

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

In the Matter of the Accusation Against:

Case No. 3094

JAMES ALTON CHINN
3074 Curlew Street
San Diego, CA 92103

Pharmacist License No. RPH 27782

Respondent.

DECISION AND ORDER

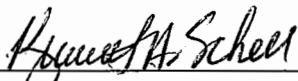
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on May 27, 2009.

It is so ORDERED on April 27, 2009.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



KENNETH H. SCHELL
Board President

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 KATHLEEN B.Y. LAM, State Bar No. 95379
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8 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

13 JAMES ALTON CHINN, RPH
14 3074 Curlew Street
San Diego, CA 92103

15 Pharmacist License No. RPH 27782

16 Respondent.

Case No. 3094

OAH No. L-2007120458

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

17
18 In the interest of a prompt and speedy settlement of this matter, consistent with the
19 public interest and the responsibility of the Board of Pharmacy (Board), the parties hereby agree
20 to the following Stipulated Settlement and Disciplinary Order which will be submitted to the
21 Board for approval and adoption as the final disposition of the Accusation.

22 PARTIES

23 1. Virginia K. Herold (Complainant) is the Executive Officer of the Board of
24 Pharmacy. She brought this action solely in her official capacity and is represented in this matter
25 by Edmund G. Brown Jr., Attorney General of the State of California, by Kathleen B.Y. Lam,
26 Deputy Attorney General.

27 2. Respondent James Alton Chinn (Respondent) is represented in this
28 proceeding by attorney John A. Cronin, Esq., whose address is 5720 Oberlin Drive, San Diego,

1 CA 92121-1723.

2 3. On or about July 14, 1972, the Board of Pharmacy issued Pharmacist
3 License No. RPH 27782 to Respondent. The Pharmacist License was in full force and effect at
4 all times relevant to the charges brought in Accusation No. 3094, and will expire on June 30,
5 2009, unless renewed.

6 JURISDICTION

7 4. Accusation No. 3094 was filed before the Board, and is currently pending
8 against Respondent. The Accusation and all other statutorily required documents were properly
9 served on Respondent on November 5, 2007. Respondent timely filed his Notice of Defense
10 contesting the Accusation. A copy of Accusation No. 3094 is attached as Exhibit A, and
11 incorporated herein by reference.

12 ADVISEMENT AND WAIVERS

13 5. Respondent has carefully read, fully discussed with counsel, and
14 understands the charges and allegations in Accusation No. 3094. Respondent has also carefully
15 read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and
16 Disciplinary Order.

17 6. Respondent is fully aware of his legal rights in this matter, including the
18 right to a hearing on the charges and allegations in the Accusation; the right to confront and
19 cross-examine the witnesses against him; the right to present evidence and to testify on his own
20 behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the
21 production of documents; the right to reconsideration and court review of an adverse decision;
22 and all other rights accorded by the California Administrative Procedure Act and other applicable
23 laws.

24 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
25 each and every right set forth above.

26 CULPABILITY

27 8. For purposes of settlement, Respondent hereby admits that at a hearing,
28 Complainant could establish a prima facie case with respect to the allegations contained in

1 Accusation No. 3094. For the purpose of resolving the Accusation without the expense and
2 uncertainty of further proceedings, Respondent hereby gives up the right to contest those charges.

3 9. Respondent agrees that his Pharmacist License is subject to discipline and
4 he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary
5 Order below.

6 CONTINGENCY

7 10. The parties understand and agree that facsimile copies of this Stipulated
8 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
9 force and effect as the originals.

10 11. This Stipulation shall be subject to approval by the Board. Respondent
11 understands and agrees that counsel for Complainant and the staff of the Board may
12 communicate directly with the Board regarding this stipulation and settlement, without notice to
13 or participation by Respondents.

14 12. By signing this Stipulation, Respondent understands and agrees that he
15 may not withdraw or seek to rescind the stipulation prior to the time the Board considers and acts
16 upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated
17 Settlement of License and Disciplinary Order shall be of no force or effect, except for this
18 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall
19 not be disqualified from further action by having considered this matter.

