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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 Against:

11 JAY'S DRUG
12 3170 West Olympic Blvd. #D
Los Angeles, CA 90006
13 JAE KUAEN SHIN, Owner
Pharmacy Permit No. PHY 38175

14 and

15 JAE KUAEN SHIN
16 435 North Mansfield Avenue
Los Angeles, CA 90036
17 Pharmacist License No. RPH 36105

18 Respondents.

Case No. 2465

OAH No. L-2002050387

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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

23 PARTIES

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

28 2. Respondents Jay's Drug and Jae Kuaen Shin(Respondents) are represented

1 in this proceeding by attorney Herbert L. Weinberg, Esq., whose address is Van Etten Suzumoto
2 & Becket, LLP, 1620 26th Street, Suite 6000 North, Santa Monica, CA 90404.

3 3. On or about December 19, 1980, the Board issued Original Pharmacist
4 License Number RPH 36105 to Jae Kuaen Shin. The license was in full force and effect at all
5 times relevant to the charges brought in Accusation No. 2465 and will expire on January 31,
6 2003, unless renewed.

7 4. On August 28, 1992, the Board of Pharmacy issued Pharmacy Permit No.
8 PHY 38175 to Jae Kuaen Shin to do business as Jay's Drug. Jae Kuaen Shin is and has been the
9 Pharmacist-in-Charge since August 28, 1992. The Permit was in full force and effect at all times
10 relevant to the charges brought in Accusation No. 2465 and will expire on August 1, 2003, unless
11 renewed.

12 JURISDICTION

13 5. Accusation No. 2465 was filed before the Board, Department of Consumer
14 Affairs, and is currently pending against Respondents. The Accusation and all other statutorily
15 required documents were properly served on Respondents on February 28, 2002. Respondents
16 timely filed its Notice of Defense contesting the Accusation. A copy of Accusation No. 2465 is
17 attached as exhibit A and incorporated herein by reference.

18 ADVISEMENT AND WAIVERS

19 6. Respondents have carefully read, fully discussed with counsel, and
20 understands the charges and allegations in Accusation No. 2465. Respondents have also
21 carefully read, fully discussed with counsel, and understand the effects of this Stipulated
22 Settlement and Disciplinary Order.

23 7. Respondents are fully aware of their legal rights in this matter, including
24 the right to a hearing on the charges and allegations in the Accusation; the right to be represented
25 by counsel at their own expense; the right to confront and cross-examine the witnesses against
26 them; the right to present evidence and to testify on their own behalf; the right to the issuance of
27 subpoenas to compel the attendance of witnesses and the production of documents; the right to
28 reconsideration and court review of an adverse decision; and all other rights accorded by the

1 California Administrative Procedure Act and other applicable laws.

2 8. Respondents voluntarily, knowingly, and intelligently waive and give up
3 each and every right set forth above.

4 CULPABILITY

5 9. For the purpose of resolving the Accusation without the expense and
6 uncertainty of further proceedings, Respondents agree that, at a hearing, Complainant could
7 establish a factual basis for the charges in the Accusation, and that Respondents hereby give up
8 their right to contest those charges.

9 10. Respondents agrees that their respective Pharmacist License and Pharmacy
10 Permit are subject to discipline and they agree to be bound by the Board 's imposition of
11 discipline as set forth in the Disciplinary Order below.

12 RESERVATION

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

17 CONTINGENCY

18 12. This stipulation shall be subject to approval by the Board. Respondents
19 understand and agree that counsel for Complainant and the staff of the Board may communicate
20 directly with the Board regarding this stipulation and settlement, without notice to or
21 participation by Respondents or their counsel. By signing the stipulation, Respondents
22 understand and agree that they may not withdraw their agreement or seek to rescind the
23 stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this
24 stipulation as their Decision and Order, the Stipulated Settlement and Disciplinary Order shall be
25 of no force or effect, except for this paragraph, it shall be inadmissible in any legal action
26 between the parties, and the Board shall not be disqualified from further action by having
27 considered this matter.

28 13. The parties understand and agree that facsimile copies of this Stipulated

1 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
2 force and effect as the originals.

