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

10 In the Matter of the Accusation and Petition to
11 Revoke Probation Against:

11 VIVIEN W. M. TSENG
12 44 Deerhaven Place
13 Pleasant Hill, CA 94523

14 Pharmacist License No. RPH 32741

15 Respondent.

Case No. 2408

OAH No. N2002120098

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

16
17 In the interest of a prompt and speedy settlement of this matter, consistent with the
18 public interest and the responsibility of the Board of Pharmacy of the Department of Consumer
19 Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order
20 which will be submitted to the Board for approval and adoption as the final disposition of the
21 Accusation and Petition to Revoke Probation solely with respect to VIVIEN W. M. TSENG. It
22 does not apply to BAY CITIES PHARMACEUTICAL SERVICES and GERALD ALLEN
23 KATAOKA.

24 PARTIES

25 1. Patricia F. Harris (Complainant) is the Executive Officer of the Board of
26 Pharmacy. She brought this action solely in her official capacity and is represented in this matter
27 by Bill Lockyer, Attorney General of the State of California, by Michael B. Franklin, Deputy
28 Attorney General.

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Pharmacist License No. RPH 32741 issued to Respondent VIVIEN W. M. TSENG is hereby publically reprimanded.

1. **Reimbursement of Board Costs.** Respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$2,500.00 within 30 days from the effective date of this decision.

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

2. **Restriction on being Pharmacist-in-Charge (PIC).** Respondent shall not be the pharmacist-in-charge of any entity licensed by the Board for a period of two (2) years from the effective date of this decision.

ACCEPTANCE

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

DATED: March 11, 2003


VIVIEN W. M. TSENG
Respondent

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

DATED: March 11, 2003


JOHN BERGER
Attorney for Respondent

ENDORSEMENT

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

DATED: 3/12/03

BILL LOCKYER, Attorney General
of the State of California


MICHAEL B. FRANKLIN
Deputy Attorney General

Attorneys for Complainant

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

In the Matter of the Accusation and Petition to
Revoke Probation Against:

VIVIEN W. M. TSENG
44 Deerhaven Place
Pleasant Hill, CA 94523

Pharmacist License No. RPH 32741

Respondent.

Case No. 2408

OAH No. N2002120098

DECISION AND ORDER

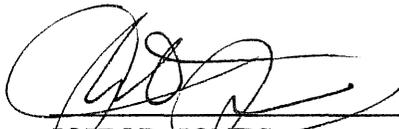
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on May 21, 2003.

It is so ORDERED April 21, 2003.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



JOHN D. JONES
Board President

1 BILL LOCKYER, Attorney General
of the State of California
2 W. LLOYD PARIS, State Bar No. 124755
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6 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 and Petition to
11 Revoke Probation Against:

Case No. 2408

12 BAY CITIES PHARMACEUTICAL
SERVICES

13 Anthony A. Froyd, owner
431 N Buchanan Cr 10 Suite 1
14 Pacheco, CA 94553

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

15 Pharmacy Permit No. PHY 40016,

16 GERALD ALLEN KATAOKA
135 Glenbridge Court
17 Pleasant Hill, CA 94523

18 Pharmacist License No. RPH 26581,

19 and

20 VIVIEN W. M. TSENG
44 Deerhaven Place
21 Pleasant Hill, CA 94523

22 Pharmacist License No. RPH 32741

23 Respondents.

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26 Complainant alleges:

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PARTIES

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1. Patricia F. Harris (Complainant) brings this Accusation solely in her

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

3 " . . .

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

7 . . .

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

10 . . .

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

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

19 9. Section 118(b) of the Code states:

20 "(b) The suspension, expiration, or forfeiture by operation of law of a license
21 issued by a board in the department, or its suspension, forfeiture, or cancellation by order
22 of the board or by order of a court of law, or its surrender without the written consent of
23 the board, shall not, during any period in which it may be renewed, restored, reissued, or
24 reinstated, deprive the board of its authority to institute or continue a disciplinary
25 proceeding against the licensee upon any ground provided by law or to enter an order
26 suspending or revoking the license or otherwise taking disciplinary action against the
27 licensee on any such ground.

