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

In the Matter of the Accusation Against: **MICHELLE H. MAI** 16051 E. Trevino Drive Fountain Hills, AZ 85268 Pharmacist License No. RPH 58012 Respondent.	Case No. 3234

DECISION AND ORDER

The attached Stipulated Revocation of License and 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 January 28, 2010.

It is so ORDERED on December 29, 2009.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By Kenneth H. Schell

KENNETH H. SCHELL
Board President

ORIGINAL

EDMUND G. BROWN JR.
Attorney General of California
ARTHUR TAGGART
Supervising Deputy Attorney General
STERLING A. SMITH
Deputy Attorney General
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Attorneys for Complainant

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

In the Matter of the Accusation Against: **MICHELLE H. MAI** **16051 E. Trevino Drive** **Fountain Hills, Arizona 85268** **Pharmacist License No. RPH 58012** Respondent.	Case No. 3234 OAH Case No. 2009080771 **STIPULATION FOR REVOCATION OF LICENSE AND ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties in this proceeding that the following matters are true:

PARTIES

1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy. She brought this action solely in her official capacity and is represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California, by Sterling A. Smith, Deputy Attorney General.

2. Michelle H. Mai (Respondent) is represented in this proceeding by attorney Brenda Maloney, whose address is Quarles & Brady, LLP, One Renaissance Square, Two North Central Avenue, Phoenix, Arizona 85004.

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3. On or about December 29, 2005, the Board of Pharmacy issued Pharmacist License No. RPH 58012 to Michelle H. Mai (Respondent). The license expired on December 31, 2009, and has not been renewed.

JURISDICTION

4. Accusation No. 3234 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs. The Accusation and all other statutorily required documents were properly served on Respondent on December 17, 2008. Respondent timely filed her Notice of Defense contesting the Accusation. On May 26, 2009, an Amended Accusation was filed and on June 25, 2009, served upon Respondent along with all other statutorily required documents. A copy of Amended Accusation No. 3234 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Amended Accusation No. 3234. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulation for Revocation of License and Order.

6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

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

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Amended Accusation No. 3234, agrees that cause exists for discipline.

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9. Respondent agrees to outright revocation of her expired Pharmacist License No. RPH 58012, and that revocation shall constitute the imposition of discipline against Respondent. This Stipulation constitutes a record of discipline and shall become a part of Respondent's license history with the Board. Respondent understands that upon the effective date of the decision, Respondent has no right to perform or otherwise act as a pharmacist in the State of California. Respondent understands that by signing this stipulation she enables the Board to issue an order revoking her Pharmacist License without further process.

10. Respondent understandas and agrees that if she ever applies for licensure or petitions for reinstatement in the State of California, the Board will treat it as a petition for reinstatement. Respondent must comply with all laws, regulations and procedures for licensure in effect at the time an application or petition is filed, and all the charges and allegations contained in the Amended Accusation No. 3234 shall be true, correct and admitted by Respodnent when the Board determines whether to grant or deny the application or petition.

CONTINGENCY

11. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and revocation, without notice to or participation by Respondent or her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulation for Revocation of License shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that facsimile copies of this Stipulation for Revocation of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

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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 Order:

ORDER

IT IS HEREBY ORDERED that Pharmacist License No. RPH 58012, issued to Respondent Michelle H. Mai is revoked outright by the Board of Pharmacy.

1. The revocation of Respondent's Pharmacist License shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

2. Respondent shall lose all rights and privileges as a pharmacist in California as of the effective date of the Board's Decision and Order.

3. Respondent shall cause to be delivered to the Board her license, license certificate(s) or before the effective date of the Decision and Order.

4. Respondent may not apply, re-apply or petition for any licensure or registration of the Board for three (3) years from the effective date of the Decision and Order.

5. If Respondent ever applies for licensure or petitions for reinstatement in the State of California, the Board shall treat it as a new application for licensure. Respondent must comply with all the laws, regulations and procedures for licensure in effect at the time the application or petition is filed, and all of the charges and allegations contained in Amended Accusation No. 3234 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the application.

6. Should Respondent ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Amended Accusation, No. 3234 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

7. Respondent shall pay the Board its costs of investigation and enforcement in the amount of $2,996.00 prior to issuance of a new or reinstated license.

ACCEPTANCE

I have carefully read the above Stipulation for Revocation of License and Order and have fully discussed it with my attorney, Brenda Maloney. I understand the stipulation and the effect it will have on my Pharmacist License. I enter into this Stipulation for Revocation of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 11/1/09

MICHELLE H. MAI, Respondent

I have read and fully discussed with Respondent Michelle H. Mai the terms and conditions and other matters contained in this Stipulation for Revocation of License and Order. I approve its form and content.

