

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

In the Matter of the Accusation Against:

Case No. 3894

**JIMMY TSAI**  
17009 Glenburn Avenue  
Torrance, CA 90504

Pharmacist License No. RPH 54445

Respondent.

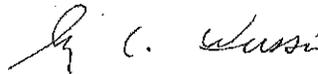
**DECISION AND ORDER**

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

This decision shall become effective on October 19, 2012.

It is so ORDERED on September 19, 2012.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
STANLEY C. WEISSER  
Board President

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9 **BOARD OF PHARMACY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
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14 **Pharmacist License No. RPH 54445**

OAH No. L-2011080802  
**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

15 Respondent.

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

18 PARTIES

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

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

25 3. On or about March 26, 2003, the Board of Pharmacy issued Pharmacist License No.  
26 RPH 54445 to Jimmy Tsai (Respondent). The Pharmacist License was in full force and effect at  
27 all times relevant to the charges brought in Accusation No. 3894 and will expire on December 31,  
28 2012, unless renewed.



1 communicate directly with the Board regarding this stipulation and settlement, without notice to  
2 or participation by Respondent. By signing the stipulation, Respondent understands and agrees  
3 that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the  
4 Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and  
5 Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for  
6 this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall  
7 not be disqualified from further action by having considered this matter.

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

11 12. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an  
12 integrated writing representing the complete, final, and exclusive embodiment of their agreement.  
13 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,  
14 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary  
15 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a  
16 writing executed by an authorized representative of each of the parties.

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

20 **DISCIPLINARY ORDER**

21 IT IS HEREBY ORDERED that Pharmacist License No. RPH 54445 issued to Respondent  
22 Jimmy Tsai (Respondent) is revoked. However, the revocation is stayed and Respondent is  
23 placed on probation for five (5) years on the following terms and conditions.

24 1. **Suspension**

25 As part of probation, respondent is suspended from the practice of pharmacy for sixty (60)  
26 beginning the effective date of this decision.

27 During suspension, respondent shall not enter any pharmacy area or any portion of the  
28 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of

1 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices  
2 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act  
3 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient  
4 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the  
5 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs  
6 and devices or controlled substances.

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

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

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

15 **2. Obey All Laws**

16 Respondent shall obey all state and federal laws and regulations.

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

- 19 • an arrest or issuance of a criminal complaint for violation of any provision of the  
20 Pharmacy Law, state and federal food and drug laws, or state and federal controlled  
21 substances laws
- 22 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to any  
23 criminal complaint, information or indictment
- 24 • a conviction of any crime
- 25 • discipline, citation, or other administrative action filed by any state or federal agency  
26 which involves respondent's pharmacist license or which is related to the practice of  
27 pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging  
28 for any drug, device or controlled substance.

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

2 **3. Report to the Board**

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

11 **4. Interview with the Board**

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

17 **5. Cooperate with Board Staff**

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

21 **6. Continuing Education**

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

24 **7. Notice to Employers**

25 During the period of probation, respondent shall notify all present and prospective  
26 employers of the decision in case number 3894 and the terms, conditions and restrictions imposed  
27 on respondent by the decision, as follows:

28 ///

1           Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of  
2 respondent undertaking any new employment, respondent shall cause his direct supervisor,  
3 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's  
4 tenure of employment) and owner to report to the board in writing acknowledging that the listed  
5 individual(s) has/have read the decision in case number 3894, and terms and conditions imposed  
6 thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s)  
7 submit timely acknowledgment(s) to the board.

8           If respondent works for or is employed by or through a pharmacy employment service,  
9 respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity  
10 licensed by the board of the terms and conditions of the decision in case number 3894 in advance  
11 of the respondent commencing work at each licensed entity. A record of this notification must be  
12 provided to the board upon request.

13           Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen  
14 (15) days of respondent undertaking any new employment by or through a pharmacy employment  
15 service, respondent shall cause his direct supervisor with the pharmacy employment service to  
16 report to the board in writing acknowledging that he has read the decision in case number 3894  
17 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure  
18 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

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

3           During the period of probation, respondent shall not supervise any intern pharmacist, be the  
4           pharmacist-in-charge or designated representative-in-charge of any entity licensed by the board  
5           nor serve as a consultant unless otherwise specified in this order. Assumption of any such  
6           unauthorized supervision responsibilities shall be considered a violation of probation.

