

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

In the Matter of the Statement of Issues Against:

Case No. 5105

GABRIEL WONG
8390 Moller Ranch Drive
Pleasanton, CA 94588

Applicant for Intern Pharmacist License

Respondent.

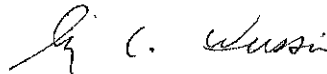
DECISION AND ORDER

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 November 7, 2014.

It is so ORDERED on October 31, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER
Board President

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JOSHUA A. ROOM
Supervising Deputy Attorney General
4 State Bar No. 214663
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1299
6 Facsimile: (415) 703-5480
Attorneys for Complainant
7

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

10 In the Matter of the Statement of Issues Against:
11 **GABRIEL WONG**
12 **Applicant for Intern Pharmacist License**
13
14 Respondent.

Case No. 5105

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15 In the interest of a prompt and speedy settlement of this matter, consistent with the public
16 interest and responsibility of the Board of Pharmacy, Department of Consumer Affairs, the parties
17 hereby agree to the following Stipulated Settlement and Disciplinary Order to be submitted to the
18 Board for approval and adoption as the final disposition of the Statement of Issues.

19 PARTIES

20 1. Virginia Herold ("Complainant"), Executive Officer, Board of Pharmacy, brought this
21 action solely in her official capacity and is represented herein by Kamala D. Harris, Attorney
22 General of the State of California, by Joshua A. Room, Supervising Deputy Attorney General.

23 2. Respondent Gabriel Wong ("Respondent") is represented in this proceeding by
24 attorney Brett Sherman, whose address is: Goyette & Associates, 2366 Gold Meadow Way, Suite
25 200, Gold River, CA 95670 (telephone (916) 851-1900).

26 3. On or about October 4, 2013, Respondent filed an application, dated September 19,
27 2013, with the Board of Pharmacy to obtain an Intern Pharmacist License. The Board denied the
28 application on or about January 7, 2014.

CONTINGENCY

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

11 11. The parties understand and agree that Portable Document Format (PDF) and facsimile
12 copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format
13 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

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

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

DISCIPLINARY ORDER

22
23 IT IS HEREBY ORDERED that, upon satisfaction of statutory and regulatory requirements
24 for issuance thereof, an Intern Pharmacist License shall be issued to Respondent Gabriel Wong
25 and shall be immediately revoked. The revocation shall be stayed and Respondent is placed on
26 probation for five (5) years (unless extended), on the following terms and conditions.

27 IT IS FURTHER HEREBY ORDERED that, should Respondent subsequently be issued a
28 Pharmacist License by the Board, any remaining probation period shall apply to that Pharmacist

1 License. That is, upon satisfaction of statutory and regulatory requirements for issuance thereof,
2 a Pharmacist License shall be issued to Respondent Gabriel Wong and shall be immediately
3 revoked, with the revocation stayed and Respondent placed on probation for the remainder of the
4 five (5) years originally ordered (unless extended), on the following terms and conditions.

5 **1. Obey All Laws**

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

7 Respondent shall report any of the following occurrences to the board, in writing, within
8 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 license(s) or which is related to the practice of pharmacy
17 or the manufacturing, obtaining, handling, distributing, billing, or charging for any
18 drug, device or controlled substance.

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

20 **2. Report to the Board**

21 Respondent shall report to the board quarterly, on a schedule as directed by the board or its
22 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.

1 **3. Interview with the Board**

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

7 **4. Cooperate with Board Staff**

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

11 **5. Continuing Education**

12 Respondent shall provide evidence of efforts to maintain skill and knowledge as an intern
13 pharmacist and, if licensed as such, a pharmacist, as directed by the board or its designee.

14 **6. Status of License**

15 Respondent shall, at all times while on probation, maintain an active, current license with
16 the board, including any period during which suspension or probation is tolled. Failure to
17 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, and is
20 not replaced or superseded by another license, upon renewal or reapplication respondent's license
21 shall be subject to all terms and conditions of this probation not previously satisfied.