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

6 **DISCIPLINARY ORDER**

7 IT IS HEREBY ORDERED that Pharmacist License No. RPH 36105 issued to
8 Jae Kuaen Shin and Pharmacy Permit No. PHY 38175 issued to Jay's Drug are revoked.
9 However, the revocation is stayed and Respondents are placed on probation for three (3) years on
10 the following terms and conditions.

11 1. **Actual Suspension -**

12 a. **Pharmacist.** Pharmacist License number RPH 36105 issued to
13 Respondent Jae Kuaen Shin is suspended for a period of 120 days.

14 b. **Pharmacy.** Pharmacy Permit License number PHY 38175, issued to
15 Respondent Jay's Drug is suspended for a period of 30 days.

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

24 Respondents shall not engage in any activity that requires the professional judgment of a
25 pharmacist. Respondents shall not direct or control any aspect of the practice of pharmacy.

26 Respondents shall not perform the duties of a pharmacy technician or an exemptee for any entity

27 licensed by the Board. Subject to the above restrictions, Respondents may continue to own or

28 hold an interest in any pharmacy in which Respondent Jae Kuaen Shin holds an interest at the

1 time this decision becomes effective unless otherwise specified in this order.

2 2. **Obey All Laws.** Respondents shall obey all state and federal laws and
3 regulations substantially related to or governing the practice of pharmacy.

4 Respondents shall report any of the following occurrences to the Board, in
5 writing, within 72 hours of such occurrence:

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

17 3. **Reporting to the Board.** Respondents shall report to the Board
18 quarterly. The report shall be made either in person or in writing, as directed. Respondents shall
19 state under penalty of perjury whether there has been compliance with all the terms and
20 conditions of probation. If the final probation report is **not** made as directed, probation shall be
21 extended automatically until such time as the final report is made and accepted by the Board.

22 4. **Interview with the Board.** Upon receipt of reasonable notice,
23 Respondents shall appear in person for interviews with the Board upon request at various
24 intervals at a location to be determined by the Board. Failure to appear for a scheduled interview
25 without prior notification to Board staff shall be considered a violation of probation.

26 5. **Cooperation with Board Staff.** Respondents shall cooperate with the
27 Board's inspectional program and in the Board's monitoring and investigation of Respondents'
28 compliance with the terms and conditions of Respondents' probation. Failure to comply shall be

1 considered a violation of probation.

2 6. **Continuing Education.** Respondent Jae Kuaen Shin shall provide
3 evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the Board.

4 7. **Notice to Employers.** Respondent Jae Kuaen Shin shall notify all present
5 and prospective employers of the decision in case number 2465 and the terms, conditions and
6 restrictions imposed on Respondents by the decision. Within 30 days of the effective date of
7 this decision, and within 15 days of Respondents undertaking new employment, Respondents
8 shall cause Respondent Jae Kuaen Shin's direct supervisor, pharmacist-in-charge and/or owner to
9 report to the Board in writing acknowledging the employer has read the decision in case number
10 2465.

11 If Respondent Jae Kuaen Shin works for or is employed by or through a pharmacy
12 employment service, Respondent Jae Kuaen Shin must notify the direct supervisor, pharmacist-
13 in-charge, and/or owner at every pharmacy of the and terms conditions of the decision in case
14 number 2465 in advance of the Respondent commencing work at each pharmacy.

15 "Employment" within the meaning of this provision shall include any full-time, part-time,
16 temporary, relief or pharmacy management service as a pharmacist, whether the
17 Respondents is considered an employee or independent contractor.

18 8. **No Preceptorships, Supervision of Interns, Being Pharmacist-in-**
19 **Charge (PIC), or Serving as a Consultant.** Respondent Jae Kuaen Shin shall not supervise any
20 intern pharmacist or perform any of the duties of a preceptor, nor shall Respondent Jae Kuaen
21 Shin be the pharmacist-in-charge of any entity licensed by the Board, other than Jay's Drug, so
22 long as Respondent Jae Kuaen Shin holds an ownership.

23 9. **Reimbursement of Board Costs.** Respondents shall pay to the Board its
24 costs of investigation and prosecution in the amount of \$3,208.95. Respondent shall be permitted
25 to pay this amount in installment payments so long as the total sum is paid in full within the
26 second year of probation.

27 The filing of bankruptcy by Respondents shall not relieve Respondents of their
28 responsibility to reimburse the Board its costs of investigation and prosecution.