DATED: 11/2/09

Quarles & Brady, LLP

BY: BRENDA MALONEY
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulation for Revocation of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated: November 2, 2009

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of California
ARTHUR TAGGART
Supervising Deputy Attorney General

STERLING A. SMITH
Deputy Attorney General
Attorneys for Complainant

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Stipulation.rtf

Exhibit A

Amended Accusation No. 3234

EDMUND G. BROWN, JR., Attorney General
of the State of California
ARTHUR TAGGART
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Attorneys for Complainant

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

In the Matter of the Accusation Against: MICHELLE H. MAI 15837 E. Palomino Blvd. Fountain Hills, Arizona 85268 Pharmacy License No. RPH 58012 Respondent.	Case No. 3234 AMENDED ACCUSATION

Complainant alleges:

PARTIES

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

2. On or about December 29, 2005, the Board of Pharmacy issued Pharmacist License No. RPH 58012 to Michelle H. Mai (Respondent). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2009, unless renewed. Respondent also holds Pharmacist License No. 12319 issued by the Arizona State Board of Pharmacy, restricted as alleged herein.

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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 laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 490 of the Code states, in pertinent part, that:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendre."

5. Section 493 of the Code states, in pertinent part, that:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of the licensee in question."

6. Section 4301 of the Code states:

"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.

...

(l) The conviction of a crime substantially related to the qualifications, functions, or duties of a licensee under this chapter.

...

(n) The revocation, suspension, or other discipline by another state of a license to practice pharmacy, operate a pharmacy, or do any other act for which a license is required by this chapter."

...

7. Section 4301.5(a) of the Code states, in pertinent part:

"If a pharmacist possesses a license or is otherwise authorized to practice pharmacy in any other state or by an agency of the federal government, and that license or authority is suspended or revoked, the pharmacist's license shall be suspended automatically for the duration or revocation, unless terminated or rescinded as provided in subdivision (c)."

8. Section 125.3 of the Code states, 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.

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Crime)

9. Respondent is subject to disciplinary action for unprofessional conduct under sections 490 and 4301(l) of the Code in that Respondent is convicted of a crime substantially related to the qualifications, functions, or duties of the pharmacist license issued to

Respondent. On or about November 17, 2008, in *United States of America v. Michelle Hoa-Chuong Mai*, United States District Court, District of Arizona, Case No. CR-08-00592-001PHX-FJM, Respondent entered her plea of guilty to violation of Title 18, United States Code section 1341 (mail fraud), a felony, whereby Respondent and Robert Hahn knowingly and willfully devised and intend to devise a scheme and artifice to defraud and to obtain money by means of materially false and fraudulent pretenses and representations. As part of her sentence, Respondent is prohibited from the practice of pharmacy until June 16, 2013. The circumstances of Respondent's felony conviction are given below.

(a) Respondent and Robert Hahn, both licensed pharmacists employed at Basha's Pharmacy #19, 3115 S. McClintock Road, Tempe, Arizona., submitted false and fraudulent prescription labels with rebate coupons to various pharmaceutical companies and requested rebate checks by mail to Respondent and her co-conspirator.

(b) Between September 2004 and August 2005, more than 2,500 false and fraudulent prescriptions were issued by Respondent and Robert Hahn, resulting in unearned rebate checks totaling about $29,749.60.

SECOND CAUSE FOR DISCIPLINE

(Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

10. Respondent is subject to disciplinary action for unprofessional conduct under section 4301(f) of the Code in that Respondent committed acts of moral turpitude, dishonesty, fraud, deceit and corruption during the course of her employment as a pharmacist at Basha's Pharmacy #19, 3115 S. McClintock Road, Tempe, Arizona. The circumstances are as set forth in Paragraph 9 hereof, incorporated herein, and concern fraudulent and false prescription orders processed by Respondent for controlled substances and other medications that included, but were not limited to, Triazolam .25 mg tablets, Tussionex Suspension, and Phentermine 15 mg capsules. Respondent also offered, delivered, received, or accepted unearned consideration while engaged in such conduct, and failed to maintain prescription records as required by law.

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THIRD CAUSE FOR DISCIPLINE

(Out of State Discipline)

11. Respondent is subject to disciplinary action for unprofessional conduct under section 4301(n) of the Code in that on or about January 25, 2006, the Arizona State Board of Pharmacy entered its Order No. 05-33-PHR(B) subjecting Respondent's Pharmacist License No. 12319 issued by the Arizona State Board of Pharmacy to discipline by suspending said license for a minimum of one year and upon termination of her suspension, placing Respondent on probation for a period of two years from the final date of suspension. On or about January 24, 2007, the Arizona State Board of Pharmacy terminated suspension of Respondent's Pharmacist License No. 12319 and imposed two years probation thereafter against Respondent.

PRAYER

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

1. Revoking or suspending Pharmacist License No. RPH 58012 issued to Michelle H. Mai;

2. Ordering Michelle H. Mai 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; and

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

DATED: 5/26/09

Virginia Herold

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