22 **7. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as
23 Designated Representative-in-Charge, or Serving as a Consultant**

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

28 ///

1 8. **Notice to Employers**

2 During the period of probation, respondent shall notify all present and prospective
3 employers of the decision in case number 5105 and the terms, conditions and restrictions imposed
4 on respondent by the decision, as follows:

5 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
6 respondent undertaking any new employment, respondent shall cause his direct supervisor,
7 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's
8 tenure of employment) and owner to report to the board in writing acknowledging that the listed
9 individual(s) has/have read the decision in case number 5105, and terms and conditions imposed
10 thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s)
11 submit timely acknowledgment(s) to the board.

12 If respondent works for or is employed by or through a pharmacy employment service,
13 respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity
14 licensed by the board of the terms and conditions of the decision in case number 5105 in advance
15 of the respondent commencing work at each licensed entity. A record of this notification must be
16 provided to the board upon request.

17 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
18 (15) days of respondent undertaking any new employment by or through a pharmacy employment
19 service, respondent shall cause his direct supervisor with the pharmacy employment service to
20 report to the board in writing acknowledging that he has read the decision in case number 5105
21 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure
22 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

23 Failure to timely notify present or prospective employer(s) or to cause such employer(s) to
24 submit timely acknowledgments to the board shall be considered a violation of probation.

25 "Employment" within the meaning of this provision shall include any full-time,
26 part-time, temporary, relief or pharmacy management service as a pharmacist or
27 intern pharmacist, or any position for which licensure in these categories is a
28 requirement or criterion for employment, whether the respondent is an employee,
independent contractor or volunteer.

///

1 **9. Employment Requirement: Tolling of Probation**

2 Except during periods of suspension, respondent shall, at all times while on probation, be
3 employed for the following minimum number of hours per calendar month in California:

4 If he holds only an intern pharmacist license, he shall be employed as an intern pharmacist
5 for a minimum of ten (10) hours per month. If he holds a pharmacist license, he shall be
6 employed as a pharmacist in California for a minimum of forty (40) hours per month.

7 Any month during which the applicable minimum is not met tolls the period of probation,
8 i.e., the period of probation is extended by one month for each month in which the minimum is
9 not met. During any period of tolling, respondent must comply with all terms and conditions of
10 probation. Should respondent, regardless of residency, for any reason (including vacation) cease
11 practicing for the applicable minimum number of hours per calendar month in California,
12 respondent must notify the board in writing within ten (10) days of the cessation of practice, and
13 must further notify the board in writing within ten (10) days of the resumption of practice. Any
14 failure to provide such notification(s) shall be considered a violation of probation.

15 It is a violation of probation for respondent's probation to remain tolled pursuant to the
16 provisions of this condition for a total period, counting consecutive and non-consecutive months
17 or smaller time periods, exceeding thirty-six (36) months.

18 "Cessation of practice" means any calendar month during which respondent is
19 not practicing as an intern pharmacist or pharmacist as defined by Business and
20 Professions Code section 4000 et seq. for the applicable minimum number of hours.
21 "Resumption of practice" means any calendar month during which respondent is
22 practicing as an intern pharmacist or pharmacist as defined by Business and
23 Professions Code section 4000 et seq. for the applicable minimum number of hours.

22 **10. Notification of Change in Employment, Name, Address(es), or Phone(s)**

23 Respondent shall notify the board in writing within ten (10) days of any change of
24 employment. Said notification shall include the reasons for leaving, the address of the new
25 employer, the name of the supervisor and owner, and the work schedule if known. Respondent
26 shall also notify the board in writing within ten (10) days of a change in name, residence address,
27 mailing address, or phone number. Failure to timely notify the board of a change in employer(s),
28 name(s), address(es), or phone number(s) shall be considered a violation of probation.

1 **11. Supervised Practice**

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

7 Continuous – At least 75% of a work week

8 Substantial - At least 50% of a work week

9 Partial - At least 25% of a work week

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

11 Within thirty (30) days of the effective date of this decision, respondent shall have his
12 supervisor submit notification to the board in writing stating that the supervisor has read the
13 decision in case number 4248 and is familiar with the required level of supervision as determined
14 by the board or its designee. It shall be respondent's responsibility to ensure that his employer(s),
15 pharmacist-in-charge and/or supervisor(s) submit timely acknowledgment(s) to the board. Failure
16 to cause the direct supervisor and the pharmacist-in-charge to submit timely acknowledgements
17 to the board shall be considered a violation of probation.