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

23 DISCIPLINARY ORDER

24 IT IS HEREBY ORDERED that Pharmacist License No. RPH 27782 issued to
25 Respondent James Alton Chinn is revoked. However, the revocation is stayed and Respondent is
26 placed on probation for three (3) years on the following terms and conditions.

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1 1. **Actual Suspension - Pharmacist.** License Number RPH 27782 issued to
2 Respondent James Alton Chinn is suspended for a period of twenty-one (21) days.

3 During suspension, Respondent shall not enter any pharmacy area or any portion
4 of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other
5 distributor of drugs which is licensed by the Board, or any manufacturer, or where dangerous
6 drugs and devices or controlled substances are maintained. Respondent shall not practice
7 pharmacy nor do any act involving drug selection, selection of stock, manufacturing,
8 compounding, dispensing or patient consultation; nor shall Respondent manage, administer, or
9 be a consultant to any licensee of the Board, or have access to or control the ordering,
10 manufacturing or dispensing of dangerous drugs and devices or controlled substances.

11 Respondent shall not engage in any activity that requires the professional
12 judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of
13 pharmacy. Respondent shall not perform the duties of a pharmacy technician or an exemptee for
14 any entity licensed by the Board. Subject to the above restrictions, Respondent may continue to
15 own or hold an interest in any pharmacy in which he holds an interest at the time this decision
16 becomes effective unless otherwise specified in this order.

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

19 Respondent shall report any of the following occurrences to the Board, in writing,
20 within 72 hours of such occurrence:

- 21 • an arrest or issuance of a criminal complaint for violation of any provision of the
22 Pharmacy Law, state and federal food and drug laws, or state and federal
23 controlled substances laws;
- 24 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to
25 any criminal complaint, information or indictment;
- 26 • a conviction of any crime;
- 27 • discipline, citation, or other administrative action filed by any state and federal
28 agency which involves Respondent's license or which is related to the practice

1 of pharmacy or the manufacturing, obtaining, handling or distribution or billing
2 or charging for any drug, device or controlled substance.

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

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

13 5. **Cooperation with Board Staff.** Respondent shall cooperate with the
14 Board's inspectional program and in the Board's monitoring and investigation of Respondent's
15 compliance with the terms and conditions of his probation. Failure to comply shall be
16 considered a violation of probation.

17 6. **Continuing Education.** Respondent shall provide evidence of efforts
18 to maintain skill and knowledge as a pharmacist as directed by the Board.

19 7. **Notice to Employers.** Respondent shall notify all present and
20 prospective employers of the decision in Case Number 3094 and the terms, conditions and
21 restrictions imposed on Respondent by the decision. Within 30 days of the effective date of
22 this decision, and within 15 days of Respondent undertaking new employment, Respondent
23 shall cause his direct supervisor, pharmacist-in-charge and/or owner to report to the Board in
24 writing acknowledging the employer has read the decision in Case Number 3094.

25 If Respondent works for or is employed by or through a pharmacy employment
26 service, Respondent must notify the direct supervisor, pharmacist-in-charge, and/or owner at
27 every pharmacy of the and terms conditions of the decision in Case Number 3094 in advance
28 of the Respondent commencing work at each pharmacy.

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

4 8. **No Preceptorships, Supervision of Interns, Being Pharmacist-in-**
5 **Charge (PIC), or Serving as a Consultant.** Respondent shall not perform any of the duties
6 of a preceptor, nor shall Respondent be the pharmacist-in-charge of any entity licensed by the
7 Board unless otherwise specified in this order.

8 9. **Reimbursement of Board Costs.** Respondent shall pay to the Board
9 its costs of investigation and prosecution in the amount of \$2,900. Respondent shall make
10 said quarterly payments until the total amount has been paid.

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

13 10. **Probation Monitoring Costs.** Respondent shall pay the costs
14 associated with probation monitoring as determined by the Board each and every year of
15 probation. Such costs shall be payable to the Board at the end of each year of probation.
16 Failure to pay such costs shall be considered a violation of probation.

