

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

In the Matter of the Accusation Against:

Case No. 3297

**SHERMAN LUM**  
466 4<sup>th</sup> Avenue  
San Francisco, CA 94118

Original Pharmacy Technician  
Registration No. RPH 21342

Respondent.

**DECISION AND ORDER**

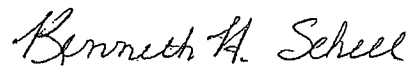
The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on April 8, 2010.

It is so ORDERED on March 9, 2010.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By



\_\_\_\_\_  
KENNETH H. SCHELL  
Board President

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 JOSHUA A. ROOM  
Deputy Attorney General  
4 State Bar No. 214663  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 703-1299  
6 Facsimile: (415) 703-5480  
*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:

Case No. 3297

11 **SHERMAN LUM**  
12 **466 4th Avenue**  
13 **San Francisco, CA 94118**

**STIPULATED SURRENDER OF  
LICENSE AND ORDER**

14 **Pharmacist License No. RPH 21342**

15 Respondent.

16 In the interest of a prompt and speedy resolution of this matter, consistent with the public  
17 interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs  
18 the parties hereby agree to the following Stipulated Surrender of License and Order which will be  
19 submitted to the Board for approval and adoption as the final disposition of the Accusation.

20 PARTIES

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

24 2. Sherman Lum (Respondent) is representing himself in this proceeding and has chosen  
25 not to exercise his right to be represented by counsel.

26 3. On or about July 27, 1958, the Board of Pharmacy issued Pharmacist License No.  
27 RPH 21342 to Respondent. The License was in full force and effect at all times relevant to the  
28 charges brought in Accusation No. 3297 and will expire on October 31, 2010, unless renewed.

1 JURISDICTION

2 4. Accusation No. 3297 was filed before the Board of Pharmacy (Board), Department of  
3 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other  
4 statutorily required documents were properly served on Respondent on June 1, 2009. Respondent  
5 timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 3297 is  
6 attached as exhibit A and incorporated herein by reference.

7  
8 ADVISEMENT AND WAIVERS

9 5. Respondent has carefully read and understands the charges and allegations in  
10 Accusation No. 3297. Respondent also has carefully read and understands the effects of this  
11 Stipulated Surrender of License and Order.

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

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

21  
22 CULPABILITY

23 8. Respondent admits the truth of each and every charge and allegation in Accusation  
24 No. 3297, agrees that cause exists for discipline, and hereby surrenders his Pharmacist License  
25 No. RPH 21342 for the Board's formal acceptance.

26 9. Respondent understands that by signing this stipulation he enables the Board to issue  
27 an order accepting the surrender of his Pharmacist License without further process.

1 RESERVATION

2 10. The admissions made by Respondent are only for the purposes of this proceeding, or  
3 any other proceedings in which the Board of Pharmacy or other professional licensing agency is  
4 involved, and shall not be admissible in any other criminal or civil proceeding.

5  
6 CONTINGENCY

7 11. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent  
8 understands and agrees that counsel for Complainant and the staff of the Board may communicate  
9 directly with the Board regarding this stipulation and surrender, without notice to or participation  
10 by Respondent. By signing the stipulation, Respondent understands and agrees that he may not  
11 withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers  
12 and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the  
13 Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this  
14 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not  
15 be disqualified from further action by having considered this matter.

16 12. The parties understand and agree that facsimile copies of this Stipulated Surrender of  
17 License and Order, including facsimile signatures thereto, shall have the same force and effect as  
18 the originals.

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

21 ORDER

22 IT IS HEREBY ORDERED that Pharmacist License No. RPH 21342, issued to Respondent  
23 Sherman Lum, is surrendered and accepted by the Board of Pharmacy.

24 14. The surrender of Respondent’s Pharmacist License and the acceptance of the  
25 surrendered license by the Board shall constitute the imposition of discipline against Respondent.  
26 This stipulation constitutes a record of the discipline and shall become a part of Respondent’s  
27 license history with the Board.

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

3 16. Respondent shall cause to be delivered to the Board both his wall license certificate  
4 and, if one was issued, pocket license on or before the effective date of the Decision and Order.

5 17. Respondent may not apply, reapply, or petition for any licensure or registration of the  
6 Board for three (3) years from the effective date of the Decision and Order.

7 18. Respondent understands and agrees that if he ever applies for licensure or petitions  
8 for reinstatement in the State of California, the Board shall treat it as a new application for  
9 licensure. Respondent must comply with all the laws, regulations and procedures for licensure in  
10 effect at the time the application or petition is filed, and all of the charges and allegations  
11 contained in Accusation No. 3297 shall be deemed to be true, correct and admitted by Respondent  
12 when the Board determines whether to grant or deny the application or petition.

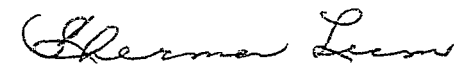
13 19. Should Respondent ever apply or reapply for a new license or certification, or petition  
14 for reinstatement of a license, by any other health care licensing agency in the State of California,  
15 all of the charges and allegations contained in Accusation No. 3297 shall be deemed to be true,  
16 correct, and admitted by Respondent for the purpose of any Statement of Issues or any other  
17 proceeding seeking to deny or restrict licensure.