18 If respondent changes employment, it shall be the respondent's responsibility to ensure that
19 his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgment(s) to
20 the board. respondent shall have his new supervisor, within fifteen (15) days after employment
21 commences, submit notification to the board in writing stating the direct supervisor and
22 pharmacist-in-charge have read the decision in case number 4248 and are familiar with the level
23 of supervision as determined by the board.

24 In this circumstance, respondent shall not practice pharmacy and his license shall be
25 automatically suspended until the board or its designee approves a new supervisor. Failure to
26 cause the direct supervisor and the pharmacist-in-charge to submit timely acknowledgements to
27 the board shall be considered a violation of probation.

28 ///

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

9 During any such 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 Failure to comply with any such suspension shall be considered a violation of probation.

14 **12. Pharmacists Recovery Program (PRP)**

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

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

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

26 Probation shall be automatically extended until respondent successfully completes the PRP.

27 Any person terminated from the PRP program shall be automatically suspended by the board.

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

1 Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a
2 licensed practitioner as part of a documented medical treatment shall result in the automatic
3 suspension of practice by respondent and shall be considered a violation of probation.
4 Respondent may not resume the practice of pharmacy until notified by the board in writing.

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

20 If participation in and compliance with the PRP proves incompatible with Respondent's
21 successful participation in pharmacy school, if Respondent finds it necessary to withdraw or take
22 a leave of absence from pharmacy school, and if such withdrawal or leave of absence results in
23 the lapse or cancellation of Respondent's intern pharmacist license, enforcement of the following
24 terms and conditions shall be suspended/tolled during the period of Respondent's loss of license:

- 25 • Term and Condition 5 – Continuing Education;
- 26 • Term and Condition 6 – Status of License;
- 27 • Term and Condition 8 – Notice to Employers; and
- 28 • Term and Condition 9 – Employment Requirement.

1 All other terms and conditions of probation shall remain in full force and effect.
2 Respondent shall promptly inform the Board prior to re-enrollment or attempted re-enrollment in
3 pharmacy school. Upon successful re-enrollment and subsequent reinstatement of license status,
4 all terms and conditions of probation shall once again be in full force and effect.

5 The period of suspension/tolling of the above-listed terms pursuant to loss of license status
6 shall not exceed twelve (12) months. Any failure to re-enroll and reinstate license status within
7 twelve (12) months shall be considered a violation of probation.

8 **13. Prescription Coordination and Monitoring of Prescription Use**

9 Within thirty (30) days of the effective date of this decision, respondent shall submit to the
10 board, for its prior approval, the name and qualifications of a single physician, nurse practitioner,
11 physician assistant, or psychiatrist of respondent's choice, who shall be aware of the respondent's
12 history with the use of alcohol and who will coordinate and monitor any prescriptions for
13 respondent for dangerous drugs, controlled substances or mood-altering drugs. The approved
14 practitioner shall be provided with a copy of the board's Statement of Issues and decision. A
15 record of this notification must be provided to the board upon request.

16 Respondent shall sign a release authorizing the practitioner to communicate with the board
17 about respondent's treatment(s). The coordinating physician, nurse practitioner, physician
18 assistant, or psychiatrist shall report to the board on a quarterly basis for the duration of probation
19 regarding respondent's compliance with this condition. If any substance considered addictive has
20 been prescribed, the report shall identify a program for its time limited use.

21 The board may require that the single coordinating physician, nurse practitioner, physician
22 assistant or psychiatrist be a specialist in addictive medicine, or consult a specialist in addictive
23 medicine. Should respondent, for any reason, cease supervision by the approved practitioner,
24 respondent shall notify the board immediately and, within thirty (30) days of ceasing, submit the
25 name of a replacement physician, nurse practitioner, physician assistant, or psychiatrist of
26 respondent's choice to the board or its designee for its prior approval. Failure to timely submit
27 the selected practitioner or replacement practitioner to the board for approval, or to ensure the
28 required reporting thereby on the quarterly reports, shall be considered a violation of probation.