1 10. **Probation Monitoring Costs.** Respondents shall pay the costs associated
2 with probation monitoring as determined by the Board each and every year of probation. Such
3 costs shall be payable to the Board at the end of each year of probation. Failure to pay such costs
4 shall be considered a violation of probation.

5 11. **Status of License.** Respondents shall, at all times while on probation,
6 maintain an active current license with the Board, including any period during which suspension
7 or probation is tolled.

8 If Respondents' respective licenses expire or are cancelled by operation of law or
9 otherwise, upon renewal or reapplication, Respondents' respective licenses shall be subject to all
10 terms and conditions of this probation not previously satisfied.

11 12. **License Surrender while on Probation/Suspension.** Following the
12 effective date of this decision, should Respondents cease practice due to retirement or health, or
13 be otherwise unable to satisfy the terms and conditions of probation, Respondents may tender
14 their respective licenses to the Board for surrender. The Board shall have the discretion whether
15 to grant the request for surrender or take any other action it deems appropriate and reasonable.
16 Upon formal acceptance of the surrender of the license, Respondents will no longer be subject to
17 the terms and conditions of probation.

18 Upon acceptance of the surrender, Respondents shall relinquish their respective
19 pocket licenses to the Board within 10 days of notification by the Board that the surrender is
20 accepted. Respondents may not reapply for any license from the Board for three years from the
21 effective date of the surrender. Respondents shall meet all requirements applicable to the license
22 sought as of the date the application for that license is submitted to the Board.

23 13. **Notice to Employees** Respondent Jay's Pharmacy shall, upon or before the
24 effective date of this decision, ensure that all employees involved in permit operations are made
25 aware of all the terms and conditions of probation, either by posting a notice of the terms and
26 conditions, circulating such notice, or both. If the notice required by this provision is posted, it
27 shall be posted in a prominent place and shall remain posted throughout the probation period.
28 Respondent shall ensure that any employees hired or used after the effective date of this decision

1 are made aware of the terms and conditions my posting a notice, circulating a notice, or both.

2 "Employees" as used in this provision includes all full-time, part-
3 time, temporary and relief employees and independent contractors
4 employed or hired at any time during probation.

5 14. **Notification of Employment/Mailing Address Change.** Respondent Jae
6 Kuaen Shin shall notify the Board in writing within 10 days of any change of employment. Said
7 notification shall include the reasons for leaving and/or the address of the new employer,
8 supervisor or owner and work schedule if known. Respondent Jae Kuaen Shin shall notify the
9 Board in writing within 10 days of a change in name, mailing address or phone number.

10 15. **Tolling of Probation.** Should Respondent Jae Kuaen Shin, regardless of
11 residency, for any reason cease practicing pharmacy for a minimum of 40 hours per calendar
12 month with an average of 80 hours per month in any 6 consecutive months in California,
13 Respondent Jae Kuaen Shin must notify the Board in writing within 10 days of cessation of the
14 practice of pharmacy or the resumption of the practice of pharmacy. Such periods of time shall
15 not apply to the reduction of the probation period. It is a violation of probation for Respondent
16 Jae Kuaen Shin's probation to remain tolled pursuant to the provisions of this condition for a
17 period exceeding three years.

18 "Cessation of practice" means any period of time exceeding 30 days
19 in which Respondent is not engaged in the practice of pharmacy as
20 defined in Section 4052 of the Business and Professions Code.

21 16. **Violation of Probation.** If Respondents violate probation in any respect,
22 the Board, after giving Respondents notice and an opportunity to be heard, may revoke probation
23 and carry out the disciplinary order which was stayed. If a petition to revoke probation or an
24 accusation is filed against Respondents during probation, the Board shall have continuing
25 jurisdiction and the period of probation shall be extended, until the petition to revoke probation or
26 accusation is heard and decided.

27 If Respondents have not complied with any term or condition of probation, the
28 Board shall have continuing jurisdiction over Respondents, and probation shall automatically be

1 extended until all terms and conditions have been satisfied or the Board has taken other action as
2 deemed appropriate to treat the failure to comply as a violation of probation, to terminate
3 probation, and to impose the penalty which was stayed.

4 17. **Completion of Probation.** Upon successful completion of probation,
5 Respondents' respective licenses will be fully restored.

