

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

In the Matter of the Accusation Against:

**SERRANO MEDICAL PHARMACY;
JAMES SONG
4220 W. 3rd Street, #100
Los Angeles, CA 90020**

**Pharmacy Permit No. PHY 49002
Pharmacist License No. RPH 42830**

Respondent.

Case No. 3653

OAH Case No. L-2011020039

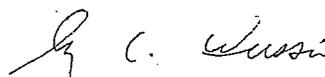
DECISION AND ORDER

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 9, 2012.

It is so ORDERED on February 8, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 HELENE E. SWANSON
Deputy Attorney General
4 State Bar No. 130426
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 620-3005
6 Facsimile: (213) 897-2804
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. 3653

11 **SERRANO MEDICAL PHARMACY;**
12 **JAMES SONG**
13 **4220 W. 3rd Street, #100**
Los Angeles, CA 90020

OAH No. L-2011020039

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

14 **Pharmacy Permit No. 49002**
15 **Pharmacist License No. 42830**

16 Respondents.

17
18 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 **PARTIES**

21 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
22 She brought this action solely in her official capacity and is represented in this matter by Kamala
23 D. Harris, Attorney General of the State of California, by Helene E. Swanson, Deputy Attorney
24 General.

25 2. Respondent Serrano Medical Pharmacy; James Song (Respondent) is represented in
26 this proceeding by attorney Herbert L. Weinberg, Esq., whose address is:

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1 McGuire Woods LLP
2 1800 Century Park East, 8th Floor
3 Los Angeles, CA 90067

4 3. On or about February 22, 2008, the Board of Pharmacy issued Pharmacy Permit No.
5 49002 to Serrano Medical Pharmacy (Respondent). Respondent James Song was at all times
6 relevant to the charges in the Accusation self-employed and the pharmacist in charge of Serrano
7 Medical Pharmacy. The Pharmacy Permit was in full force and effect at all times relevant to the
8 charges brought in Accusation No. 3653 and will expire on February 1, 2012, unless renewed.

9 4. On or about August 16, 1989, the Board of Pharmacy issued Pharmacist License No.
10 42830 to James Song (Respondent). The Pharmacist License was in full force and effect at all
11 times relevant to the charges brought in Accusation No. 3653 and will expire on November 30,
12 2012, unless renewed.

13 **JURISDICTION**

14 5. Accusation No. 3653 was filed before the Board of Pharmacy (Board), Department of
15 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other
16 statutorily required documents were properly served on Respondent on August 10, 2010.
17 Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation
18 No. 3653 is attached as Exhibit A and incorporated herein by reference.

19 **ADVISEMENT AND WAIVERS**

20 6. Respondent has carefully read, fully discussed with counsel, and understands the
21 charges and allegations in Accusation No. 3653. Respondent has also carefully read, fully
22 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
23 Order.

24 7. Respondent is fully aware of his legal rights in this matter, including the right to a
25 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
26 his own expense; the right to confront and cross-examine the witnesses against him; the right to
27 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
28 the attendance of witnesses and the production of documents; the right to reconsideration and

1 court review of an adverse decision; and all other rights accorded by the California
2 Administrative Procedure Act and other applicable laws.

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

5 **CULPABILITY**

6 9. Respondent admits the truth of each and every charge and allegation in Accusation
7 No. 3653. The admissions made by Respondent herein are only for the purposes of this
8 proceeding, or any other proceedings in which the Board of Pharmacy or other professional
9 licensing agency is involved, and shall not be admissible in any other criminal or civil
10 proceeding.

11 10. Respondent agrees that his Pharmacy Permit and Pharmacist License are subject to
12 discipline and he agrees to be bound by the Board's probationary terms as set forth in the
13 Disciplinary Order below.

14 **CONTINGENCY**

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

24 12. The parties understand and agree that facsimile copies of this Stipulated Settlement
25 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
26 effect as the originals.

27 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
28 integrated writing representing the complete, final, and exclusive embodiment of their agreement.

1 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
2 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
3 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
4 writing executed by an authorized representative of each of the parties.

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

8 **DISCIPLINARY ORDER**

9 **IT IS HEREBY ORDERED** that Pharmacy Permit No. 49002 issued to Respondent
10 Serrano Medical Pharmacy, and Pharmacist License No. 42830 to Respondent James Song are
11 revoked. However, the revocation is stayed and Respondents are placed on probation for five (5)
12 years on the following terms and conditions.

13 **TERMS AND CONDITIONS FOR RESPONDENT JAMES SONG:**

14 **1. Suspension**

15 As part of probation, Respondent Song is suspended from the practice of pharmacy for 60
16 days beginning the effective date of this decision.

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

25 Respondent shall not engage in any activity that requires the professional judgment of a
26 pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy.
27 Respondent shall not perform the duties of a pharmacy technician or a designated representative
28 for any entity licensed by the board.

1 Subject to the above restrictions, respondent may continue to own or hold an interest in any
2 licensed premises in which he holds an interest at the time this decision becomes effective unless
3 otherwise specified in this order.

4 Failure to comply with this suspension shall be considered a violation of probation.

5 **2. Obey All Laws**

6 Respondent Song shall obey all state and federal laws and regulations.

7 Respondent Song shall report any of the following occurrences to the board, in writing,
8 within seventy-two (72) hours of such occurrence:

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

19 Failure to timely report such occurrence shall be considered a violation of probation.

20 **3. Report to the Board**

21 Respondent Song shall report to the board quarterly, on a schedule as directed by the board
22 or its designee. The report shall be made either in person or in writing, as directed. Among other
23 requirements, respondent shall state in each report under penalty of perjury whether there has
24 been compliance with all the terms and conditions of probation. Failure to submit timely reports
25 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency
26 in submission of reports as directed may be added to the total period of probation. Moreover, if
27 the final probation report is not made as directed, probation shall be automatically extended until
28 such time as the final report is made and accepted by the board.

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4. Interview with the Board

Upon receipt of reasonable prior notice, Respondent Song shall appear in person for interviews with the board or its designee, at such intervals and locations as are determined by the board or its designee. Failure to appear for any scheduled interview without prior notification to board staff, or failure to appear for two (2) or more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

5. Cooperate with Board Staff

Respondent Song shall cooperate with the board's inspection program and with the board's monitoring and investigation of Respondent's compliance with the terms and conditions of his probation. Failure to cooperate shall be considered a violation of probation.

6. Continuing Education

Respondent Song shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the board or its designee.

7. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in Case Number 3653 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause his direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in Case Number 3653, and terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity licensed by the board of the terms and conditions of the decision in Case Number 3653 in

1 advance of the respondent commencing work at each licensed entity. A record of this notification
2 must be provided to the board upon request.

3 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
4 (15) days of respondent undertaking any new employment by or through a pharmacy employment
5 service, respondent shall cause his direct supervisor with the pharmacy employment service to
6 report to the board in writing acknowledging that he has read the decision in Case Number 3653
7 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure
8 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

9 Failure to timely notify present or prospective employer(s) or to cause that/those
10 employer(s) to submit timely acknowledgments to the board shall be considered a violation of
11 probation.

12 "Employment" within the meaning of this provision shall include any full-time,
13 part-time, temporary, relief or pharmacy management service as a pharmacist or any
14 position for which a pharmacist license is a requirement or criterion for employment,
15 whether the respondent is an employee, independent contractor or volunteer.

16 **8. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as**
17 **Designated Representative-in-Charge, or Serving as a Consultant**

18 During the period of probation, Respondent Song shall not supervise any intern pharmacist,
19 be the pharmacist-in-charge or designated representative-in-charge of any entity licensed by the
20 board nor serve as a consultant unless otherwise specified in this order. Assumption of any such
21 unauthorized supervision responsibilities shall be considered a violation of probation.

22 **9. Reimbursement of Board Costs**

23 As a condition precedent to successful completion of probation, Respondent Serrano
24 Medical Pharmacy and Respondent Song shall pay to the board, jointly and severally, its costs of
25 investigation and prosecution in the amount of \$13,924. Respondent shall make said payments as
26 directed by the board, and a payment schedule is acceptable.

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1 There shall be no deviation from this schedule absent prior written approval by the board or
2 its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of
3 probation.

4 The filing of bankruptcy by Respondents shall not relieve Respondents of their
5 responsibility to reimburse the board its costs of investigation and prosecution.

6 **10. Probation Monitoring Costs**

7 Respondent Song shall pay any costs associated with probation monitoring as determined
8 by the board each and every year of probation. Such costs shall be payable to the board on a
9 schedule as directed by the board or its designee. Failure to pay such costs by the deadline(s) as
10 directed shall be considered a violation of probation.

11 **11. Status of License**

12 Respondent Song shall, at all times while on probation, maintain an active, current license
13 with the board, including any period during which suspension or probation is tolled. If
14 respondent owner submits an application to the board, and the application is approved, for a
15 change of location, change of permit or change of ownership, the board shall retain continuing
16 jurisdiction over the license, and the respondent shall remain on probation as determined by the
17 board. Failure to maintain an active, current license shall be considered a violation of probation.

18 If respondent's license expires or is cancelled by operation of law or otherwise at any time
19 during the period of probation, including any extensions thereof due to tolling or otherwise, upon
20 renewal or reapplication respondent's license shall be subject to all terms and conditions of this
21 probation not previously satisfied.

22 **12. License Surrender While on Probation/Suspension**

23 Following the effective date of this decision, should Respondent Song cease practice due to
24 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
25 respondent may tender his license to the board for surrender. The board or its designee shall have
26 the discretion whether to grant the request for surrender or take any other action it deems
27 appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent
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1 will no longer be subject to the terms and conditions of probation. This surrender constitutes a
2 record of discipline and shall become a part of the respondent's license history with the board.

3 Upon acceptance of the surrender, respondent shall relinquish his pocket and wall license to
4 the board within ten (10) days of notification by the board that the surrender is accepted.

5 Respondent may not reapply for any license from the board for three (3) years from the effective
6 date of the surrender. Respondent shall meet all requirements applicable to the license sought as
7 of the date the application for that license is submitted to the board, including any outstanding
8 costs.

9 **13. Notification of a Change in Name, Residence Address, Mailing Address or**
10 **Employment**

11 Respondent Song shall notify the board in writing within ten (10) days of any change of
12 employment. Said notification shall include the reasons for leaving, the address of the new
13 employer, the name of the supervisor and owner, and the work schedule if known. Respondent
14 shall further notify the board in writing within ten (10) days of a change in name, residence
15 address, mailing address, or phone number.

16 Failure to timely notify the board of any change in employer(s), name(s), address(es), or
17 phone number(s) shall be considered a violation of probation.

18 **14. Tolling of Probation**

19 Except during periods of suspension, respondent shall, at all times while on probation, be
20 employed as a pharmacist in California for a minimum of 40 hours per calendar month. Any
21 month during which this minimum is not met shall toll the period of probation, i.e., the period of
22 probation shall be extended by one month for each month during which this minimum is not met.
23 During any such period of tolling of probation, respondent must nonetheless comply with all
24 terms and conditions of probation.

25 Should respondent, regardless of residency, for any reason (including vacation) cease
26 practicing as a pharmacist for a minimum of 40 hours per calendar month in California,
27 respondent must notify the board in writing within ten (10) days of the cessation of practice, and
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1 must further notify the board in writing within ten (10) days of the resumption of practice. Any
2 failure to provide such notification(s) shall be considered a violation of probation.

3 It is a violation of probation for respondent's probation to remain tolled pursuant to the
4 provisions of this condition for a total period, counting consecutive and non-consecutive months,
5 exceeding thirty-six (36) months.

6 "Cessation of practice" means any calendar month during which respondent is
7 not practicing as a pharmacist for at least 40 hours, as defined by Business and
8 Professions Code section 4000 et seq. "Resumption of practice" means any calendar
9 month during which respondent is practicing as a pharmacist for at least 40 hours as a
10 pharmacist as defined by Business and Professions Code section 4000 et seq.

11 **15. Violation of Probation**

12 If a respondent has not complied with any term or condition of probation, the board shall
13 have continuing jurisdiction over respondent, and probation shall automatically be extended, until
14 all terms and conditions have been satisfied or the board has taken other action as deemed
15 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and
16 to impose the penalty that was stayed.

17 If respondent violates probation in any respect, the board, after giving respondent notice
18 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
19 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a
20 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If
21 a petition to revoke probation or an accusation is filed against respondent during probation, the
22 board shall have continuing jurisdiction and the period of probation shall be automatically
23 extended until the petition to revoke probation or accusation is heard and decided.

24 **16. Completion of Probation**

25 Upon written notice by the board or its designee indicating successful completion of
26 probation, Respondent Song's pharmacy license will be fully restored.