7           **9. Reimbursement of Board Costs**

8           As a condition precedent to successful completion of probation, respondent shall pay to the  
9           board its costs of investigation and prosecution in the amount of \$2,786.50. Respondent shall be  
10          allowed to make said payments as required by the Board.

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

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

16          **10. Probation Monitoring Costs**

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

21          **11. Status of License**

22          Respondent shall, at all times while on probation, maintain an active, current license with  
23          the board, including any period during which suspension or probation is tolled. Failure to  
24          maintain an active, current license shall be considered a violation of probation.

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

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

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

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

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

15           **13. Notification of a Change in Name, Residence Address, Mailing Address or**  
16 **Employment**

17          Respondent shall notify the board in writing within ten (10) days of any change of  
18 employment. Said notification shall include the reasons for leaving, the address of the new  
19 employer, the name of the supervisor and owner, and the work schedule if known. Respondent  
20 shall further notify the board in writing within ten (10) days of a change in name, residence  
21 address, mailing address, or phone number.

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

24           **14. Tolling of Probation**

25          Except during periods of suspension, respondent shall, at all times while on probation, be  
26 employed as a pharmacist in California for a minimum of 40 hours per calendar month. Any  
27 month during which this minimum is not met shall toll the period of probation, i.e., the period of  
28 probation shall be extended by one month for each month during which this minimum is not met.

1 During any such period of tolling of probation, respondent must nonetheless comply with all  
2 terms and conditions of probation.

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

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

11 "Cessation of practice" means any calendar month during which respondent is  
12 not practicing as a pharmacist for at least 40 hours, as defined by Business and  
13 Professions Code section 4000 et seq. "Resumption of practice" means any calendar  
14 month during which respondent is practicing as a pharmacist for at least 40 hours as a  
15 pharmacist as defined by Business and Professions Code section 4000 et seq.

16 Respondent is required to practice as a pharmacist in a licensed pharmacy setting that  
17 dispenses medication for a minimum of one year prior to the completion of probation. After the  
18 first year of probation, the board or its designee may consider a modification of this requirement.  
19 If respondent fails to comply with this requirement or a subsequent modification thereto, such  
20 failure shall be considered a violation of probation.

#### 21 15. **Violation of Probation**

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

27 If respondent violates probation in any respect, the board, after giving respondent notice  
28 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that

1 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a  
2 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If  
3 a petition to revoke probation or an accusation is filed against respondent during probation, the  
4 board shall have continuing jurisdiction and the period of probation shall be automatically  
5 extended until the petition to revoke probation or accusation is heard and decided.

6 **16. Completion of Probation**

7 Upon written notice by the board or its designee indicating successful completion of  
8 probation, respondent's license will be fully restored.

9 **17. Pharmacists Recovery Program (PRP)**

10 Within thirty (30) days of the effective date of this decision, respondent shall contact the  
11 Pharmacists Recovery Program (PRP) for evaluation, and shall immediately thereafter enroll,  
12 successfully participate in, and complete the treatment contract and any subsequent addendums as  
13 recommended and provided by the PRP and as approved by the board or its designee. The costs  
14 for PRP participation shall be borne by the respondent.

15 If respondent is currently enrolled in the PRP, said participation is now mandatory and as of  
16 the effective date of this decision is no longer considered a self-referral under Business and  
17 Professions Code section 4362(c)(2). Respondent shall successfully participate in and complete  
18 his current contract and any subsequent addendums with the PRP.

19 Failure to timely contact or enroll in the PRP, or successfully participate in and complete  
20 the treatment contract and/or any addendums, shall be considered a violation of probation.

21 Probation shall be automatically extended until respondent successfully completes the PRP.  
22 Any person terminated from the PRP program shall be automatically suspended by the board.  
23 Respondent may not resume the practice of pharmacy until notified by the board in writing.

24 Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a  
25 licensed practitioner as part of a documented medical treatment shall result in the automatic  
26 suspension of practice by respondent and shall be considered a violation of probation.

27 Respondent may not resume the practice of pharmacy until notified by the board in writing.

28 ///

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

9 During suspension, respondent shall not engage in any activity that requires the  
10 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the  
11 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a  
12 designated representative for any entity licensed by the board.