6 18. **Owners and Officers: Knowledge of the Law.** Respondent Jay's Drug
7 shall provide, within 30 days after the effective date of this decision, signed and dated statements
8 from its owners, including any owner or holder of 10% or more of the interest in Respondent or
9 Respondent's stock, and any officer, stating said individuals have read and are familiar with state
10 and federal laws and regulations governing the practice of pharmacy.

11 19. **No Ownership of Premises.** Respondents shall not acquire any new
12 ownership, legal or beneficial interest nor serve as a manager, administrator, member, officer,
13 director, trustee, associate, or partner of any additional business, firm, partnership, or corporation
14 licensed by the Board. If Respondents currently owns or has any legal or beneficial interest in, or
15 serves as a manager, administrator, member, officer, director, associate, or partner of any
16 business, firm, partnership, or corporation currently or hereinafter licensed by the Board,
17 Respondents may continue to serve in such capacity or hold that interest, but only to the extent of
18 that position or interest as of the effective of this decision.

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ACCEPTANCE

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I, Jae Kuaen Shin, have carefully read the above Stipulated Settlement and
Disciplinary Order and have fully discussed it with my attorney, Herbert L. Weinberg, Esq. I
understand the stipulation and the effect it will have on my Pharmacy Permit. I enter into this

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1 Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree
2 to be bound by the Decision and Order of the Board of Pharmacy.

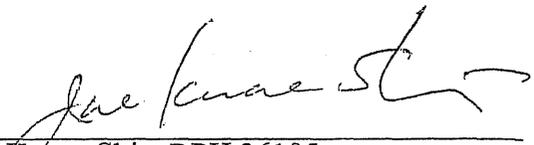
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5 DATED: 12/17/02

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Jae Kuaen Shin, RPH 36105
Respondent

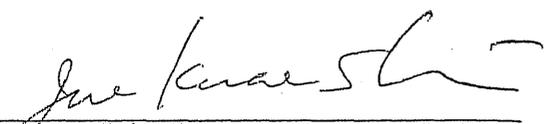
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10 DATED: 12/17/02

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Jae Kuaen Shin dba Jay's Drug, PHY 38175
Respondent

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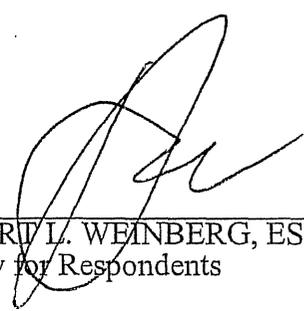
17 I have read and fully discussed with Respondents the terms and conditions and other
18 matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form
19 and content.

20

21 DATED: 12/26/02

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23



HERBERT L. WEINBERG, ESQ.
Attorney for Respondents

24

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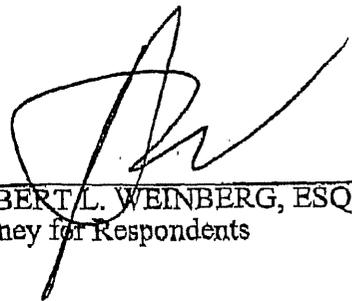
ENDORSEMENT

27

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

1 I have read and fully discussed with Respondents the terms and conditions and
 2 other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its
 3 form and content.

4
 5 DATED: 11/8/02

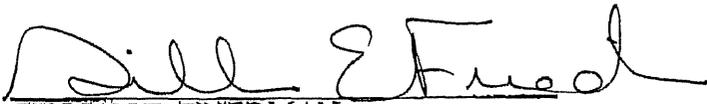
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 10 HERBERT L. WEINBERG, ESQ.
 11 Attorney for Respondents

12 ENDORSEMENT

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

15
 16 DATED: 12/2/02

17 BILL LOCKYER, Attorney General
 18 of the State of California

19 
 20 GILLIAN E. FRIEDMAN
 21 Deputy Attorney General
 22 Attorneys for Complainant

23 DOJ Docket Number: 03583110-LA2001AD2137

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

In the Matter of the Accusation Against:

JAY'S DRUG
3170 West Olympic Blvd. #D
Los Angeles, CA 90006
JAE KUAEN SHIN, Owner
Pharmacy Permit No. PHY 38175

and

JAE KUAEN SHIN
435 North Mansfield Avenue
Los Angeles, CA 90036
Pharmacist License No. RPH 36105

Respondents.