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1 **OPTIONAL CONDITIONS OF PROBATION**

2 **17. Community Services Program**

3 Within sixty (60) days of the effective date of this decision, Respondent Song shall submit
4 to the board or its designee, for prior approval, a community services program in which
5 Respondent shall provide free health-care related services on a regular basis to a community or
6 charitable facility or agency for at least 150 hours over the course of probation, and Respondent
7 Serrano shall perform 50 hours of community service a year for the first two years of probation.
8 Within thirty (30) days of board approval thereof, respondent shall submit documentation to the
9 board demonstrating commencement of the community service program. A record of this
10 notification must be provided to the board upon request. Respondent shall report on progress
11 with the community service program in the quarterly reports. Failure to timely submit,
12 commence, or comply with the program shall be considered a violation of probation.

13 **18. Remedial Education**

14 Within sixty (60) days of the effective date of this decision, Respondent Song shall submit
15 to the board or its designee, for prior approval, an appropriate program of remedial education
16 related to the area of Controlled Substance Dispensing Security of Inventory and Corresponding
17 Responsibility. The program of remedial education shall consist of at least 20 extra hours, which
18 shall be completed within each year at respondent's own expense. All remedial education shall be
19 in addition to, and shall not be credited toward, continuing education (CE) courses used for
20 license renewal purposes.

21 Failure to timely submit or complete the approved remedial education shall be considered a
22 violation of probation. The period of probation will be automatically extended until such
23 remedial education is successfully completed and written proof, in a form acceptable to the board,
24 is provided to the board or its designee.

25 Following the completion of each course, the board or its designee may require the
26 respondent, at his own expense, to take an approved examination to test the respondent's
27 knowledge of the course. If the respondent does not achieve a passing score on the examination,
28 this failure shall be considered a violation of probation. Any such examination failure shall

1 require respondent to take another course approved by the board in the same subject area.

2 **19. Pharmacy Self-Assessment Mechanism**

3 Every quarter while on probation, Respondent Song shall complete the Pharmacist Self-
4 Assessment Mechanism (PSAM) examination provided by the National Association of Boards of
5 Pharmacy (NABP). Respondent shall submit a record of completion to the board demonstrating
6 he has completed this examination. Respondent shall bear all costs for the examination.
7 Continuing education hours received for this examination shall not be used as part of the required
8 continuing education hours for renewal purposes.

9 Failure to timely complete the PSAM or submit documentation thereof shall be considered
10 a violation of probation.

11 Respondent shall waive any rights to confidentiality and provide examination results to the
12 board or its designee.

13 **20. No Ownership of Licensed Premises**

14 Respondent Song shall not acquire any new ownership, legal or beneficial interest nor serve
15 as a manager, administrator, member, officer, director, trustee, associate, or partner of any
16 additional business, firm, partnership, or corporation licensed by the board. If respondent
17 currently owns or has any legal or beneficial interest in, or serves as a manager, administrator,
18 member, officer, director, trustee, associate, or partner of any business, firm, partnership, or
19 corporation currently or hereinafter licensed by the board, respondent may continue to serve in
20 such capacity or hold that interest, but only to the extent of that position or interest as of the
21 effective date of this decision. Violation of this restriction shall be considered a violation of
22 probation.

23 **21. Separate File of Records**

24 Respondent Song shall maintain and make available for inspection a separate file of all
25 records pertaining to the acquisition or disposition of all controlled substances. Failure to
26 maintain such file or make it available for inspection shall be considered a violation of probation.

27 **22. Consultant for Owner or Pharmacist-In-Charge**

28 During the period of probation, Respondent Song shall not supervise any intern pharmacist

1 or serve as a consultant to any entity licensed by the board. Respondent may be a pharmacist-in-
2 charge. However, if during the period of probation respondent serves as a pharmacist-in-charge,
3 respondent shall retain an independent consultant at his own expense who shall be responsible for
4 reviewing pharmacy operations on a quarterly basis for the first three (3) years of probation, for
5 compliance by respondent with state and federal laws and regulations governing the practice of
6 pharmacy and for compliance by respondent with the obligations of a pharmacist-in-charge. The
7 consultant shall be a pharmacist licensed by and not on probation with the board and whose name
8 shall be submitted to the board or its designee, for prior approval, within thirty (30) days of the
9 effective date of this decision. Respondent shall not be a pharmacist-in-charge at more than one
10 pharmacy or at any pharmacy of which he is not the sole owner. Failure to timely retain, seek
11 approval of, or ensure timely reporting by the consultant shall be considered a violation of
12 probation.

13 **23. Tolling of Suspension**

14 During the period of suspension, Respondent Song shall not leave California for any period
15 exceeding ten (10) days, regardless of purpose (including vacation). Any such absence in excess
16 of the (10) days during suspension shall be considered a violation of probation. Moreover, any
17 absence from California during the period of suspension exceeding ten (10) days shall toll the
18 suspension, i.e., the suspension shall be extended by one day for each day over ten (10) days
19 respondent is absent from California. During any such period of tolling of suspension,
20 respondent must nonetheless comply with all terms and conditions of probation.

21 Respondent must notify the board in writing within ten (10) days of departure, and must
22 further notify the board in writing within ten (10) days of return. The failure to provide such
23 notification(s) shall constitute a violation of probation. Upon such departure and return,
24 respondent shall not resume the practice of pharmacy until notified by the board that the period of
25 suspension has been satisfactorily completed.

26 **24. Ethics Course**

27 Within sixty (60) calendar days of the effective date of this decision, Respondent Song shall
28 enroll in a course in ethics, at respondent's expense, approved in advance by the board or its

1 designee. Failure to initiate the course during the first year of probation, and complete it within
2 the second year of probation, is a violation of probation.

3 Respondent shall submit a certificate of completion to the board or its designee within five
4 days after completing the course.

5 **TERMS AND CONDITIONS FOR RESPONDENT SERRANO MEDICAL**

6 **PHARMACY:**

7 **25. Obey All Laws**

8 Respondent owner shall obey all state and federal laws and regulations.

9 Respondent owner shall report any of the following occurrences to the board, in writing,
10 within seventy-two (72) hours of such occurrence:

- 11 an arrest or issuance of a criminal complaint for violation of any provision of the
12 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
13 substances laws
- 14 a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
15 criminal complaint, information or indictment
- 16 a conviction of any crime
- 17 discipline, citation, or other administrative action filed by any state or federal agency
18 which involves respondent's pharmacy permit or which is related to the practice of
19 pharmacy or the manufacturing, obtaining, handling or distributing, billing, or
20 charging for any drug, device or controlled substance.