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

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

15 Failure to comply with any such suspension shall be considered a violation of probation.

16 **14. Random Drug Screening**

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

25 Upon request of the board or its designee, respondent shall provide documentation from a
26 licensed practitioner that the prescription for a detected drug was legitimately issued and is a
27 necessary part of the treatment of the respondent. Failure to timely provide such documentation
28 shall be considered a violation of probation.

1 Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a
2 licensed practitioner as part of a documented medical treatment shall be considered a violation of
3 probation and shall result in the automatic suspension of practice of pharmacy by respondent.
4 Respondent may not resume the practice of pharmacy until notified by the board in writing.

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

17 **15. Abstain from Drugs and Alcohol Use**

18 Respondent shall completely abstain from the possession or use of alcohol, controlled
19 substances, dangerous drugs or their paraphernalia except when the drugs are lawfully prescribed
20 by a licensed practitioner as part of a documented medical treatment. Upon request of the board
21 or its designee, respondent shall provide documentation from the licensed practitioner that the
22 prescription for the drug was legitimately issued as a necessary part of treatment of respondent.
23 Failure to timely provide such documentation shall be considered a violation of probation.

24 Respondent shall ensure he is not in the same physical location as individuals using illicit
25 substances even if respondent is not using the drugs. Any possession or use of alcohol, controlled
26 substances, or their associated paraphernalia not supported by documentation timely provided, or
27 any proximity to persons using illicit substances, shall be considered a violation of probation.

28 ///

1 **16. No Ownership of Licensed Premises**

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

9 **17. Probation Monitoring Costs**

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

14 **18. License Surrender While on Probation/Suspension**

15 Following the effective date of this decision, should respondent cease practice as an intern
16 pharmacist or pharmacist due to retirement or health, or be otherwise unable to satisfy the terms
17 and conditions of probation, respondent may tender his license(s) to the board for surrender. The
18 board or its designee shall have the discretion whether to grant the request for surrender or take
19 any other action it deems appropriate. Upon formal acceptance of the surrender, respondent will
20 no longer be subject to the terms and conditions of probation. This surrender constitutes a record
21 of discipline and shall become a part of the respondent's license history with the board.

22 Upon acceptance of the surrender, respondent shall relinquish his pocket and wall license(s)
23 to the board within ten (10) days of notification by the board surrender is accepted. Respondent
24 may not reapply for any license from the board for three (3) years from the effective date of the
25 surrender. Respondent shall meet all requirements applicable to the license sought as of the date
26 the application for that license is submitted to the board, including any outstanding costs.

27 ///

28 ///

1 **19. Violation of Probation**

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

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

14 **20. Completion of Probation**

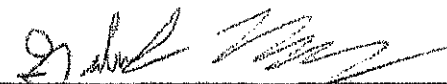
15 Upon written notice by the board or its designee indicating successful completion of
16 probation, respondent's license will be fully restored.

17
18
19
20
21
22
23
24
25
26
27
28

ACCEPTANCE

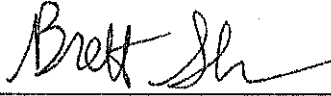
I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
discussed it with my attorney, Brett Sherman. I understand the stipulation and the effect it will
have on my application for an Intern Pharmacist License, and on my succeeding Intern
Pharmacist License and/or subsequent 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: 9/4/14



GABRIEL WONG
Respondent

1 I have read and fully discussed with Respondent Gabriel Wong the terms and conditions
2 and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve
3 its form and content.

4 DATED: 9/9/14 
5 BRETT SHERMAN
6 Attorney for Respondent

7 ENDORSEMENT

8 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
9 submitted for consideration by the Board of Pharmacy.

10 Dated: 9/26/2014

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General


JOSHUA A. ROOM
Supervising Deputy Attorney General
Attorneys for Complainant

17 SF2014407381
18 41063430.doc

19
20
21
22
23
24
25
26
27
28

Exhibit A

Statement of Issues No. 5105

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

7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Statement of Issues Against:

Case No. 5105

11 **GABRIEL WONG**

12 **Applicant for Intern Pharmacist License**

STATEMENT OF ISSUES

13
14 Respondent.