Case No. 2465

OAH No. L-2002050387

DECISION AND ORDER

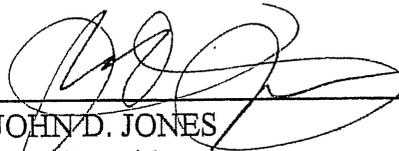
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on March 5, 2003.

It is so ORDERED February 3, 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 GILLIAN E. FRIEDMAN, State Bar No. 169207
Deputy Attorney General
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6 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 2465

12 JAY'S DRUG
13 3170 West Olympic Blvd. #D
Los Angeles, CA 90006
14 Pharmacy Permit No. PHY 38175
JAE KUAEN SHIN, Owner

ACCUSATION

15 and

16 JAE KUAEN SHIN
17 435 North Mansfield Avenue
Los Angeles, CA 90036
18 Pharmacist License No. RPH 36105

19 Respondents.

20
21 Complainant alleges:

22 PARTIES

23 1. Patricia F. Harris ("Complainant") brings this Accusation solely in her
24 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
25 Affairs.

26 2. On or about August 28, 1992, the Board of Pharmacy issued Pharmacy
27 Permit Number PHY 38175 to Jae Kuaen Shin to do business as Jay's Drug ("Respondent
28 Jay's"). Jae Kuaen Shin has been the Pharmacist-in-Charge since August 24, 1992. The

1 6. Section 4059 of the Code states, in pertinent part, that no person shall
2 furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist,
3 optometrist, or veterinarian. No person shall furnish any dangerous device, except upon the
4 prescription of a physician, dentist, podiatrist, optometrist, or veterinarian.

5 7. Section 4059.5 (e) of the Code states:

6 A dangerous drug or dangerous device shall not be transferred, sold, or delivered
7 to any person outside this state, whether foreign or domestic, unless the transferor, seller, or
8 deliverer does so in compliance with the laws of this state and of the United States and of the
9 state or country to which the drugs or devices are to be transferred, sold, or delivered.
10 Compliance with the laws of this state and the United States and of the state or country to which
11 the drugs or devices are to be delivered shall include, but not be limited to, determining that the
12 recipient of the drugs or devices is authorized by law to receive the drugs or devices.

13 8. Section 4160 of the Code states:

14 (a) No person shall act as a wholesaler of any dangerous drug or dangerous device
15 unless he or she has obtained a license from the board. Upon approval by the board and the
16 payment of the required fee, the board shall issue a license to the applicant.

17 (b) No selling or distribution outlet, located in this state, of any out-of-state
18 manufacturer, that has not obtained a license from the board, that sells or distributes only the
19 dangerous drugs or the dangerous devices of that manufacturer, shall sell or distribute any
20 dangerous drug or dangerous device in this state without obtaining a wholesaler's license from
21 the board.

22 (c) A separate license shall be required for each place of business owned or
23 operated by a wholesaler. Each license shall be renewed annually and shall not be transferable.

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

25 (a) All records of manufacture and of sale, acquisition, or disposition of dangerous
26 drugs or dangerous devices shall be at all times during business hours open to inspection by
27 authorized officers of the law, and shall be preserved for at least three years from the date of
28 making. A current inventory shall be kept by every . . . pharmacy . . . or establishment

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

5 (b) The owner, officer, and partner of any pharmacy . . . shall be jointly
6 responsible, with the pharmacist-in-charge or exemptee, for maintaining the records and
7 inventory described in this section.

8 10. Section 4328 of the Code states:

9 Unauthorized persons compounding, dispensing or furnishing dangerous drugs
10 Except as otherwise provided in this chapter, any person who permits the compounding or
11 dispensing of prescriptions, or the furnishing of dangerous drugs in his or her pharmacy, except
12 by a pharmacist, is guilty of a misdemeanor.

13 11. Section 4330 of the Code states:

14 (a) Any person who has obtained a license to conduct a pharmacy, who fails to
15 place in charge of the pharmacy a pharmacist, or any person, who by himself or herself, or by
16 any other person, permits the compounding or dispensing of prescriptions, or the furnishing of
17 dangerous drugs, in his or her pharmacy, except by a pharmacist, or as otherwise provided in this
18 chapter, is guilty of a misdemeanor.