21 Failure to timely report any such occurrence shall be considered a violation of probation.

22 **26. Report to the Board**

23 Respondent owner shall report to the board quarterly, on a schedule as directed by the board
24 or its designee. The report shall be made either in person or in writing, as directed. Among other
25 requirements, respondent owner shall state in each report under penalty of perjury whether there
26 has been compliance with all the terms and conditions of probation. Failure to submit timely
27 reports in a form as directed shall be considered a violation of probation. Any period(s) of
28 delinquency in submission of reports as directed may be added to the total period of probation.

1 Moreover, if the final probation report is not made as directed, probation shall be automatically
2 extended until such time as the final report is made and accepted by the board.

3 **27. Interview with the Board**

4 Upon receipt of reasonable prior notice, respondent owner shall appear in person for
5 interviews with the board or its designee, at such intervals and locations as are determined by the
6 board or its designee. Failure to appear for any scheduled interview without prior notification to
7 board staff, or failure to appear for two (2) or more scheduled interviews with the board or its
8 designee during the period of probation, shall be considered a violation of probation.

9 **28. Cooperate with Board Staff**

10 Respondent owner shall cooperate with the board's inspection program and with the board's
11 monitoring and investigation of respondent's compliance with the terms and conditions of his
12 probation. Failure to cooperate shall be considered a violation of probation.

13 **29. Reimbursement of Board Costs**

14 As a condition precedent to successful completion of probation, respondent owner shall pay
15 to the board, jointly and severally with Respondent Song, its costs of investigation and
16 prosecution in the amount of \$13,924. Respondent owner shall make said payments as directed
17 by the board, and a payment schedule is acceptable.

18 There shall be no deviation from this schedule absent prior written approval by the board or
19 its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of
20 probation.

21 The filing of bankruptcy by respondent owner shall not relieve respondent of his
22 responsibility to reimburse the board its costs of investigation and prosecution.

23 **30. Probation Monitoring Costs**

24 Respondent owner shall pay any costs associated with probation monitoring as determined
25 by the board each and every year of probation. Such costs shall be payable to the board on a
26 schedule as directed by the board or its designee. Failure to pay such costs by the deadline(s) as
27 directed shall be considered a violation of probation.

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1 **31. Status of License**

2 Respondent owner shall, at all times while on probation, maintain current licensure with the
3 board. If respondent owner submits an application to the board, and the application is approved,
4 for a change of location, change of permit or change of ownership, the board shall retain
5 continuing jurisdiction over the license, and the respondent shall remain on probation as
6 determined by the board. Failure to maintain current licensure shall be considered a violation of
7 probation.

8 If respondent owner's license expires or is cancelled by operation of law or otherwise at any
9 time during the period of probation, including any extensions thereof or otherwise, upon renewal
10 or reapplication respondent owner's license shall be subject to all terms and conditions of this
11 probation not previously satisfied.

12 **32. License Surrender While on Probation/Suspension**

13 Following the effective date of this decision, should respondent owner discontinue
14 business, respondent owner may tender the premises license to the board for surrender. The
15 board or its designee shall have the discretion whether to grant the request for surrender or take
16 any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of
17 the license, respondent will no longer be subject to the terms and conditions of probation.

18 Upon acceptance of the surrender, respondent owner shall relinquish the premises wall and
19 renewal license to the board within ten (10) days of notification by the board that the surrender is
20 accepted. Respondent owner shall further submit a completed Discontinuance of Business form
21 according to board guidelines and shall notify the board of the records inventory transfer.

22 Respondent owner shall also, by the effective date of this decision, arrange for the
23 continuation of care for ongoing patients of the pharmacy by, at minimum, providing a written
24 notice to ongoing patients that specifies the anticipated closing date of the pharmacy and that
25 identifies one or more area pharmacies capable of taking up the patients' care, and by cooperating
26 as may be necessary in the transfer of records or prescriptions for ongoing patients. Within five
27 days of its provision to the pharmacy's ongoing patients, Respondent owner shall provide a copy
28 of the written notice to the board. For the purposes of this provision, "ongoing patients" means

1 those patients for whom the pharmacy has on file a prescription with one or more refills
2 outstanding, or for whom the pharmacy has filled a prescription within the preceding sixty (60)
3 days.

4 Respondent owner may not apply for any new licensure from the board for three (3) years
5 from the effective date of the surrender. Respondent owner shall meet all requirements applicable
6 to the license sought as of the date the application for that license is submitted to the board.

7 Respondent owner further stipulates that he or she shall reimburse the board for its costs of
8 investigation and prosecution prior to the acceptance of the surrender.

9 **33. Notice to Employees**

10 Respondent owner shall, upon or before the effective date of this decision, ensure that all
11 employees involved in permit operations are made aware of all the terms and conditions of
12 probation, either by posting a notice of the terms and conditions, circulating such notice, or both.
13 If the notice required by this provision is posted, it shall be posted in a prominent place and shall
14 remain posted throughout the probation period. Respondent owner shall ensure that any
15 employees hired or used after the effective date of this decision are made aware of the terms and
16 conditions of probation by posting a notice, circulating a notice, or both. Additionally,
17 respondent owner shall submit written notification to the board, within fifteen (15) days of the
18 effective date of this decision, that this term has been satisfied. Failure to submit such
19 notification to the board shall be considered a violation of probation.

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

23 **34. Owners and Officers: Knowledge of the Law**

24 Respondent shall provide, within thirty (30) days after the effective date of this decision,
25 signed and dated statements from its owners, including any owner or holder of ten percent (10%)
26 or more of the interest in respondent or respondent's stock, and any officer, stating under penalty
27 of perjury that said individuals have read and are familiar with state and federal laws and
28 regulations governing the practice of pharmacy. The failure to timely provide said statements

1 under penalty of perjury shall be considered a violation of probation.

2 **35. Posted Notice of Probation**

3 Respondent owner shall prominently post a probation notice provided by the board in a
4 place conspicuous and readable to the public. The probation notice shall remain posted during
5 the entire period of probation.

6 Respondent owner shall not, directly or indirectly, engage in any conduct or make any
7 statement which is intended to mislead or is likely to have the effect of misleading any patient,
8 customer, member of the public, or other person(s) as to the nature of and reason for the probation
9 of the licensed entity.