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

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

17 Respondent shall pay administrative fees as invoiced by the PRP or its designee. Fees not  
18 timely paid to the PRP shall constitute a violation for probation. The board will collect unpaid  
19 administrative fees as part of the annual probation monitoring costs if not submitted to the PRP.

20 **18. Random Drug Screening**

21 Respondent, at his own expense, shall participate in random testing, including but not  
22 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug  
23 screening program as directed by the board or its designee. Respondent may be required to  
24 participate in testing for the entire probation period and the frequency of testing will be  
25 determined by the board or its designee. At all times, respondent shall fully cooperate with the  
26 board or its designee, and shall, when directed, submit to such tests and samples for the detection  
27 of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its  
28 designee may direct. Failure to timely submit to testing as directed shall be considered a violation

1 of probation. Upon request of the board or its designee, respondent shall provide documentation  
2 from a licensed practitioner that the prescription for a detected drug was legitimately issued and is  
3 a necessary part of the treatment of the respondent. Failure to timely provide such documentation  
4 shall be considered a violation of probation. Any confirmed positive test for alcohol or for any  
5 drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment  
6 shall be considered a violation of probation and shall result in the automatic suspension of  
7 practice of pharmacy by respondent. Respondent may not resume the practice of pharmacy until  
8 notified by the board in writing.

9       During suspension, respondent shall not enter any pharmacy area or any portion of the  
10 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of  
11 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices  
12 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act  
13 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient  
14 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the  
15 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs  
16 and controlled substances. Respondent shall not resume practice until notified by the board.

17       During suspension, respondent shall not engage in any activity that requires the  
18 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the  
19 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a  
20 designated representative for any entity licensed by the board.

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

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

25       **19. Abstain from Drugs and Alcohol Use**

26       Respondent shall completely abstain from the possession or use of alcohol, controlled  
27 substances, dangerous drugs and their associated paraphernalia except when the drugs are  
28 lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon

1 request of the board or its designee, respondent shall provide documentation from the licensed  
2 practitioner that the prescription for the drug was legitimately issued and is a necessary part of the  
3 treatment of the respondent. Failure to timely provide such documentation shall be considered a  
4 violation of probation. Respondent shall ensure that he is not in the same physical location as  
5 individuals who are using illicit substances even if respondent is not personally ingesting the  
6 drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia  
7 not supported by the documentation timely provided, and/or any physical proximity to persons  
8 using illicit substances, shall be considered a violation of probation.

9 **20. Prescription Coordination and Monitoring of Prescription Use**

10 Within thirty (30) days of the effective date of this decision, respondent shall submit to the  
11 board, for its prior approval, the name and qualifications of a single physician, nurse practitioner,  
12 physician assistant, or psychiatrist of respondent's choice, who shall be aware of the respondent's  
13 history of controlled substance and dangerous drug abuse and who will coordinate and monitor  
14 any prescriptions for respondent for dangerous drugs, controlled substances or mood-altering  
15 drugs. The approved practitioner shall be provided with a copy of the board's Accusation and  
16 decision. A record of this notification must be provided to the board upon request. Respondent  
17 shall sign a release authorizing the practitioner to communicate with the board about respondent's  
18 treatment(s). The coordinating physician, nurse practitioner, physician assistant, or psychiatrist  
19 shall report to the board on a quarterly basis for the duration of probation regarding respondent's  
20 compliance with this condition. If any substances considered addictive have been prescribed, the  
21 report shall identify a program for the time limited use of any such substances. The board may  
22 require that the single coordinating physician, nurse practitioner, physician assistant or  
23 psychiatrist be a specialist in addictive medicine, or consult a specialist in addictive medicine.  
24 Should respondent, for any reason, cease supervision by the approved practitioner, respondent  
25 shall notify the board immediately and, within thirty (30) days of ceasing treatment, submit the  
26 name of a replacement physician, nurse practitioner, physician assistant, or psychiatrist of  
27 respondent's choice to the board or its designee for its prior approval. Failure to timely submit  
28 the selected practitioner or replacement practitioner to the board for approval, or to ensure the

1 required reporting thereby on the quarterly reports, shall be considered a violation of probation.

2 If at any time an approved practitioner determines that respondent is unable to practice  
3 safely or independently as a pharmacist, the practitioner shall notify the board immediately by  
4 telephone and follow up by written letter within three (3) working days. Upon notification from  
5 the board or its designee of this determination, respondent shall be automatically suspended and  
6 shall not resume practice until notified by the board that practice may be resumed.