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1 ACCUSATION

2 **FIRST CAUSE FOR DISCIPLINARY ACTION**

3 (Failure to Maintain Records on Pharmacy Premises)

4 10. Section 4105 of the Code states:

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

8 "(b) The licensee may remove the original records or documentation from the
9 licensed premises on a temporary basis for license-related purposes. However, a duplicate set of
10 those records or other documentation shall be retained on the licensed premises.

11 "(c) The records required by this section shall be retained on the licensed premises
12 for a period of three years from the date of making.

13 11. Title 16, California Code of Regulations, section 1764 provides, in
14 pertinent part, that no pharmacist shall exhibit or discuss or reveal the contents of any patient or
15 any medical information furnished by the prescriber with any person other than the patient or his
16 or her authorized representative.

17 12. Respondents Bay Cities, Kataoka and Tseng are subject to disciplinary
18 action under sections 4301(j) and/or 4301(o) for having violated section 4105 in that records of
19 acquisition and disposition of dangerous drugs and devices (or a duplicate copy) were not
20 maintained at respondent Bay Cities. The circumstances are as follows:

21 (A.) On May 4, 2000 the Federal Food and Drug Administration executed a search
22 warrant on the home of Anthony A. Froyd, the non-pharmacist owner of
23 respondent Bay Cities, with the assistance of other law enforcement personnel
24 including an inspector from the Board.

25 (B.) Records of acquisition of dangerous drugs, prescriptions and prescription records
26 and payment or reimbursement records pertaining to respondent Bay Cities were
27 found at Mr. Froyd's home. Duplicate records were not maintained at respondent
28 Bay Cities.

1 13. Respondents Kataoka and Tseng are subject to disciplinary action under
2 sections 4301(j) and/or 4301(o) for having violated Title 16, California Code of Regulations,
3 section 1764 in that they revealed the contents of prescriptions to one other than the patient or the
4 patients' representative. The circumstances are as follows:

5 (A.) The allegations contained in paragraph 12 are incorporated by reference as if fully
6 set forth.

7 (B.) Respondent Bay Cities' prescriptions and patient records were found in Mr.
8 Froyd's home despite the fact that he is not a pharmacist or other qualified
9 representative of a patient.

10 **SECOND CAUSE FOR DISCIPLINARY ACTION**

11 (Accepting Prescriptions From Patients By FAX)

12 14. Title 16, California Code of Regulations, section 1717.4(a) provides, in
13 pertinent part, that except as otherwise prohibited by law, prescriptions may be transmitted by
14 electronic means from the prescriber to the pharmacy.

15 15. Respondents Bay Cities, Kataoka and Tseng are subject to disciplinary
16 action under sections 4301(j) and/or 4301(o) for having violated Title 16, California Code of
17 Regulations, section 1717.4 in that they accepted electronic facsimile prescriptions directly from
18 patients as opposed to prescribers. The circumstances are as follows:

19 (A.) On May 4, 2000 the Federal Food and Drug Administration executed a search
20 warrant on respondent Bay Cities, with the assistance of other law enforcement
21 personnel including an inspector from the Board.

22 (B.) During the search of respondent Bay Cities, respondent Tseng was interviewed by
23 the Board inspector. Respondent Tseng admitted that prescription number
24 3000252 dated March 3, 2000 had in fact been sent by FAX transmission to
25 respondent Bay Cities by the patient. Respondent Tseng further admitted that it
26 was common practice for patients to FAX their prescriptions to respondent Bay
27 Cities.

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1 **THIRD CAUSE FOR DISCIPLINARY ACTION**

2 (Dispensing Medications from a Pharmacy on Suspension)

3 16. In Board Case Number 2011, In the Matter of the Accusation Against: Bay
4 Cities Pharmaceutical Services, et al. respondent Bay Cities' pharmacy permit was revoked, but
5 the revocation was stayed and the pharmacy permit was placed on three years probation. One of
6 the probationary terms included an actual suspension of the pharmacy for fifteen days from the
7 effective date of the decision March 28, 2000.

8 17. Respondent Bay Cities is subject to disciplinary action pursuant to section
9 4300(d) for violating its probation in Board Case Number 2011 by dispensing the following
10 prescriptions during the period in which it was on suspension:

11 (i.) RX Number 300252 for Gamimune 5 gram was dispensed on April 1, 2000.

12 (ii.) RX Number 300256 for Gamimune N10% was dispensed on April 1, 2000.

13 (iii.) RX Number 300221 for Sandoglobulin was dispensed on April 7, 2000.