17 11. **Ethics Program.** During the term of probation, Respondent shall
18 enroll in and complete a course in ethics approved in advance by the Board or its designee.
19 All expenses associated with the ethics course shall be the responsibility of Respondent. The
20 Board shall identify courses that will satisfy this requirement and shall provide Respondent
21 with contact information regarding enrollment in an acceptable course. If the Board cannot
22 identify an acceptable course within a time period that will allow Respondent to complete the
23 course within the term of probation, this requirement will be deemed waived by the Board.

24 Respondent shall submit a certificate of completion to the Board or its designee
25 within five (5) days after completing the course.

26 12. **Status of License.** Respondent shall, at all times while on probation,
27 maintain an active current license with the Board, including any period during which
28 suspension or probation is tolled.

1 If Respondent's license expires or is cancelled by operation of law or otherwise,
2 upon renewal or reapplication, Respondent's license shall be subject to all terms and
3 conditions of this probation not previously satisfied.

4 13. **License Surrender while on Probation/Suspension.** Following
5 the effective date of this decision, should Respondent cease practice due to retirement or
6 health, or be otherwise unable to satisfy the terms and conditions of probation, Respondent
7 may tender his license to the Board for surrender. The Board shall have the discretion whether
8 to grant the request for surrender or take any other action it deems appropriate and reasonable.
9 Upon formal acceptance of the surrender of the license, Respondent will no longer be subject
10 to the terms and conditions of probation.

11 Upon acceptance of the surrender, Respondent shall relinquish his pocket
12 license to the Board within 10 days of notification by the Board that the surrender is accepted.
13 Respondent may not reapply for any license from the Board for three years from the effective
14 date of the surrender. Respondent shall meet all requirements applicable to the license sought
15 as of the date the application for that license is submitted to the Board.

16 14. **Notification of Employment/Mailing Address Change.** Respondent
17 shall notify the Board in writing within 10 days of any change of employment. Said
18 notification shall include the reasons for leaving and/or the address of the new employer,
19 supervisor or owner and work schedule if known. Respondent shall notify the Board in
20 writing within 10 days of a change in name, mailing address or phone number.

21 15. **Tolling of Probation.** Should Respondent, regardless of residency, for
22 any reason cease practicing pharmacy for a minimum of forty (40) hours per calendar month
23 in California, Respondent must notify the Board in writing within ten (10) days of cessation of
24 the practice of pharmacy or the resumption of the practice of pharmacy. Such periods of time
25 shall not apply to the reduction of the probation period. It is a violation of probation for
26 Respondent's probation to remain tolled pursuant to the provisions of this condition for a
27 period exceeding three years.

28 "Cessation of practice" means any period of time exceeding 30 days in which

1 Respondent is not engaged in the practice of pharmacy as defined in Section 4052 of the
2 Business and Professions Code.

3 16. **Tolling of Suspension.** If Respondent leaves California to reside or
4 practice outside this state, for any period exceeding 10 days (including vacation), Respondent
5 must notify the Board in writing of the dates of departure and return. Periods of residency or
6 practice outside the state, or any absence exceeding a period of 10 days, shall not apply to the
7 reduction of the suspension period.

8 Respondent shall not practice pharmacy upon returning to this state until
9 notified by the Board that the period of suspension has been completed.

10 17. **Violation of Probation.** If Respondent violates probation in any
11 respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke
12 probation and carry out the disciplinary order which was stayed. If a petition to revoke
13 probation or an accusation is filed against Respondent during probation, the Board shall have
14 continuing jurisdiction and the period of probation shall be extended, until the petition to
15 revoke probation or accusation is heard and decided.

16 If Respondent has not complied with any term or condition of probation, the
17 Board shall have continuing jurisdiction over Respondent, and probation shall automatically
18 be extended until all terms and conditions have been satisfied or the Board has taken other
19 action as deemed appropriate to treat the failure to comply as a violation of probation, to
20 terminate probation, and to impose the penalty which was stayed.