10 Failure to post such notice shall be considered a violation of probation.

11 **36. Violation of Probation**

12 If a respondent owner has not complied with any term or condition of probation, the board
13 shall have continuing jurisdiction over respondent license, and probation shall be automatically
14 extended until all terms and conditions have been satisfied or the board has taken other action as
15 deemed appropriate to treat the failure to comply as a violation of probation, to terminate
16 probation, and to impose the penalty that was stayed.

17 If respondent owner violates probation in any respect, the board, after giving respondent
18 owner notice and an opportunity to be heard, may revoke probation and carry out the disciplinary
19 order that was stayed. Notice and opportunity to be heard are not required for those provisions
20 stating that a violation thereof may lead to automatic termination of the stay and/or revocation of
21 the license. If a petition to revoke probation or an accusation is filed against respondent during
22 probation, the board shall have continuing jurisdiction and the period of probation shall be
23 automatically extended until the petition to revoke probation or accusation is heard and decided.

24 **37. Completion of Probation**

25 Upon written notice by the board or its designee indicating successful completion of
26 probation, respondent license will be fully restored.

27 **OPTIONAL CONDITIONS OF PROBATION**

28 **38. Community Services Program**

1 I have read and fully discussed with Respondent Serrano Medical Pharmacy; James Song
2 the terms and conditions and other matters contained in the above Stipulated Settlement and
3 Disciplinary Order. I approve its form and content.

4
5
6 DATED: 9/30/11


HERBERT L. WEINBERG, ESQ.
Attorney for Respondent

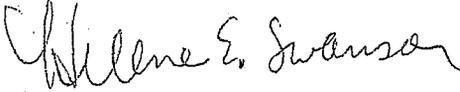
8
9 **ENDORSEMENT**

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

12 Dated: September 30, 2011

Respectfully submitted,

14 KAMALA D. HARRIS
Attorney General of California
15 GREGORY J. SALUTE
Supervising Deputy Attorney General

16 
17 HELENE E. SWANSON
18 Deputy Attorney General
Attorneys for Complainant

19
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Exhibit A

Accusation No. 3653

1 EDMUND G. BROWN JR.
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 HELENE E. SWANSON
Deputy Attorney General
4 State Bar No. 130426
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 620-3005
6 Facsimile: (213) 897-2804
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. 3653

11 **SERRANO MEDICAL PHARMACY;**
12 **JAMES SONG**
13 **4220 W. 3rd Street, #100**
Los Angeles, CA 90020

A C C U S A T I O N

14 **Pharmacy Permit No. 49002**
15 **Pharmacist License No. 42830**

16 Respondents.

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about August 16, 1989, the Board of Pharmacy issued Pharmacist License
22 Number 42830 to James Song (Respondent Song). The Pharmacist License was in full force and
23 effect at all times relevant to the charges brought herein and will expire on November 30, 2010,
24 unless renewed.

25 3. On or about February 22, 2008, the Board of Pharmacy issued Pharmacy Permit
26 Number 49002 to Serrano Medical Pharmacy (Respondent Pharmacy). Respondent Song was at
27 all times relevant to the charges herein self-employed and the pharmacist in charge of Respondent
28

1 Pharmacy. The Pharmacy Permit was in full force and effect at all times relevant to the charges
2 brought herein and will expire on February 1, 2011, unless renewed.

3 **JURISDICTION**

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

7 5. Section 118, subdivision (b), states that the suspension, expiration, or forfeiture by
8 operation of law of a license issued by a Board in the department, or its suspension, forfeiture, or
9 cancellation by order of the Board or by order of a court of law, or its surrender without the
10 written consent of the Board, shall not, during any period in which it may be renewed, restored,
11 reissued, or reinstated.

12 6. Section 4022 defines "Dangerous Drug" of "dangerous device" means "any drug or
13 device unsafe for self-use in humans or animals", and which by federal or state law can be
14 lawfully dispensed only on prescription.

15 7. Section 4040, subdivision (a), defines "Prescription" as an "oral, written, or electronic
16 transmission order that is both of the following:

17 (1) Given individually for the person or persons for whom ordered that is both of the
18 following:

19 (A) The name or names and address of the patient or patients.

20 (B) The name and quantity of the drug or device prescribed and the directions for
21 use.

22 (C) The date of issue.

23 (D) Either rubber stamped, typed, or printed by hand or typeset, the name, address,
24 and telephone number of the prescriber, his or her license classification, and his or her federal
25 registry number, if a controlled substance is prescribed.

26 (E) A legible, clear notice of the condition or purpose for which the drug is
27 prescribed, if requested by the patient or patients.

28 (F) ...

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(2) Issued by a physician . . . licensed in this state.”

8. Section 4059 of the Code states, in pertinent part, that “(a) A person may not furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian . . .

9. Section 4060 of the Code states, in pertinent part, that “No person may possess any controlled substance, except that furnished to the person upon the prescription of a physician, dentist, podiatrist, or veterinarian . . . furnished pursuant to a drug order issued by a certified nurse-midwife, nurse practitioner, or a physician assistant.

10. Section 4300 permits the Board to take disciplinary action to suspend or revoke a license or permit.

11. 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:

* * *

(b) Incompetence.

(c) Gross negligence.

* * *

(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.

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

* * *

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

* * *

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

5 (p) Actions or conduct that would have warranted denial of a license.”

6 12. Section 4306.5 states as follows:

7 “Unprofessional conduct for a pharmacist may include any of the following:

8 (a) Acts or omissions that involve, in whole or in part, the inappropriate exercise of
9 his or her education, training, or experience as a pharmacist, whether or not the act or omission
10 arises in the course of the practice of pharmacy or the ownership, management, administration, or
11 operation of a pharmacy or other entity licensed by the board.

12 (b) Acts or omissions that involve, in whole or in part, the failure to exercise or
13 implement his or her best professional judgment or corresponding responsibility with regard to
14 the dispensing or furnishing of controlled substances, dangerous drugs, or dangerous devices, or
15 with regard to the provision of services.

16 (c) Acts or omissions that involve, in whole or in part, the failure to consult
17 appropriate patient, prescription, and other records pertaining to the performance of any
18 pharmacy function.

19 (d) Acts or omissions that involve, in whole or in part, the failure to fully maintain
20 and retain appropriate patient-specific information pertaining to the performance of any pharmacy
21 function.”

22 13. Section 4313 provides that:

23 “In determining whether to grant an application for licensure or whether to discipline or
24 reinstate a license, the board shall give consideration to evidence of rehabilitation. However,
25 public protection shall take priority over rehabilitation and, where evidence of rehabilitation and
26 public protection are in conflict, public protection shall take precedence.”