14 18. Respondents Kataoka and Tseng are subject to disciplinary action under
15 section 4301(o) for having violated the Board's disciplinary order in Case Number 2001 as set
16 forth in paragraph 17 above.

17 19. Respondents Bay Cities, Kataoka and Tseng are subject to disciplinary
18 action under section 4301(f) for having committed acts involving moral turpitude, dishonesty,
19 fraud, deceit or corruption in that they violated the Board's disciplinary order in Case Number
20 2001 as set forth in paragraph 17 above.

21 **FOURTH CAUSE FOR DISCIPLINARY ACTION**

22 (Failure to Maintain All Records of Acquisition)

23 20. Section 4081 of the Code states:

24 "(a) All records of manufacture and of sale, acquisition, 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,
28 pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian,

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

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

9 21. Respondents Bay Cities, Kataoka and Tseng are subject to disciplinary
10 action under sections 4301(j) and/or 4301(o) for having violated sections 4105 and/or 4801(a) in
11 that records of acquisition of dangerous drugs for the following expired dangerous drugs were
12 not maintained by respondents or available for inspection during the May 4, 2000 search of
13 Respondent Bay Cities.

14 (i.) Benadryl 50mg per ml NDC 0071-4259-40
15 Expired 6/96 Parke Davis

16 (ii.) Diazepam 10mg/2ml 10ml Multiple Dose vial NDC 0677-1088-21
17 Expired 8/89 Elkins-Sinn

18 (iii.) Diazepam Injection 5mg/ml 10ml Multiple Dose vial NDC 0677-1088-21
19 Expired 1/00 United Research Laboratories

20 (iv.) EpiPen 0.3mg NDC 49502-500-01
21 Expired 1/00 Dey Pharma

22 **FIFTH CAUSE FOR DISCIPLINARY ACTION**

23 (Failure to Maintain Dangerous Drugs, Dangerous Devices & Pharmacy Records In the
24 Pharmacy Area)

25 22. Code section 4116 (a) provides, in pertinent part, that no person other than
26 a pharmacist shall be permitted in that area described in the license issued by the board wherein
27 controlled substances and dangerous drugs are stored.

28 23. Respondents Bay Cities, Kataoka and Tseng are subject to disciplinary

1 suspended from the operation of a pharmacy for 15 days beginning the effective date of the
2 decision. Condition 6 of the probation order required that respondent Bay Cities obey all laws
3 and regulations substantially related to the practice of pharmacy. Condition 10 of the probation
4 order required that respondent Bay Cities pay the Board its costs of investigation and prosecution
5 in the amount of \$8,000.00; an initial payment of \$4,000.00 was to be made within 30 days of
6 the effective date of the decision, and a final payment of \$4,000.00 was to be made one year
7 thereafter.

8 29. Grounds exist to revoke respondent Bay Cities' probation and reimpose
9 the order of revocation for failing to comply with the terms and conditions of the probation as set
10 forth below:

11 (A.) Respondent Bay Cities dispensed medications during the period of its suspension
12 as set forth in paragraph 17 above in violation of probationary condition number one.

13 (B.) Respondent Bay Cities failed to obey all laws and regulations substantially related
14 to the practice of pharmacy in violation of probationary condition number six. Complaint
15 incorporates all individual causes for disciplinary action in paragraphs 11 through 26
16 above which are incorporated by reference as if fully set forth. Each cause for
17 disciplinary action set forth in paragraphs 11 through 26 is a separate and individual
18 violation of probationary condition number six.

19 (C.) Respondent Bay Cities failed to make all payments to the Board as required under
20 probationary condition number ten. Respondent Bay Cities made the initial \$4,000.00
21 payment to the Board, but it has failed to make the final \$4,000.00 payment.

22 **PETITION TO REVOKE PROBATION AGAINST RESPONDENT KATAOKA**

23 30. On February 29, 2000 in Board Case No. 2011, the Board order
24 respondent Kataoka's pharmacist license revoked, then stayed the revocation and placed
25 respondent Kataoka on three years probation with terms and conditions. The Board's decision
26 was effective March 28, 2000.

27 31. Paragraph 16 (first probationary condition) of the stipulated settlement
28 agreement and probationary order required that respondent Kataoka obey all laws and regulations

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

DATED: 7/29/02.

P. F. Harris
PATRICIA F. HARRIS
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant