong Chao (Respondent Pharmacist);

3. Ordering Respondents 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;

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

DATED: 10/13/16 Virginia Herold

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

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Attorney General of California
2 JOSHUA A. ROOM
Supervising Deputy Attorney General
3 ROSALDA PEREZ
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4 State Bar No. 284646
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5 San Francisco, CA 94102-7004
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6 Facsimile: (415) 703-5480
Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:
11 **NORTH BAY CUSTOM CARE**
12 **PHARMACY**
13 **NANCY KONG CHAO, PRES/PIC**
ROBERT KONG, SEC/TRES/CFO
14 **CAROLYN KONG, SHAREHOLDER**
15 **1460 N. Camino Alto, Ste. 101**
Vallejo, CA 94589-2567
16 **Pharmacy License No. PHY 49934**
17
18 **and**
19 **NANCY KONG CHAO**
23 Railroad Avenue #366
Danville, CA 94526
20 **Pharmacist License No. RPH 48087**
21
22 Respondents.

Case No. 5207

A C C U S A T I O N

23 Complainant alleges:

24 **PARTIES**

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

27 2. On or about June 5, 2009, the Board of Pharmacy issued Original Pharmacy Permit
28 Number PHY 49934 to North Bay Custom Care Pharmacy dba North Bay Custom Care

1 Pharmacy, Nancy Kong Chao, PRES/PIC, Robert Kong, SEC/TRES/CFO (Respondent
2 Pharmacy). The Original Pharmacy Permit was in full force and effect at all times relevant to the
3 charges brought herein. It expired on June 1, 2014 and was cancelled on July 22, 2014.

4 3. On or about August 10, 1995, the Board of Pharmacy issued Pharmacist License No.
5 RPH 48087 to Nancy Kong Chao (Respondent Pharmacist). The Pharmacist License was in full
6 force and effect at all times relevant to the charges brought herein and will expire on November
7 30, 2016, unless renewed, and for all time periods relevant to the charges herein, Respondent
8 Pharmacist served and/or was reflected in Board records as the Pharmacist in Charge (PIC) for
9 Respondent North Bay.

10 JURISDICTION

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

13 5. Code section 4300 provides that every license issued by the Board may be suspended
14 or revoked.

15 6. Code section 4300.1 states:

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

21 STATUTORY PROVISIONS

22 7. Code section 4081 states:

23 "(a) All records of manufacture and of sale, acquisition, receipt, shipment, or disposition of
24 dangerous drugs or dangerous devices shall be at all times during business hours open to
25 inspection by authorized officers of the law, and shall be preserved for at least three years from the
26 date of making. A current inventory shall be kept by every manufacturer, wholesaler, third-party
27 logistics provider, pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist,
28 veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and

1 unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing
2 with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section
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4 drugs or dangerous devices.

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

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22 whether the act is a felony or misdemeanor or not.

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24 the existence or nonexistence of a state of facts.

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26 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
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20 Federal Regulations, the dispensing pharmacy, clinic, or other dispenser shall report the following
21 information to the Department of Justice as soon as reasonably possible, but not more than seven
22 days after the date a controlled substance is dispensed, in a format specified by the Department of
23 Justice:

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2 "...

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6 FACTS

7 18. On or about August 6, 2013 and August 29, 2013, two Board Inspectors inspected
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- 15 d. Respondents misrepresented dispensing dates of prescriptions to CURES;
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23 limited English proficiency;
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2 an additional complaint and discovered the following:

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5 premise;
6 c. Respondents knowingly signed and filed a Discontinuation of Business form that
7 contained false statements; and
8 d. Respondents subverted the Board's investigation.

9 **FIRST CAUSE FOR DISCIPLINE**

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

11 20. Respondents are subject to discipline under Code section 4301, subdivisions (f) and
12 (o), in that they were dishonest and committed fraud when they billed insurance providers for
13 medication that was not dispensed, as described in paragraph 18, above.

14 **SECOND CAUSE FOR DISCIPLINE**

15 (Knowingly Make or Sign Certificate or Document Falsely Representing Existence or
16 Nonexistence of a State of Facts)

17 21. Respondents are subject to disciplinary action under Code section 4301, subdivisions
18 (g) and (o), in that they knowingly made misrepresentations when they billed insurance providers
19 for the medications they did not dispense as described in paragraph 18, above.

20 **THIRD CAUSE FOR DISCIPLINE**

21 (Knowingly Make or Sign Certificate or Document Falsely Representing Existence or
22 Nonexistence of a State of Facts)

23 22. Respondents are subject to disciplinary action under Code section 4301, subdivision
24 (g) and (o), in that they knowingly falsified records indicating when a prescription was dispensed,
25 as described in paragraph 18, above.

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FOURTH CAUSE FOR DISCIPLINE

(Failure to Comply with CURES Reporting)

23. Respondents are subject to disciplinary action under Code section 4301, subdivisions (g) and (o), and/or Health and Safety Code section 11165, subdivision (d)(10), in that they misrepresented the dispensing dates of prescriptions, as described in paragraph 18, above.