27 14. Health and Safety Code section 11152, states:
28

1 "No person shall write, issue, fill, compound, or dispense a prescription that does not
2 conform to this division."

3 15. Health and Safety Code section 11153, states:

4 "(a) A prescription for a controlled substance shall only be issued for a legitimate medical
5 purpose by an individual practitioner acting in the usual course of his or her professional practice.
6 The responsibility for the proper prescribing and dispensing of controlled substances is upon the
7 prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the
8 prescription. Except as authorized by this division, the following are not legal prescriptions: (1)
9 an order purporting to be a prescription which is issued not in the usual course of professional
10 treatment or in legitimate and authorized research; or (2) an order for an addict or habitual user of
11 controlled substances, which is issued not in the course of professional treatment or as part of any
12 authorized narcotic treatment program, for the purpose of providing the user with controlled
13 substances, sufficient to keep him or her comfortable by maintaining customary use."

14 16. Health and Safety Code section 11157 provides that "No person shall issue a
15 prescription that is false or fictitious in any respect."

16 17. Health and Safety Code section 11158, subdivision (a), states:

17 "Except as provided in Section 11159 or in subdivision (b) of this section, no controlled
18 substance classified in Schedule II shall be dispensed without a prescription meeting the
19 requirements of this chapter. Except as provided in Section 11159 or when dispensed directly to
20 an ultimate user by a practitioner, other than a pharmacist or pharmacy, no controlled substance
21 classified in Schedule III, IV, or V may be dispensed without a prescription meeting the
22 requirements of this chapter."

23 18. Health and Safety Code section 11162.1 states:

24 "(a) The prescription forms for controlled substances shall be printed with the following
25 features:

26 (1) A latent, repetitive "void" pattern shall be printed across the entire front of the
27 prescription blank; if a prescription is scanned or photocopies, the word "void" shall appear in a
28 pattern across the entire front of the prescription.

1 (2) A watermark shall be printed on the backside of the prescription blank; the watermark
2 shall consist of the words "California Security Prescription."

3 (3) A chemical void protection that prevents alteration by chemical washing.

4 (4) A feature printed in thermochromic ink.

5 (5) An area of opaque writing so that the writing disappears if the prescription is lightened.

6 (6) A description of the security features shall be printed on the form and the following
7 quantities shall appear:

8 1-24

9 25-49

10 50-74

11 75-100

12 101-150

13 151 and over.

14 (B) In conjunction with the quantity boxes, a space shall be provided to designate the units
15 referenced in the quantity boxes when the drug is not in tablet or capsule form.

16 (8) Prescription blanks shall contain a statement printed on the bottom of the prescription
17 blank that the "Prescription is void if the number of drugs prescribed is not noted.

18 (9) The preprinted name, category of licensure, license number, federal controlled
19 substance registration number of the prescribing practitioner.

20 (10) Check boxes shall be printed on the form so that the prescriber may indicate the
21 number of refills ordered.

22 (11) The date of origin of the prescription.

23 (12) A check box indicting the prescriber's order not to substitute.

24 (13) An identifying number assigned to the approved security printer by the Department of
25 Justice.

26 (14) (A) A check box by the name of each prescriber when a prescription form lists
27 multiple prescribers.

28

1 (B) Each prescriber who signs the prescription form shall identify himself or herself as the
2 prescriber by checking the box by his or her name.

3 (b) Each batch of controlled substance prescription forms shall have the lot number printed
4 on the form and each form within that batch shall be numbered sequentially beginning with the
5 numeral one.”

6 19. Health and Safety Code section 11164, subdivision (a), states:

7 “Except as provided in Section 11167, no person shall prescribe a controlled substance, nor
8 shall any person fill, compound, or dispense a prescription for a controlled substance, unless it
9 complies with the requirements of this section.

10 (a) Each prescription for a controlled substance classified in Schedule II, III, IV, or V,
11 except as authorized by subdivision (b), shall be made on a controlled substance prescription form
12 as specified in Section 11162.1 and shall meet the following requirements:

13 (1) The prescription shall be signed and dated by the prescriber in ink and shall contain the
14 prescriber's address and telephone number; the name of the ultimate user or research subject, or
15 contact information as determined by the Secretary of the United States Department of Health and
16 Human Services; refill information, such as the number of refills ordered and whether the
17 prescription is a first-time request or a refill; and the name, quantity, strength, and directions for
18 use of the controlled substance prescribed.

19 (2) The prescription shall also contain the address of the person for whom the controlled
20 substance is prescribed. If the prescriber does not specify this address on the prescription, the
21 pharmacist filling the prescription or an employee acting under the direction of the pharmacist
22 shall write or type the address on the prescription or maintain this information in a readily
23 retrievable form in the pharmacy.”

24 20. Health and Safety Code section 11171 provides that no person shall prescribe,
25 administer, or furnish a controlled substance except under the conditions and in the manner
26 provided by this division.

27 21. Health and Safety Code section 11173 states:
28

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

4 (b) No person shall make a false statement in any prescription, order, report, or record,
5 required by the division.”

6 22. Health and Safety Code section 11174 provides that “no person shall, in
7 connection with the prescribing, furnishing, administering, or dispensing of a controlled
8 substance, give a false name or false address.”

9 23. Health and Safety Code section 11180 provides that “no person shall obtain
10 or possess a controlled substance obtained by a prescription that does not comply with this
11 division. A “dangerous drug” is any drug unsafe for self-medication within the meaning of
12 section 4022 in that it requires a prescription under federal law.”

13 24. California Code of Regulations, title 16, section 1709.1 provides that: “(a) The
14 pharmacist-in-charge of a pharmacy shall be employed at that location and shall have
15 responsibility for the daily operation of the pharmacy.”

16 25. California Code of Regulations, title 16, section 1715.5 requires that the “collection
17 of information authorized by Health and Safety Code section 11165 shall be provided as follows:

18 (a) For each prescription for a Schedule II controlled substance, the dispensing pharmacy
19 shall provide the following information: the full name and address of the patient; the gender and
20 date of birth of the patient; the DEA (Drug Enforcement Administration) number of the
21 prescriber; the triplicate prescription number; the pharmacy prescription number; the pharmacy
22 license number; the NDC (National Drug Code) number and the quantity of the controlled
23 substance; the ICD-9 (diagnosis code), if available; the date of issue of the prescription, the date
24 of dispensing of the prescription, and the state medical license number of any prescriber using the
25 DEA number of a government exempt facility.”