19 (b) Any nonpharmacist owner who commits any act that would subvert or tend to
20 subvert the efforts of the pharmacist-in-charge to comply with the laws governing the operation
21 of the pharmacy is guilty of a misdemeanor.

22 12. Section 4332 of the Code states that any person who fails, neglects, or
23 refuses to maintain the records required by Section 4081 or who, when called upon by an
24 authorized officer or a member of the board, fails, neglects, or refuses to produce or provide the
25 records within a reasonable time, or who willfully produces or furnishes records that are false, is
26 guilty of a misdemeanor.

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13. Section 4342 of the Code states that:

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

(b) Any knowing or willful violation of any regulation adopted pursuant to Section 4006 shall be subject to punishment in the same manner as is provided in Sections 4336 and 4321.

14. Title 16, California Code of Regulations section 1716 states that:

Pharmacists shall not deviate from the requirements of a prescription except upon the prior consent of the prescriber or to select the drug product in accordance with Section 4047.6 of the Business and Professions Code. Nothing in this regulation is intended to prohibit a pharmacist from exercising commonly-accepted pharmaceutical practice in the compounding or dispensing of a prescription.

15. Title 16, California Code of Regulations section 1718 states that:

“Current Inventory” as used in Section 4232 of the Business and Professions Code shall be considered to include complete accountability for all dangerous drugs handled by every licensee enumerated in Section 4232. The controlled substances inventories required by Title 21, CFR, Section 1304 shall be available for inspection upon request for at least 3 years after the date of the inventory.

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

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1 DRUG CLASSIFICATIONS

2 17. The dangerous drugs, as defined in Business and Professions Code section
3 4022 are as follows:

4 a. Viagra is a dangerous drug pursuant to Business and Professions Code
5 section 4022 and is used in the treatment of Erectile Dysfunction.

6 b. Amoxicillin is a dangerous drug according to Business and Professions
7 Code, section 4022. Its indicated use is for use against susceptible bacteria causing infections of
8 the middle ear, tonsillitis, throat infections, laryngitis, bronchitis, and pneumonia. It is also used
9 in treating urinary tract infections, skin infections, and gonorrhea.

10 FIRST CAUSE FOR DISCIPLINE

11 (Furnished Dangerous Drugs Without a Prescription)

12 18. Respondents Shin and Jay's are subject to disciplinary action under
13 sections 4301(j) and (o) and 4059 of the Code in conjunction with Title 16 California Code of
14 Regulations section 1716 in that Respondents furnished dangerous drugs without a prescription.
15 The circumstances are as follows:

16 a. On or about January 10, 2001, at Jay's Drugs, Pong Shin, the spouse of
17 Respondent Shin, furnished an undercover officer with twenty-one capsules of amoxicillin
18 500 mg without a prescription. Respondent Shin was present at the time the undercover officer
19 purchased the amoxicillin without a prescription.

20 b. On January 26, 2001, Respondent Shin provided Board inspectors with a
21 log listing customers Viagra was dispensed to without prescriptions. Between April and
22 November 2000, Respondent Shin dispensed Viagra to customers without prescriptions. The log
23 listed the customer's name, address and/or telephone number and amount of Viagra dispensed.
24 Respondent admitted to the inspectors that these customers were foreign tourists leaving the
25 United States and that there were no prescriptions for these customers.

26 SECOND CAUSE FOR DISCIPLINE

27 (Unauthorized Person Furnishing Drugs)

28 19. Respondents Shin and Jay's are subject to disciplinary action under

1 sections 4301(j) and (o), 4328 and 4330 of the Code in that Respondents allowed an
2 unauthorized person to furnish dangerous drugs. The circumstances are described above in
3 paragraph 18(a).

4 THIRD CAUSE FOR DISCIPLINE

5 (Acting as a Wholesaler without a License)

6 20. Respondents Shin and Jay's are subject to disciplinary action under
7 sections 4301(j) and (o) and 4160 of the Code in that Respondents acted as a wholesaler of
8 dangerous drugs without a wholesaler's license. The circumstances are that on or about
9 November 8, 2000, Respondent Shin shipped, using the United States Postal Service, Viagra, a
10 dangerous drug to a business recipient in Korea.