15 Complainant alleges:

16 PARTIES

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

19 2. On or about October 4, 2013, the Board of Pharmacy, Department of Consumer
20 Affairs received an Application for Registration as an Intern Pharmacist from Gabriel Wong
21 (Respondent). On or about September 19, 2013, Gabriel Wong certified under penalty of perjury
22 as to the truthfulness of all statements, answers, and representations in the Application. The
23 Board denied the application on January 7, 2014.

24 JURISDICTION

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

28 ///

1 STATUTORY AND REGULATORY PROVISIONS

2 4. Section 4300, subdivision (c), of the Code states in pertinent part:

3 “(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The
4 board may, in its sole discretion, issue a probationary license to any applicant for a license who is
5 guilty of unprofessional conduct and who has met all other requirements for licensure. The board
6 may issue the license subject to any terms or conditions not contrary to public policy”

7 5. Section 4301 of the Code provides, in pertinent part, that “unprofessional conduct” is
8 defined to include, but not be limited to, any of the following:

9 (h) The administering to oneself, of any controlled substance, or the use of any dangerous
10 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
11 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
12 to the extent that the use impairs the ability of the person to conduct with safety to the public the
13 practice authorized by the license.

14 (k) The conviction of more than one misdemeanor or any felony involving the use,
15 consumption, or self-administration of any dangerous drug or alcoholic beverage, or any
16 combination of those substances.

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

19 6. Section 480 of the Code states, in pertinent part:

20 “(a) A board may deny a license regulated by this code on the grounds that the applicant
21 has one of the following:

22 “(1) Been convicted of a crime. . . . Any action which a board is permitted to take following
23 the establishment of a conviction may be taken . . . irrespective of a subsequent order under the
24 provisions of Section 1203.4 of the Penal Code.

25 “(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially
26 benefit himself or another, or substantially injure another; or

27 “(3) Done any act which if done by a licentiate of the business or profession in question,
28 would be grounds for suspension or revocation of license.

1 "The board may deny a license pursuant to this subdivision only if the crime or act is
2 substantially related to the qualifications, functions or duties of the . . . [license]."

3 7. California Code of Regulations, title 16, section 1770, states:

4 "For the purpose of denial, suspension, or revocation of a personal or facility license
5 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
6 crime or act shall be considered substantially related to the qualifications, functions or duties of a
7 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
8 licensee or registrant to perform the functions authorized by his license or registration in a manner
9 consistent with the public health, safety, or welfare."

10 FIRST CAUSE FOR DENIAL OF APPLICATION

11 (Conviction of Substantially Related Crime(s))

12 8. Respondent's application is subject to denial under the following section(s) of the
13 Code: 480(a)(1); 480(a)(3) by reference to 4301(l); and/or 4300(c) by reference to 4301(l) and
14 California Code of Regulations, title 16, section 1770, for conviction of a substantially related
15 crime, in that on or about June 18, 2009, in a criminal case titled *People v. Gabriel Wong*, Case
16 No. 418516-7 in Alameda County Superior Court, Respondent was convicted of violating Vehicle
17 Code section 23152, subdivision (a) (Driving While Under the Influence of Alcohol/Drug), a
18 misdemeanor. The conviction was entered as follows:

19 a. On or about April 3, 2009, Respondent was observed by California Highway Patrol
20 officer(s) driving a vehicle on I-580, too close to another vehicle, and maintaining a steady speed
21 of 90 mph. Respondent was pulled over, at which time the officer(s) detected the odor of alcohol
22 coming from the vehicle. Respondent was unable to successfully perform Field Sobriety Tests
23 (FSTs), and a breath test measured his blood alcohol level at 0.15% or 0.16%.

24 b. On or about April 22, 2009, Respondent was charged by Complaint in Case No.
25 418516-7 in Alameda County Superior Court with violating (1) Vehicle Code section 23152,
26 subdivision (a) (Driving While Under the Influence of Alcohol/Drug), a misdemeanor, and (2)
27 Vehicle Code section 23152, subdivision (b) (Driving With a Blood Alcohol of 0.08% or Higher),
28 a misdemeanor, with an allegation that his blood alcohol was 0.15% percent or more.