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

15 During suspension, respondent shall not engage in any activity that requires the  
16 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the  
17 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a  
18 designated representative for any entity licensed by the board.

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

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

23 **21. Community Services Program**

24 Within sixty (60) days of the effective date of this decision, respondent shall submit to the  
25 board or its designee, for prior approval, a community service program in which respondent shall  
26 provide free health-care related services on a regular basis to a community or charitable facility or  
27 agency for at least eighty (80) hours for the first two years of probation. Within thirty (30) days  
28 of board approval thereof, respondent shall submit documentation to the board demonstrating

1 commencement of the community service program. A record of this notification must be  
2 provided to the board upon request. Respondent shall report on progress with the community  
3 service program in the quarterly reports. Failure to timely submit, commence, or comply with the  
4 program shall be considered a violation of probation.

5 **22. Supervised Practice**

6 During the period of probation, respondent shall practice only under the supervision of a  
7 licensed pharmacist not on probation with the board. Upon and after the effective date of this  
8 decision, respondent shall not practice pharmacy and his license shall be automatically suspended  
9 until a supervisor is approved by the board or its designee. The supervision shall be, as required  
10 by the board or its designee, either:

11 Continuous – At least 75% of a work week

12 Substantial - At least 50% of a work week

13 Partial - At least 25% of a work week

14 Daily Review - Supervisor's review of probationer's daily activities within 24 hours

15 Within thirty (30) days of the effective date of this decision, respondent shall have his  
16 supervisor submit notification to the board in writing stating that the supervisor has read the  
17 decision in case number 3894 and is familiar with the required level of supervision as determined  
18 by the board or its designee. It shall be the respondent's responsibility to ensure that his  
19 employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the  
20 board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely  
21 acknowledgements to the board shall be considered a violation of probation.

22 If respondent changes employment, it shall be the respondent's responsibility to ensure that  
23 his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to  
24 the board. Respondent shall have his new supervisor, within fifteen (15) days after employment  
25 commences, submit notification to the board in writing stating the direct supervisor and  
26 pharmacist-in-charge have read the decision in case number 3894 and is familiar with the level of  
27 supervision as determined by the board. Respondent shall not practice pharmacy and his license  
28 shall be automatically suspended until the board or its designee approves a new supervisor.

1 Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely  
2 acknowledgements to the board shall be considered a violation of probation.

3       Within ten (10) days of leaving employment, respondent shall notify the board in writing.

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

12       During suspension, respondent shall not engage in any activity that requires the  
13 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the  
14 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a  
15 designated representative for any entity licensed by the board.

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

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

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

21       Respondent shall not own, have any legal or beneficial interest in, or serve as a manager,  
22 administrator, member, officer, director, trustee, associate, or partner of any business, firm,  
23 partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell  
24 or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90)  
25 days following the effective date of this decision and shall immediately thereafter provide written  
26 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide  
27 documentation thereof shall be considered a violation of probation.

28       ///

1           **24. Criminal Probation/Parole Reports**

2           Respondent shall provide a copy of the conditions of any criminal probation/parole to the  
3 board, in writing, within ten (10) days of the issuance or modification of those conditions.  
4 Respondent shall provide the name of his probation/parole officer to the board, in writing, within  
5 ten (10) days after that officer is designated or a replacement for that officer is designated.  
6 Respondent shall provide a copy of all criminal probation/parole reports to the board within ten  
7 (10) days after respondent receives a copy of such a report. Failure to timely make any of the  
8 submissions required hereby shall be considered a violation of probation.

9           **25. Tolling of Suspension**

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

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

22           **26. Ethics Course**

23           Within sixty (60) calendar days of the effective date of this decision, respondent shall enroll  
24 in a course in ethics, at respondent's expense, approved in advance by the board or its designee.  
25 Failure to initiate the course during the first year of probation, and complete it within the second  
26 year of probation, is a violation of probation.

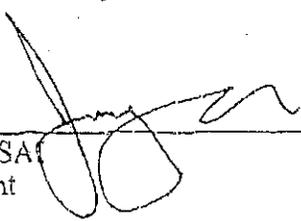
27           Respondent shall submit a certificate of completion to the board or its designee within five  
28 days after completing the course.