26 26. California Code of Regulations, title 16, section 1716, states that “Pharmacists shall
27 not deviate from the requirements of a prescription except upon the prior consent of the prescriber
28

1 or to select the drug product in accordance with Section 4073 of the Business and Professions
2 Code.”

3 27. California Code of Regulations, title 16, section 1717, subdivision (b), requires
4 pharmacies to maintain the following information for each prescription on file:

5 “(1) The date dispensed, and the name or initials of the dispensing pharmacist. . .

6 (2) The brand name of the drug or device; or if a generic drug or device is dispensed, the
7 distributor's name which appears on the commercial package label; and

8 (3) If a prescription for a drug or device is refilled, a record of each refill, quantity
9 dispensed, if different, and the initials or name of the dispensing pharmacist.

10 (4) A new prescription must be created if there is a change in the drug, strength, prescriber
11 or directions for use, unless a complete record of all such changes is otherwise maintained.”

12 28. California Code of Regulations, title 16, section 1717, subdivision (c), states:

13 “Promptly upon receipt of an orally transmitted prescription, the pharmacist shall reduce it
14 to writing, and initial it, and identify it as an orally transmitted prescription. If the prescription is
15 then dispensed by another pharmacist, the dispensing pharmacist shall also initial the prescription
16 to identify him or herself. All orally transmitted prescriptions shall be received and transcribed
17 by a pharmacist prior to compounding, filling, dispensing, or furnishing. . . .”

18 29. California Code of Regulations, title 16, section 1760 states that in reaching a
19 decision on a disciplinary action under the Administrative Procedure Act (Government Code
20 section 11400 et seq.), the board shall consider the disciplinary guidelines entitled “Disciplinary
21 Guidelines” (Rev. 1/2001). Deviation from these guidelines and orders, including the standard
22 terms of probation, is appropriate where the board, in its sole discretion, determines that the facts
23 of the particular case warrant such a deviation--the presence of mitigating factors; the age of the
24 case; evidentiary problems.

25 30. California Code of Regulations, title 16, section 1761 provides:

26 “(a) No pharmacist shall compound or dispense any prescription which contains any
27 significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon receipt of any
28

1 such prescription, the pharmacist shall contact the prescriber to obtain the information needed to
2 validate the prescription.

3 (b) Even after conferring with the prescriber, a pharmacist shall not compound or dispense
4 a controlled substance prescription where the pharmacist knows or has objective reason to know
5 that said prescription was not issued for a legitimate medical purpose.”

6 31. California Code of Regulations, title 16, section 1793.3 provides, in pertinent part:

7 “(a) In addition to employing a pharmacy technician to perform the tasks specified in
8 section 1793.2, a pharmacy may employ a non-licensed person to type a prescription label or
9 otherwise enter prescription information into a computer record system, but the responsibility for
10 the accuracy of the prescription information and the prescription as dispensed lies with the
11 registered pharmacist who initials the prescription or prescription record. At the direction of the
12 registered pharmacist, a non-licensed person may also request and receive refill authorization.”

13 COST RECOVERY

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

18 CONTROLLED SUBSTANCES/ DANGEROUS DRUGS

19 33. “**Phenergan with Codeine**” (generic name: “**Promethazine hydrochloride with**
20 **Codeine**”) is a Schedule V controlled substance as designated by Health and Safety Code section
21 11058 and is a “dangerous drug” pursuant to Section 4022, in that under federal or state law it
22 requires a prescription. It is a narcotic analgesic used to treat a cough and symptoms of a cold or
23 allergy.

24 34. “**Oxycontin**” (generic name: “**Oxycodone**”) is a Schedule II controlled substance
25 pursuant to Health and Safety Code section 11055(b)(1)(N) and is a “dangerous drug” pursuant to
26 Section 4022 of the Code. It is used to treat pain.

1 35. **"Xanax"** (generic name: **"Alprazolam"**) is a Schedule IV controlled substance as
2 designated by Health and Safety Code section 11057, subdivision (d)(1) and is a dangerous drug
3 as defined by Section 4022. It is used to treat anxiety.

4 36. **"Vicodin, Lorcet, Norco, Vicodin ES, Vicodin HP and Lorcet 10/650"** (generic
5 name: **"Hydrocodone"** and **"Acetaminophen"**) are Schedule III controlled substances as
6 designated by the Health and Safety Code Section 11056, subdivision (e)(4) and are dangerous
7 drugs as defined Section 4022. They are narcotic analgesics used to treat moderate to severe
8 pain.

9 37. **"Carisoprodol"** is a centrally-acting skeletal muscle relaxer (brand name: **"Soma"**)
10 and is a dangerous drug within the meaning of Section 4022, in that it requires a prescription
11 under federal law.

12 38. **"Clonazepam"** is a Schedule IV controlled substance as designated by the Health and
13 Safety Code Section 11054, and is a dangerous drug, as defined in Section 4022.

14 39. **"Ambien"** is a brand of **"Zolpidem Tartrate"** and is a Schedule IV controlled
15 substance as designated by Health and Safety Code section 11057, and is a dangerous drug, as
16 defined in Section 4022.

17 40. **"Tussionex"** is a brand name for **"hydrocodone chlorpheniramin 10mg/5ml"**, is a
18 Schedule III controlled substance as designated by Health and Safety Code section 11056,
19 subdivision (e)(4) and is categorized as a "dangerous drug," pursuant to Section 4022.

20 41. **"Valium"** is a brand of **"Diazepam"**, is a Schedule IV controlled substance as
21 designated by Health and Safety Code section 11057, subdivision (d)(8), and is categorized as a
22 dangerous drug under Section 4022.

23 42. **"Tylenol with Codeine"** is a compound consisting of codeine and acetaminophen,
24 and is a Schedule III controlled substance as designated by the Health and Safety Code section
25 11506, subdivision (e)(2), and is categorized as a dangerous drug under Section 4022.

26 43. **"Morphine"** is a Schedule II controlled substance as designated by the Health and
27 Safety Code section 11055, subdivisions (a) and (b)(1)(M), and is categorized as a dangerous
28 drug under Section 4022.