1 c. On or about June 18, 2009, Respondent pleaded no contest and was found guilty of
2 count 1 (violation of Vehicle Code section 23152, subdivision (a)). Count 2 was dismissed. The
3 imposition of sentence was suspended and Respondent was placed on court probation for thirty-
4 six (36) months on terms and conditions including two (2) days in county jail (1 day CTS),
5 completion of a three (3) month Level I DUI School, and payment of fines and fees.

6 SECOND CAUSE FOR DENIAL OF APPLICATION

7 (Conviction of Substantially Related Crime(s))

8 9. Respondent's application is subject to denial under the following section(s) of the
9 Code: 480(a)(1); 480(a)(3) by reference to 4301(l); and/or 4300(c) by reference to 4301(l) and
10 California Code of Regulations, title 16, section 1770, for conviction of a substantially related
11 crime, in that on or about August 5, 2011, in a criminal case titled *People v. Gabriel Wong*, Case
12 No. 561103 in Alameda County Superior Court, Respondent was convicted of violating Vehicle
13 Code section 23152, subdivision (a) (Driving While Under the Influence of Alcohol/Drug), a
14 misdemeanor. The conviction was entered as follows:

15 a. On or about April 30, 2010, Respondent was observed by University of California
16 (Berkeley) Police Department officer(s) driving a vehicle that failed to stop properly at a stop
17 sign, a flashing red light, and a subsequent stop sign. Respondent was pulled over, at which time
18 the officer(s) detected the odor of alcohol coming from the vehicle. Respondent was unable to
19 successfully perform Field Sobriety Tests (FSTs), and refused to provide a blood or urine sample.

20 b. On or about April 30, 2010, Respondent was charged by Complaint in Case No.
21 561103 in Alameda County Superior Court with violating Vehicle Code section 23152,
22 subdivision (a) (Driving While Under the Influence of Alcohol/Drug), a misdemeanor, with an
23 allegation of Respondent's prior June 18, 2009 conviction as described above.

24 c. On or about August 5, 2011, Respondent pleaded no contest and was found guilty of
25 violating Vehicle Code section 23152, subdivision (a). Imposition of sentence was suspended
26 and Respondent was placed on court probation for thirty-six (36) months on terms and conditions
27 including ten (10) days in county jail (1 day CTS), completion of an eighteen (18) month Multiple
28 Offender Drinking Driver Program, and payment of fines and fees.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THIRD CAUSE FOR DENIAL OF APPLICATION

(Conviction of Alcohol or Drug-Involved Crimes)

10. Respondent's application is subject to denial under the following section(s) of the Code: 480(a)(3) by reference to 4301(k); and/or 4300(c) by reference to 4301(k), in that, as described in paragraphs 8 and 9 above, Respondent was convicted of more than one misdemeanor involving the use or consumption of an alcoholic beverage or a dangerous drug.

FOURTH CAUSE FOR DENIAL OF APPLICATION

(Dangerous or Injurious Use of Alcohol/Drug)

11. Respondent's application is subject to denial under the following section(s) of the Code: 480(a)(3) by reference to 4301(h); and/or 4300(c) by reference to 4301(h), in that, as described in paragraphs 8 and 9 above, Respondent made dangerous or injurious use of alcohol.

FIFTH CAUSE FOR DENIAL OF APPLICATION

(Unprofessional Conduct)

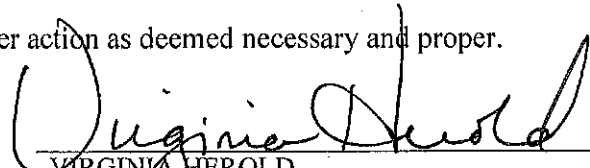
12. Respondent's application is subject to denial under the following section(s) of the Code: 480(a)(3) by reference to 4301; and/or 4300(c) by reference to 4301, in that, as described in paragraphs 8 through 11 above, Respondent engaged in unprofessional conduct.

PRAYER

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

- 1. Denying the application of Gabriel Wong for an Intern Pharmacist License;
- 2. Taking such other and further action as deemed necessary and proper.

DATED: 5/3/14



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

SF2014407381
11310869.doc