18 20. Respondent shall pay the Board its costs of investigation and enforcement in the  
19 amount of \$5,404.75 prior to issuance of a new or reinstated license.

20  
21 ACCEPTANCE

22 I have carefully read the Stipulated Surrender of License and Order. I understand the  
23 stipulation and the effect it will have on my Pharmacist License. I enter into this Stipulated  
24 Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound  
25 by the Decision and Order of the Board of Pharmacy.

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27 DATED: 10 Dec 2009



28 SHERMAN LUM  
Respondent


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ENDORSEMENT

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

Dated: 12/14/09

Respectfully Submitted,  
EDMUND G. BROWN JR.  
Attorney General of California  
FRANK H. PACOE  
Supervising Deputy Attorney General

  
JOSHUA A. ROOM  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

Accusation No. 3297

1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 JOSHUA A. ROOM, State Bar No. 214663  
Deputy Attorney General  
4 455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004  
5 Telephone: (415) 703-1299  
Facsimile: (415) 703-5480

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:

Case No. 3297

11 SHERMAN LUM  
12 1308 Pacific Avenue #104  
San Francisco, CA 94109-2755

**A C C U S A T I O N**

13 Pharmacist License No. RPH 21342

14 Respondent.

15  
16  
17 Complainant alleges:

18 PARTIES

- 19 1. Virginia Herold (Complainant) brings this Accusation solely in her official  
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.  
21 2. On or about July 27, 1958, the Board of Pharmacy issued Pharmacist  
22 License Number RPH 21342 to Sherman Lum (Respondent). The Pharmacist License was in full  
23 force and effect at all times relevant to the charges brought herein and will expire on October 31,  
24 2010, unless renewed.

25 JURISDICTION

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





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

5 8. Section 4059 of the Code, in pertinent part, prohibits furnishing of any  
6 dangerous drug or dangerous device except upon the prescription of an authorized prescriber.

7 9. Section 4060 of the Code provides, in pertinent part, that no person shall  
8 possess any controlled substance, except that furnished upon a valid prescription/drug order.

9 10. Health and Safety Code section 11170 provides that no person shall  
10 prescribe, administer, or furnish a controlled substance for himself or herself.

11 11. Health and Safety Code section 11173, subdivision (a), provides that no  
12 person shall obtain or attempt to obtain controlled substances or a prescription therefor, (1) by  
13 fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

14 12. Health and Safety Code section 11350, in pertinent part, makes it unlawful  
15 to possess any controlled substance in Schedule II (Health and Safety Code section 11055),  
16 subdivision (b) or (c), or any Schedule III-V narcotic drug, absent a prescription.

17 13. Health and Safety Code section 11377, in pertinent part, makes it unlawful  
18 to possess any controlled substance classified in Schedule III, IV, or V which is not a narcotic  
19 drug, or certain controlled substances in Schedule II (Health and Safety Code section 11055),  
20 subdivision (d), (e), or (f), without a valid prescription.

21 14. Health and Safety Code section 11550, in pertinent part, makes it unlawful  
22 to use or be under the influence of any controlled substance in Schedule II (Health and Safety  
23 Code section 11055), subdivision (b) or (c), or any Schedule III-V narcotic drug, except when  
24 administered by or under the direction of an authorized licensee.

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

28 ///

1                                    CONTROLLED SUBSTANCES / DANGEROUS DRUGS

2                    16.      Section 4021 of the Code states:

3                    “‘Controlled substance’ means any substance listed in Chapter 2 (commencing  
4 with Section 11053) of Division 10 of the Health and Safety Code.”

5                    17.      Section 4022 of the Code states, in pertinent part:

6                    “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for  
7 self-use, except veterinary drugs that are labeled as such, and includes the following:

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

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

12                   18.      **Norco, Vicodin, Vicodin ES, Lortab, and Lorcet** are among the brand  
13 names for compounds of varying dosages of acetaminophen (aka APAP) and **hydrocodone**, a  
14 Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4)  
15 and dangerous drug as designated by Business and Professions Code section 4022. The varying  
16 compounds are also known generically as **Hydrocodone with APAP**. These are narcotic drugs.

17                   19.      **Xanax** is a brand name for **alprazolam**, a Schedule IV controlled  
18 substance as designated by Health and Safety Code section 11057(d)(1) and a dangerous drug as  
19 designated by Business and Professions Code section 4022. It is a depressant drug.

20                   20.      **Valium** is a brand name for **diazepam**, which is a Schedule IV controlled  
21 substance as designated by Health and Safety Code section 11057(d)(9) and a dangerous drug as  
22 designated by Business and Professions Code section 4022. It is a depressant drug.

23                   21.      **Viagra** is a brand name for **sildenafil**, a dangerous drug as designated by  
24 Business and Professions Code section 4022. It is an erectile-dysfunction treatment drug.