21 18. **Completion of Probation.** Upon successful completion of probation,
22 Respondent's license will be fully restored.

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DATED: 1/20/2009.

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

DATED: 1/20/2009


JOHN A. CRONIN
Attorney for Respondent

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DATED: 1/23/07

JAMES M. LEDAKIS
Supervising Deputy Attorney General

Attorneys for Complainant

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Exhibit A
Accusation No. 3094

1 EDMUND G. BROWN JR., Attorney General
of the State of California
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Supervising Deputy Attorney General
3 KATHLEEN B.Y. LAM, State Bar No. 95379
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8 Attorneys for Complainant
9

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

13 In the Matter of the Accusation Against:

Case No. 3094.

14 JAMES ALTON CHINN, RPH
3074 Curlew Street
15 San Diego, CA 92103

A C C U S A T I O N

16 Original Pharmacist License No: RPH 27782

17 Respondent.
18

19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about July 14, 1972, the Board of Pharmacy issued Original Pharmacist
24 License Number RPH 27782 to James Alton Chinn, RPH (Respondent). The license was in full
25 force and effect at all times relevant to the charges brought herein and will expire on June 30,
26 2009, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following sections of the Business and Professions Code:

A. Section 4301 of the Code states in pertinent part:

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

"....

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

"....

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

"....

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

"...."

B. Section 4063 states:

"No prescription for any dangerous drug or dangerous device may be refilled except upon authorization of the prescriber. The authorization may be given orally or at the time of giving the original prescription. No prescription for any dangerous drug that is a controlled substance may be designated refillable as needed."

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1 C. Section 4059 states in pertinent part that "[a] person may not furnish any
2 dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist,
3 veterinarian, or naturopathic doctor pursuant to Section 3640.7. . ."

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

8 4. This Accusation also refers to the following sections of the California Health &
9 Safety Code (H&S Code):

10 A. H&S Code section 11171 states that "no person shall prescribe, administer or
11 furnish a controlled substance except under the conditions and in the manner provided by this
12 division."

13 B. H&S Code section 11173 states in pertinent part:

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

17 "..."

18 C. H&S Code section 11200(a) provides that "no person shall dispense or refill a
19 controlled substance prescription more than six months after the date thereof."

20 5. This Accusation also refers to Title 16, California Code of Regulation (CCR)
21 section 1716, which states:

22 "Pharmacists shall not deviate from the requirements of a prescription except upon the
23 prior consent of the prescriber or to select the drug product in accordance with Section 4073 of
24 the Business and Professions Code. Nothing in this regulation is intended to prohibit a
25 pharmacist from exercising commonly-accepted pharmaceutical practice in the compounding or
26 dispensing of a prescription."

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1 DRUGS

2 6. Hydrocodone with APAP 7.5/500 is a dangerous drug and a Schedule III
3 controlled substance under H&S Code section 11056.

4 7. Hydrocodone with APAP 5/500 is a dangerous drug and a Schedule III controlled
5 substance under H&S Code section 11056.

6 8. "Ambien" is a brand name for zolpidem, a dangerous drug and a Schedule IV
7 controlled substance under H&S Code section 11057.

8 CHARGES AND ALLEGATIONS

9 9. Between March 2002 and approximately July 2005, while employed as a
10 pharmacist at UCSD Medical Center Pharmacy in San Diego, California, Respondent provided
11 his wife with approximately 220 tablets of hydrocodone/APAP 7.5/500 via fraudulent
12 prescriptions and fraudulent refills of those prescriptions.

13 10. On or about September 30, 2005 and again on or about October 31, 2005,
14 Respondent fraudulently refilled a legitimate prescription, dated August 8, 2005, for his wife for
15 hydrocodone/APAP 5/500. The original prescription clearly stated no refills.

16 11. On or about January 10, 2006, March 15, 2006, and May 12, 2006, Respondent
17 fraudulently refilled a legitimate prescription, dated January 3, 2006, for his wife for 10 tablets of
18 hydrocodone/APAP 5/500. No refills were authorized on the original prescriptions. Further,
19 Respondent provided his wife with 40 tablets for each of the three fraudulent refills.