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ACCEPTANCE

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

DATED: 6/1/2012

  
\_\_\_\_\_  
JIMMY TSAI  
Respondent

ENDORSEMENT

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

Dated:

Respectfully submitted,  
KAMALA D. HARRIS  
Attorney General of California  
GLORIA A. BARRIOS  
Supervising Deputy Attorney General

KIMBERLEE D. KING  
Deputy Attorney General  
*Attorneys for Complainant*

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DATED: \_\_\_\_\_

JIMMY TSAI  
Respondent

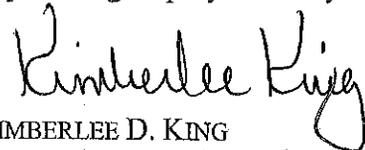
ENDORSEMENT

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

Dated: 6/28/12

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
GLORIA A. BARRIOS  
Supervising Deputy Attorney General

  
KIMBERLEE D. KING  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**Accusation No. 3894**

1 KAMALA D. HARRIS  
Attorney General of California  
2 KIMBERLEE D. KING  
Deputy Attorney General  
3 GLORIA A. BARRIOS  
Supervising Deputy Attorney General  
4 State Bar No. 141813  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2581  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*  
7

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

11 In the Matter of the Accusation Against:

Case No. 3894

12 **JIMMY TSAI**  
17009 Glenburn Ave.  
13 Torrance, CA 90504

**ACCUSATION**

14 Pharmacist License No. RPH 54445

15 Respondent.

16  
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 March 26, 2003, the Board of Pharmacy issued Pharmacist License No.  
22 RPH 54445 to Jimmy Tsai (Respondent). The Pharmacist License was in full force and effect at  
23 all times relevant to the charges brought herein and will expire on December 31, 2012, unless  
24 renewed.

25 **JURISDICTION**

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

STATUTORY PROVISIONS

4. Section 490 of the Code states:

"A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code. "

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

" Dangerous drugs" means any drug unsafe for self-use in humans or animals, and includes the following:

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

....

"(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to section 4006.

6. Section 4060 of the Code states, in pertinent part:

"(a) No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1. . . ."

7. Section 4300, subdivision (a), of the Code states that "[e]very license issued may be suspended or revoked."

///



1 crime or act shall be considered substantially related to the qualifications, functions or duties of a  
2 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a  
3 licensee or registrant to perform the functions authorized by his license or registration in a manner  
4 consistent with the public health, safety, or welfare."

5 **COST RECOVERY**

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

10 **CONTROLLED SUBSTANCES/DANGEROUS DRUGS**

11 12. Ambien is a Schedule IV controlled substance, as designated by Health and Safety  
12 Code section 11057 subdivision (d)(32), and is categorized as a dangerous drug pursuant to  
13 section 4022 of the Code.

14 13. Effexor is categorized as a dangerous drug pursuant to section 4022 of the Code.

15 14. Indomethacin is categorized as a dangerous drug pursuant to section 4022 of the  
16 Code.

17 15. Lorazepam is a Schedule IV controlled substance, as designated by Health and Safety  
18 Code section 11057, subdivision (d)(16), and is categorized as a dangerous drug pursuant to  
19 section 4022 of the Code.

20 16. Soma is categorized as a dangerous drug pursuant 4022 of the Code.

21 17. Vicodin is a Schedule III controlled substance, as designated by Health and Safety  
22 Code section 11056 subdivision (e)(4), and is categorized as a dangerous drug pursuant to  
23 section 4022 of the Code.

24 **FIRST CAUSE FOR DISCIPLINE**

25 **(Substantially Related Convictions)**

26 18. Respondent is subject to disciplinary action under sections 490, 4300, subdivision (a),  
27 and section 4301, subdivision (l), in conjunction with California Code of Regulations, title 16,

28 ///

1 section 1770, in that, Respondent was convicted of crimes substantially related to the  
2 qualifications, functions or duties of a registered pharmacist. The circumstances are as follows:

3 a. On or about July 21, 2010, after pleading nolo contendere, Respondent was convicted  
4 of one misdemeanor count of violating Vehicle Code Section 23152(a) [driving while under the  
5 influence of a drug] in the criminal proceeding entitled *The People of the State of California v.*  
6 *Jimmy Tsai* (Super. Ct. Santa Barbara County, 2010, No. 1334736). The Court sentenced  
7 Respondent to 120 days in jail and ordered him to pay a fine of \$1,754.00. In addition, the Court  
8 placed Respondent on three (3) years probation and ordered Respondent to complete a three  
9 month 1<sup>st</sup> Offender Alcohol/Drug Program.