FIRST CAUSE FOR DISCIPLINE

(Prescriptions Containing Errors, Omissions, Irregularities and/or Uncertainties)

1
2
3 44. Respondent Pharmacy and Respondent Song have subjected their permit and license
4 to discipline pursuant to Sections 4059, 4300 and 4301, for unprofessional conduct as defined in
5 Section 4301, subdivision (o), by violating Sections 4040, 4059, and 4060, Health and Safety
6 Code sections 11152, 11153, 11157, 11158, subdivision (a), 11162.1, 11164, subdivision (a),
7 11167, 11171, 11173, 11174, and California Code of Regulations, title 16, sections 1715.5, 1716,
8 1717, 1760, 1761; subdivisions (a) and (b), in that an audit by the Department of Health Care
9 Services (DHCS), Medical Review Branch, on or about March 20, 2009, found that 8
10 prescriptions filled by Respondents were fraudulent, and several of the prescriptions did not have
11 all of the elements required of a controlled substance prescription. DHCS personnel spoke with
12 Dr. Herbert R. Kornfeld, the prescriber of 8 of the prescriptions, who indicated that he had not
13 seen these patients, that the prescriptions were not signed by him, and that prescription blanks had
14 been stolen from a hospital where he works.

15 45. Upon referral of the case from DHCS, the Board conducted an investigation.
16 Respondent Song indicated that a woman, whose name appears to be Carol Hill, claimed to be
17 affiliated with an organization named "IHSS Home Health", and stated that she needed to get
18 prescriptions filled for patients that would not be able to pick up their own prescriptions. She
19 began bringing prescriptions to the pharmacy on or about June 1, 2008, to be filled. She
20 sometimes brought single prescriptions and sometimes multiple prescriptions, and either Ms. Hill
21 or sometimes other persons, picked up the filled prescriptions. The addresses on some of the
22 prescriptions were not in the same location as Respondent Pharmacy.

23 46. The false prescriptions bearing Dr. Kornfeld's name had dates ranging from between
24 July 31, 2008 to January 24, 2009. Ms. Hill signed a "UCLA Healthcare – Authorization for
25 Release of Health Information" on or about January 11, 2009, which purported to authorize Ms.
26 Hill to release health information to Respondent for prescriptions, and represented that Ms. Hill
27 was the patients' "provider" and UCLA Healthcare was the "Patient's Legal Representative."
28

1 Sometime in approximately January, 2009, Respondent Song stopped filling the prescriptions
2 with Dr. Kornfeld's name on them, after having been alerted by DHCS that they were bogus.

3 47. From on or about August 1, 2008 through January 24, 2009, 896 fraudulent
4 prescriptions were filled by Respondents, in violation of pharmacy law. The drugs which were
5 dispensed by Respondents through those fraudulent prescriptions are:

<u>DRUG</u>	<u>AMOUNT</u>
6 1. Alprazolam	14990
7 2. Carisoprodol	300
8 3. Clonazepam	880
9 4. Diazepam	1300
10 5. Hydro/Apap 10/325 (hydrocodone/ 11 acetaminophen)	500
12 6. Hydro/Apap 10/500 (hydrocodone/ 13 acetaminophen)	1780
14 7. Hydro/Apap 7.5/750 (hydrocodone/ 15 acetaminophen)	16630
16 8. Morphine	60
17 9. Oxycontin 80 mg	4500
18 10. Promethazine/Codeine	6916 oz. or 54 gallons
19 11. Tussionex	176 oz.
20 12. Tylenol with Codeine #4	600
13. Zolpidem	190

21 48. These filled prescriptions contained errors, omissions, irregularities, uncertainties,
22 ambiguities or alterations, as follows:

23 a. There were only 13 different drugs prescribed, and usually with the same directions
24 for use. Many of the prescriptions were filled at the same time, which meant the pharmacist knew
25 all the patients were receiving the same drug, but failed to question it.

26 b. Some of the prescriptions did not have the "latent void" appearing on the photocopy.

27 c. For some of the prescriptions for controlled substances, Respondent Song failed to
28 contact the prescribing physician to clarify any omission on the prescriptions and failed to

1 exercise his corresponding responsibility to determine that a prescription was issued for a
2 legitimate medical purpose.

3 d. The prescriptions were fraudulent in that they were for patients who were never seen
4 or treated by Dr. Kornfeld, and the physician's signatures on the prescriptions did not match Dr.
5 Kornfeld's handwriting.

6 e. Some of the prescriptions, including the prescription for Promethazine/Codeine
7 syrup, did not specify the quantity checked on the prescription, as required by Health & Safety
8 Code section 11162.1, and the quantity was crossed out.

9 f. Respondents filled and/or dispensed numerous false prescriptions with Dr. Kornfeld's
10 name on them, despite the fact that the patient did not drop off or pick up the prescription, and
11 Respondent Song did not ask for proof of identification from the patient before filling the
12 prescriptions.

13 g. Respondents filled and/or dispensed numerous false prescriptions, even though some
14 of the patients' addresses were not local or in the local vicinity of Serrano Pharmacy.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Furnishing Drugs Without a Prescription)**

17 49. Respondents are subject to disciplinary action under Code sections 4300 and 4301,
18 subdivision (f) and (j), on the grounds of unprofessional conduct, for violating section 4059,
19 subdivision (a), in conjunction with Health and Safety Code sections 11152, 11153, 11157,
20 11158, subdivision (a), 11162.1, 11164, subdivision (a), 11167, 11171, 11173, 11174, and
21 California Code of Regulations, title 16, sections 1715.5, 1716, 1717, 1760, 1761, subdivisions
22 (a) and (b), in that from approximately August 1, 2008 through January 24, 2009, Respondents
23 furnished controlled substances and dangerous drugs, without legitimate prescriptions, as more
24 fully set forth in the preceding Paragraphs 44 through 48, and incorporated by reference as if fully
25 set forth.

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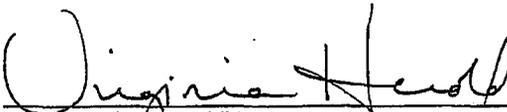
1 pharmaceutical education for four years following the completion of a course. That Citation is
2 now final and is incorporated by reference as if fully set forth.

3 PRAYER

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

- 6 1. Revoking or suspending Pharmacy Permit Number 49002, issued to Serrano Medical
7 Pharmacy;
- 8 2. Revoking or suspending Pharmacist License Number 42830, issued to James Song;
- 9 3. Ordering Serrano Medical Pharmacy and James Song to pay the Board of Pharmacy
10 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
11 Professions Code section 125.3; and
- 12 4. Taking such other and further action as deemed necessary and proper.

13
14 DATED: 7/26/10


15 VIRGINIA HEROLD
16 Executive Officer
17 Board of Pharmacy
18 Department of Consumer Affairs
19 State of California
20 Complainant

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