25                   22.      **Cialis** is a brand name for **tadalafil**, a dangerous drug as designated by  
26 Business and Professions Code section 4022. It is an erectile-dysfunction treatment drug.

27                   23.      **Levitra** is a brand name for **vardenafil**, a dangerous drug as designated by  
28 Business and Professions Code section 4022. It is an erectile-dysfunction treatment drug.

1 FACTUAL BACKGROUND

2 24. On or about February 3, 2008, Respondent worked as a relief pharmacist  
3 at a Lucky Pharmacy (PHY 48515) in Daly City, CA. Respondent diverted/stole or furnished to  
4 himself through surreptitious removal, at least one bottle of 500 tablets of **Hydrocodone with**  
5 **APAP 5/500** (generic **Vicodin**) from the stock of the pharmacy. He also consumed or ingested  
6 one or more tablets of **hydrocodone**-containing products from pharmacy stock.

7 25. On or about February 9, 2008, the Lucky Pharmacy reported losses due to  
8 diversion/theft on February 3, 2008 including 1,100 tablets of **Hydrocodone with APAP 5/500**  
9 (generic **Vicodin**) and 100 tablets of **Hydrocodone with APAP 7.5/325** (generic **Norco**).

10 26. In subsequent interview(s) with Board Inspector(s), Respondent admitted  
11 that on one or more unspecified occasions during his employment history, he had diverted/stolen  
12 for his own possession/use "2-3 tablets" of **Xanax**, **Viagra**, and **Cialis** or **Levitra**.

13 FIRST CAUSE FOR DISCIPLINE

14 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

15 27. Respondent is subject to discipline under section 4301(f) of the Code in  
16 that Respondent, as described in paragraphs 24 to 26 above, committed acts involving moral  
17 turpitude, dishonesty, fraud, deceit, or corruption.

18 SECOND CAUSE FOR DISCIPLINE

19 (Self-Administration of Controlled Substance)

20 28. Respondent is subject to discipline under section 4301(h) of the Code, in  
21 that Respondent, as described in paragraph 24 above, administered one or more controlled  
22 substances to himself, including **Hydrocodone with APAP** products.

23 THIRD CAUSE FOR DISCIPLINE

24 (Furnishing of Controlled Substance)

25 29. Respondent is subject to discipline under section 4301(j) and/or (o) and/or  
26 section 4059 of the Code in that Respondent, as described in paragraphs 24 to 26 above,  
27 furnished to himself or another without a valid prescription, and/or conspired to furnish, and/or  
28 assisted or abetted furnishing of, one or more controlled substance(s).

1 FOURTH CAUSE FOR DISCIPLINE

2 (Possession of Controlled Substance)

3 30. Respondent is subject to discipline under section 4301(j) and/or (o) and/or  
4 section 4060 of the Code, and/or Health and Safety Code section(s) 11350 and/or 11377, in that  
5 Respondent, as described in paragraphs 24 to 26 above, possessed, conspired to possess, and/or  
6 assisted in or abetted possession of, one or more controlled substance(s), without a prescription.

7 SEVENTH CAUSE FOR DISCIPLINE

8 (Self-Administration/Use of Controlled Substance)

9 31. Respondent is subject to discipline under section 4301(j) and/or (o) of the  
10 Code, and/or Health and Safety Code section(s) 11170 and/or 11550, in that Respondent, as  
11 described in paragraphs 24 to 26 above, self-administered/used, conspired to self-administer/use,  
12 and/or assisted in/abetted self-administration/use of, controlled substance(s), absent prescription.

13 EIGHTH CAUSE FOR DISCIPLINE

14 (Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

15 32. Respondent is subject to discipline under section 4301(j) and/or (o) of the  
16 Code, and/or Health and Safety Code section 11173(a), in that Respondent, as described in  
17 paragraphs 24 to 26 above, obtained, conspired to obtain, and/or assisted in or abetted obtaining  
18 of controlled substance(s), by fraud, deceit, subterfuge, or concealment of material fact.

19 TWELFTH CAUSE FOR DISCIPLINE

20 (Unprofessional Conduct)

21 33. Respondent is subject to discipline under section 4301 of the Code in that  
22 Respondent, as described in paragraphs 24 to 32 above, engaged in unprofessional conduct.

23  
24 PRAYER

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

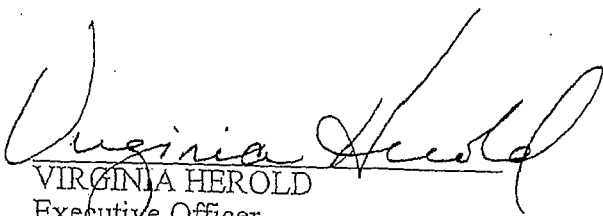
27 A. Revoking or suspending Pharmacist License Number RPH 21342, issued  
28 to Sherman Lum (Respondent);

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B. Ordering Respondent to pay the Board reasonable costs of investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

C. Taking such other and further action as is deemed necessary and proper.

DATED: 5/14/09

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

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