

1 EDMUND G. BROWN JR.
Attorney General of California
2 WILBERT E. BENNETT
Supervising Deputy Attorney General
3 SHANA A. BAGLEY
Deputy Attorney General
4 State Bar No. 169423
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 622-2129
Facsimile: (510) 622-2270
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 3289

12 **DARRYL DONG CHIN**
13 **766 Hollyhock Drive**
San Leandro, California 94578

A C C U S A T I O N

14 **Pharmacist License No. RPH 28889**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about July 17, 1974, the Board of Pharmacy issued Pharmacist License
22 Number RPH 28889 to Darryl Dong Chin (Respondent). The Pharmacist License was in full
23 force and effect at all times relevant to the charges brought herein and will expire on July 31,
24 2010, unless renewed.

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2 **JURISDICTION**

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

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

10 5. Section 477 of the Code states:

11 As used in this division:

12 (a) "Board" includes "bureau," "commission," "committee," "department,"
13 "division," "examining committee," "program," and "agency."

14 (b) "License" includes certificate, registration or other means to engage in a
15 business or profession regulated by this code.

16 6. Section 4300 of the Code states, in pertinent part:

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

18 (b) The board shall discipline the holder of any license issued by the board, whose
19 default has been entered or whose case has been heard by the board and found
20 guilty, by any of the following methods:

21 (1) Suspending judgment.

22 (2) Placing him or her upon probation.

23 (3) Suspending his or her right to practice for a period not exceeding one year.

24 (4) Revoking his or her license.

25 (5) Taking any other action in relation to disciplining him or her as the board in its
26 discretion may deem proper.

27 ...

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STATUTORY PROVISIONS

7. Section 4022 of the Code states:

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

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

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

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

8. Section 4059 of the Code states, in pertinent part, that a person may not furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

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

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

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1 10. Section 4077 of the Code states, in pertinent part, that except as provided in
2 subdivisions (b) and (c) of this section, no person shall dispense any dangerous drug upon
3 prescription except in a container correctly labeled with the information required by Section
4 4076.

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

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

11 ...

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

15 ...

16 (h) The administering to oneself, of any controlled substance, or the use of any
17 dangerous drug or of alcoholic beverages to the extent or in a manner as to be
18 dangerous or injurious to oneself, to a person holding a license under this chapter,
19 or to any other person or to the public, or to the extent that the use impairs the
20 ability of the person to conduct with safety to the public the practice authorized by
21 the license.

22 ...

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

25 ...

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

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12. Health and Safety Code section 11170, subdivision (a), provides:

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

COST RECOVERY

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

DRUG SUMMARY

14. "LORAZEPAM", the trade name for Ativan (a benzodiazepine with CNS depressant, anxiolytic, and sedative properties), is a Schedule IV controlled substance pursuant to Health and Safety Code Section 11057(d)(11) and a dangerous drug pursuant to Business and Professions Code section 4022.

FACTUAL SUMMARY

15. On or about August 28, 2008, while employed as a pharmacist at the Kaiser Permanente Skyview Pharmacy, Richmond Medical Center, in Richmond, California, Respondent diverted approximately 18 tablets of LORAZEPAM 0.5 mg from the pharmacy stock and put them in his pocket. He later threw them in the garbage in an effort to conceal his actions.

16. On or about August 28, 2008, Respondent resigned from his employment with Kaiser Permanente Skyview Pharmacy, Richmond Medical Center.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Stealing Controlled Substance)

17. Respondent is subject to disciplinary action under Code section 4301, subdivision (f), in that he engaged in acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, by attempting to divert and ingest controlled substances in violation of Code section 4060 and Health and Safety Code section 11173, subdivision (a), as set forth in paragraphs 15 and 16, above.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 (Attempted Administration of Controlled Substances)

3 18. Respondent is subject to disciplinary action under Code section 4301, subdivisions
4 (h) and (o), and Health and Safety Code section 11170 in that he furnished, and attempted to
5 administer to himself, controlled substances, as set forth in paragraphs 15 and 16, above.

6 **THIRD CAUSE FOR DISCIPLINE**

7 (Unlawful Possession of Controlled Substances)

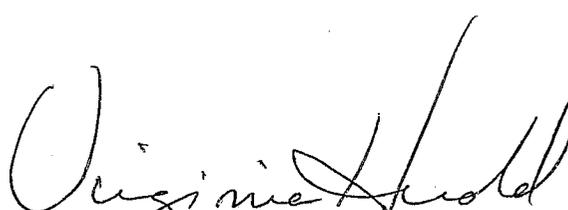
8 19. Respondent is subject to disciplinary action under Code section 4301, subdivisions (j)
9 and (o), as they relate to Code section 4060, in that he unlawfully possessed controlled substances
10 in an attempt to divert and ingest them, as set forth in paragraphs 15 and 16, above.

11 **PRAYER**

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

- 14 1. Revoking or suspending Pharmacist License Number RPH 28889, issued to Darryl
- 15 Dong Chin.
- 16 2. Ordering Darryl Dong Chin to pay the Board of Pharmacy the reasonable costs of the
- 17 investigation and enforcement of this case, pursuant to Business and Professions Code section
- 18 125.3; and
- 19 3. Taking such other and further action as deemed necessary and proper.

20
21
22 DATED: 8/4/09



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

SF2009403211