20 12. On or about July 24, 2003 and again on or about May 6, 2004, Respondent's wife
21 was legally prescribed Ambien. Respondent refilled each of these prescriptions without
22 authorization and outside the 6-month limit for refills of controlled substances, on February 6,
23 2004 and February 22, 2005, respectively.

24 CHARGES AND ALLEGATIONS

25 FIRST CAUSE FOR DISCIPLINE

26 (Unprofessional Conduct: Repeated Acts of Dishonesty and Fraud)

27 13. Respondent is subject to disciplinary action under section 4301(f) in that over a
28 long period of time he stole drugs from his employer, as more particularly alleged above and

1 incorporated herein by reference.

2 SECOND CAUSE FOR DISCIPLINE

3 (Unprofessional Conduct: Unauthorized Refilling of Prescriptions)

4 14. Respondent is subject to disciplinary action under section 4301(o) in conjunction
5 with section 4063 for unauthorized refilling of prescriptions, as more particularly alleged above
6 and incorporated herein by reference.

7 THIRD CAUSE FOR DISCIPLINE

8 (Unprofessional Conduct: Illegal Furnishing of a Controlled Substance)

9 15. Respondent is subject to disciplinary action under section 4301(j) in conjunction
10 with H&S Code section 11171 and under section 4301(o) in conjunction with section 4059 in
11 that he illegally furnished controlled substances/dangerous drugs to his wife, as more
12 particularly alleged above and incorporated herein by reference.

13 FOURTH CAUSE FOR DISCIPLINE

14 (Unprofessional Conduct: Obtaining a Controlled Substance
15 by Fraud, Deceit, Subterfuge or Concealment of a Material Fact)

16 16. Respondent is subject to disciplinary action under section 4301(j) in conjunction
17 with H&S Code section 11173 in that he obtained controlled substances by fraud, deceit,
18 subterfuge or concealment of a material fact, as more particularly alleged above and incorporated
19 herein by reference.

20 FIFTH CAUSE FOR DISCIPLINE

21 (Unprofessional Conduct: Unauthorized Deviation From Prescription)

22 17. Respondent is subject to disciplinary action under section 4301(o) in conjunction
23 with CCR section 1716 in that, regarding the hydrocodone/APAP 5/500 he supplied his wife,
24 Respondent's refills were for more tablets (40 per refill) than was originally prescribed (10).

25 SIXTH CAUSE FOR DISCIPLINE

26 (Unprofessional Conduct: Violation of Board Law re Refilling Prescriptions)

27 18. Respondent is subject to disciplinary action under section 4301(j) in conjunction
28 with H&S Code section 11200 in that, with regard to the Ambien he supplied his wife, not only

1 did he furnish it without authorization but also outside the time limit for any refill of any
2 controlled substance, as more particularly alleged above and incorporated herein by reference.

3 PRAYER

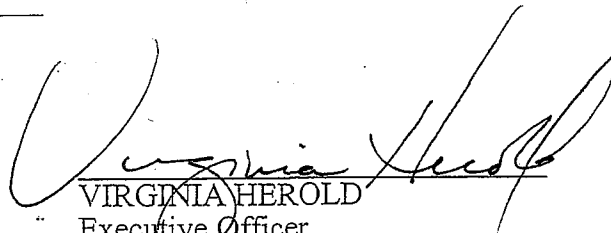
4 WHEREFORE, Complainant requests that a hearing be held on the matters herein
5 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

6 1. Revoking or suspending Original Pharmacist License Number RPH 27782, issued
7 to James Alton Chinn, RPH;

8 2. Ordering James Alton Chinn, RPH to pay the Board of Pharmacy the reasonable
9 costs of the investigation and enforcement of this case, pursuant to Business and Professions
10 Code section 125.3;

11 3. Taking such other and further action as deemed necessary and proper.

12 DATED: 10/22/02

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

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