10 b. The circumstances underlying the conviction are that on or about June 4, 2010, Santa  
11 Barbara Police Officers arrested Respondent for driving under the influence after Respondent  
12 drove his vehicle onto a sidewalk and collided into a planter before entering his apartment  
13 complex. Respondent admitted to the arresting officers to being under the influence of Ambien,  
14 Effexor, Indomethacin, Lorazepam, Soma and Vicodin, without valid prescriptions. The arresting  
15 officers searched Respondents apartment and seized over 100 unidentified pills.

16 c. On or about February 22, 2011, after pleading nolo contendere to an interlienated  
17 lesser charge from a misdemeanor, Respondent was convicted of one infraction count violating  
18 Penal Code section 415(2) [disturbing the peace] in the criminal proceeding entitled *The People*  
19 *of the State of California v. Jimmy Y. Tsai* (Super. Ct. Santa Barbara County, 2010, No. 1335344).

20 d. The circumstances underlying the conviction are that on or about July 17, 2010, while  
21 an employee of Kmart, Goleta, California, Respondent was arrested for stealing a set of speakers  
22 and cable from Goleta Kmart. Previously, Respondent admitted to the theft and agreed to make  
23 restitution to his employer.

## 24 SECOND CAUSE FOR DISCIPLINE

### 25 (Unlawful Possession of Controlled Substances/Dangerous Drugs)

26 19. Respondent is subject to disciplinary action under sections 4300, subdivision (a),  
27 and 4301, subdivision (h), on the grounds of unprofessional conduct for violating sections 4022  
28 and 4060, in that on or about June 4, 2010, Respondent was in possession of controlled

1 substances and dangerous drugs without valid prescriptions: Ambien, Effexor, Indomethacin,  
2 Lorazepam, Soma and Vicodin. Complaint refers to and by this reference incorporates the  
3 allegations set forth above in paragraph 18, subparagraphs a and b, inclusive, as though set forth  
4 fully.

5 **THIRD CAUSE FOR DISCIPLINE**

6 **(Under the Influence of Controlled Substances/Dangerous Drugs)**

7 20. Respondent is subject to disciplinary action under sections 4300, subdivision (a),  
8 and 4301, subdivision (j) on the grounds of unprofessional conduct, in conjunction with Health  
9 and Safety Code section 11550, in that on or about June 4, 2010, Respondent administered to  
10 himself controlled substances, and/or used dangerous drugs without valid prescriptions.  
11 Complaint refers to and by this reference incorporates the allegations set forth above in  
12 paragraphs 18 and 19, inclusive, as though set forth fully.

13 **FOURTH CAUSE FOR DISCIPLINE**

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

15 21. Respondent is subject to disciplinary action under sections 4300, subdivision (a),  
16 and 4301, subdivision (f), on the grounds of unprofessional conduct, in that Respondent  
17 committed acts involving act involving moral turpitude, dishonesty, fraud, deceit, or corruption.  
18 Complaint refers to and by this reference incorporates the allegations set forth above in  
19 paragraphs 18-20, inclusive, as though set forth fully.

20 **FIFTH CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct)**

22 22. Respondent is subject to disciplinary action under sections 4300, subdivision (a),  
23 and 4301, in that Respondent committed acts of unprofessional conduct. Complaint refers to and  
24 by this reference incorporates the allegations set forth above in paragraphs 18-20, inclusive, as  
25 though set forth fully.

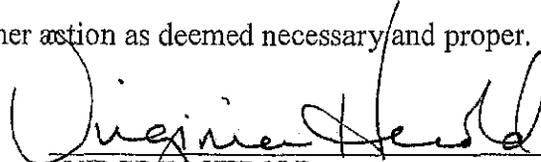
26 **PRAYER**

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

- 1           1.    Revoking or suspending Pharmacist License No. RPH 54445, issued to Jimmy Tsai;  
2           2.    Ordering Jimmy Tsai to pay the Board of Pharmacy the reasonable costs of the  
3 investigation and enforcement of this case pursuant to section 125.3; and  
4           2.    Taking such other and further action as deemed necessary and proper.

5 DATED:

6 6/21/11



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

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