11 FOURTH CAUSE FOR DISCIPLINE

12 (Failure to Maintain Records)

13 21. Respondents Shin and Jay's are subject to disciplinary action under
14 sections 4301(o), 4081(a) and (b) and 4332 of the Code in conjunction with Title 16, California
15 Code of Regulations section 1718 in that Respondents failed to maintain required records and
16 inventory. The circumstances are as follows:

17 a. On January 19, 2001, the Board inspector requested all acquisition and
18 disposition records for Viagra 50 and 100 mg for the period of January 1, 2000 to December 31,
19 2000 be available for inspection on January 24, 2001.

20 b. On January 26, 2001, the Board inspector returned to Jay's Drugs to
21 inspect the requested records. Respondent Shin failed to have the requested records available.
22 Respondent Shin provided the Board inspector with the log described above in paragraph 18(b).
23 The Board inspector again requested the records.

24 c. On February 15, 2001, the Board inspectors returned to Jay's Drugs to
25 inspect the requested records. The records provided by Respondent Shin were handwritten log of
26 invoices, Cardinal Health invoices, prescription documents for Viagra 100mg, and a Drug
27 utilization report for Viagra 100mg. No prescriptions or utilization reports for Viagra 50mg, as
28 required, were provided by Respondent Shin.

1 SIXTH CAUSE FOR DISCIPLINE

2 (Mislabeled and Expired Drug Inventory)

3 23. Respondents Shin and Jay's are subject to disciplinary action under
4 sections 4301(f), (j) and (o) and 4342 of the Code in that Respondents had mislabeled and
5 expired drugs in his store inventory. The circumstances are as follows:

6 a. On January 19, 2001, while conducting a physical inspection of the
7 premises, Board inspectors discovered numerous expired medications. These medications are:

8 <u>Drug</u>	<u>Expiration Date</u>
9 Valu-Dryl	December 2000
10 Pt Zovirax Susp	August 2000
11 Pt Dimetane DC generic	June 2000
12 Empty Prometh DM on shelves	July 2000
13 BG Tracer Strips	October 1994
14 Hypo tears	April 2000

15 b. Board inspectors discovered numerous prescription vials with expired
16 medication from other pharmacies. These medications are:

17 <u>Drug</u>	<u>Expiration Date</u>	<u>Pharmacy</u>
18 Ketoprofen 500 (40 dosage units)	July 1999	Jay's Drug prescription # 141549
19 Perphenazine/Amitrip 2/25	November 1999	Jay's Drug prescription # 147288
20 Urispas 100 mg	June 2000	Jay's Drug prescription # 159116
21 Apap Cod #3	December 1998	Kaju Pharmacy prescription #66407
22 Theodur 100 generic	February 1998	Jay's Drug prescription #133419
23 Cytomel 5 mcg	October 2000	Jay's Drug prescription #159901

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1 c. Board inspectors discovered numerous mislabeled or unlabeled
2 medications. These medications are:
3 Mislabeled Chlorpheniramine 4mg tablets
4 Mislabeled Cardizem CD 180
5 Mislabeled Diovan Hct 80 mg
6 Mislabeled Cartia 240 XT
7 Unlabeled medication
8 Unlabeled Cardura

9 d. Board inspectors discovered Respondent Shin had medication for his wife
10 in the store's inventory drawer. These medications are Kaiser prescription number 187518223,
11 for Methocarbamol 750, expires May 2002, and Kaiser prescription number 10744453, for
12 Celebrex 200, expires February 2002.

13 SEVENTH CAUSE FOR DISCIPLINE

14 (Exporting Dangerous Drugs)

15 24. Respondents Shin and Jay's are subject to disciplinary action under
16 sections 4301(j) and (o) and 4059.5(e) of the Code in that Respondents furnished dangerous
17 drugs without a prescription. The circumstances are described above in paragraphs 18 and 20.

18 PRAYER

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

21 1. Revoking or suspending Pharmacy Permit Number PHY 38175, issued to
22 Jae Kuaen Shin to do business as Jay's Drug;

23 2. Revoking or suspending Pharmacist License Number RPH 36105, issued
24 to Jae Kuaen Shin;

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3. Ordering Jay's Drug and Jae Kuaen Shin 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: 2/21/02

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