FIFTH CAUSE FOR DISCIPLINE

(Acting Like Wholesaler Without License)

24. Respondents are subject to disciplinary action under Code sections 4301, subdivision (o), and 4160, subdivision (a), in that Respondents accepted returned medication from patients for destruction without having the required license to do so, as described in paragraph 18, above.

SIXTH CAUSE FOR DISCIPLINE

(Failed to Refer Patient for New Medication Consultation)

25. Respondents are subject to disciplinary action under Code section 4301, subdivision (o), and California Code of Regulations, title 16, section 1707.2, subdivision (b)(1)(A), in that Respondents failed to refer patient L.W. for a new medication consultation, as described in paragraph 18, above.

SEVENTH CAUSE FOR DISCIPLINE

(Failed to Notify Patients of Right to Consultation)

26. Respondents are subject to disciplinary action under Code section 4301, subdivision (o), and California Code of Regulations, title 16, section 1707.2, subdivision (b)(2), in that they failed to ensure patients received written notification of their right to a consultation and a telephone number to obtain the consultation, as described in paragraph 18, above.

EIGHTH CAUSE FOR DISCIPLINE

(Drugs Lacking Quality of Strength)

27. Respondents are subject to disciplinary action under Code sections 4301, subdivision (o), and 4342, subdivision (a), because they had expired medications in their drug inventory, as described in paragraph 18, above.

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NINTH CAUSE FOR DISCIPLINE

(Failed to Have Patient-Centered Labels)

28. Respondents are subject to disciplinary action under Code sections 4301, subdivision (o), and California Code of Regulations, title 16, section 1707.5, subdivision (a), because the pharmacy did not meet the patient-centered labeling requirements for bubble-packed medication orders, as described in paragraph 18, above.

TENTH CAUSE FOR DISCIPLINE

(Failed to Have Translation Services)

29. Respondents are subject to disciplinary action under Code sections 4301, subdivision (o), and California Code of Regulations, title 16, section 1707.5, subdivision (d), in that they did not have written policies and procedures in place to assist patients with limited English proficiency, as described in paragraph 18, above.

ELEVENTH CAUSE FOR DISCIPLINE

(Failed to Investigate Medication Errors)

30. Respondents are subject to disciplinary action under Code sections 4301, subdivision (o), and California Code of Regulations, title 16, section 1711 subdivision (d)(e), in that Respondents did not investigate medication errors through pharmacy's quality assurance program, as described in paragraph 18, above.

TWELFTH CAUSE FOR DISCIPLINE

(Failed to Keep Record Quality Assurance Review)

31. Respondents are subject to disciplinary action under Code sections 4301, subdivision (o), and California Code of Regulations, title 16, section 1711 subdivision (e), in that Respondents did not keep a record of the quality assurance review related to the medication errors, as described in paragraph 18, above.

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THIRTEENTH CAUSE FOR DISCIPLINE

(Disorganized Dispensing Area)

32. Respondents are subject to disciplinary action under Code sections 4301, subdivision (o), and California Code of Regulations, title 16, section 1714 subdivision (b), in that the pharmacy's dispensing area was cluttered and disorganized, as described in paragraph 18, above.

FOURTEENTH CAUSE FOR DISCIPLINE

(Failure to Maintain Current Inventory)

33. Respondents are subject to disciplinary action under Code section 4081, subdivision (a), because they failed to maintain a current inventory of drugs in the pharmacy, as described in paragraph 19, above.

FIFTEENTH CAUSE FOR DISCIPLINE

(Failure to Maintain Records of Acquisition and Disposition on Licensed Premises)

34. Respondents are subject to disciplinary action under Code section 4105, subdivision (a), in that they did not keep the records of acquisition and disposition on a licensed premise between approximately January 18, 2014 and January 29, 2014, as described in paragraph 19, above.

SIXTEENTH CAUSE FOR DISCIPLINE

(Knowingly Sign Document with False Statements)

35. Respondents are subject to disciplinary action under Code section 4301, subdivision (g), in that they knowingly misrepresented where the records of acquisition and disposition were maintained in the Discontinuation of Business form, as described in paragraph 19, above.

SEVENTEENTH CAUSE FOR DISCIPLINE

(Subverting an Investigation)

36. Respondents are subject to disciplinary action under Code section 4301, subdivision (q), in that they were untruthful about the location of the records of acquisition and disposition, as described in paragraph 19, above.

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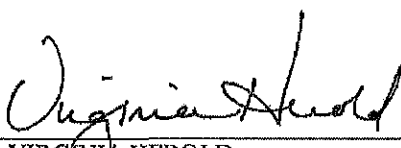
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PRAYER

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 or suspending Original Pharmacy Permit Number PHY 49934, issued to North Bay Custom Care Pharmacy dba North Bay Custom Care Pharmacy, Nancy Kong Chao, PRES/PIC, Robert Kong, SEC/TRES/CFO (Respondent Pharmacy);
2. Revoking or suspending Pharmacist License No. RPH 48087, issued to Nancy Kong Chao (Respondent Pharmacist);
3. Ordering Respondents 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;
4. Taking such other and further action as deemed necessary and proper.

DATED: 1/7/16 
VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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