

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

**In the Matter of the Petition for Early Termination of
Probation of:**

HAKYUNG KIM, Petitioner

Agency Case No. 5747

OAH No. 2022030325

DECISION

This matter was heard on March 16, 2022, before a quorum of the Board of Pharmacy (Board), Department of Consumer Affairs, State of California, by WebEx from Sacramento, California. Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, presided.

Kristina T. Jarvis, Deputy Attorney General, appeared pursuant to Government Code section 11522.

Petitioner Hakyung Kim represented himself at the hearing.

Evidence was received, the record closed, and the matter submitted for decision on March 16, 2022.

FACTUAL FINDINGS

Jurisdictional Matters

1. The Board received petitioner's application for an intern pharmacist license on September 14, 2015. The Board denied the application, and petitioner filed an appeal. A former Board Executive Officer signed a Statement of Issues alleging cause to deny the application because petitioner was convicted of a crime substantially related to the qualifications, functions, or duties of a pharmacist and violated a statute regulating controlled substances by possessing marijuana on October 16, 2009, and May 24, 2014.

2. Petitioner resolved the Statement of Issues by entering into a Stipulated Settlement and Disciplinary Order agreeing that his application would be granted and an intern pharmacist license issued, the license revoked, the revocation stayed, and the license placed on probation for five years. Terms of probation included participating in the Pharmacists Recovery Program operated by Maximus Recovery (PRP), undergoing random screenings for drugs and alcohol, and abstaining from drugs and alcohol. Additionally, if petitioner was issued a pharmacist license during probation, any remaining probationary period would apply to that license. The Board adopted the Stipulated Settlement on September 23, 2016.

3. The Board issued petitioner Intern Pharmacist License Number INT 39412 on January 25, 2018 (Intern License). The license was canceled when the Board issued petitioner Registered Pharmacist License Number RPH 85173 on January 15, 2021 (Pharmacist License). The license expires September 30, 2023, unless renewed.

Petition for Early Termination of Probation

4. The Board received petitioner's Petition for Early Termination of Probation on June 10, 2020. He included letters of support written by two of his former pharmacy professors, his preceptor during a clinical rotation, and his Alcoholics Anonymous (AA) sponsor. Each author described petitioner in laudatory terms and supports early termination of his probation.

5. Lupe Baltazar, an Administrative Case Analyst with the Board, forwarded the petition to the Board members with a cover memo confirming petitioner's compliance with all terms of probation. She also stated that she spoke with each of the authors of the letters of support and they all confirmed they wrote their letters and were familiar with the probationary status of petitioner's license.

Additional Evidence at Hearing

6. Petitioner testified openly and honestly about his struggles with drugs and alcohol. He used to deny having a problem with drugs and alcohol and saw asking for help as a "weakness." Now, he readily admits he is an "addict" and an "alcoholic" and recognizes asking for help as a "strength." He obtained sobriety from drugs on May 25, 2014, and from alcohol on March 2, 2018.

7. Petitioner was in his second year at the Keck Graduate Institute School of Pharmacy and Health Sciences (Keck) when he initially enrolled in the PRP in 2016. One month into the program, he tested positive for alcohol, dropped out of school, and started inpatient treatment at Social Model Recovery Systems. He continued treatment in the American Recovery Center's Intensive Outpatient Program and then its aftercare program. Petitioner re-enrolled at Keck in 2019. He graduated with honors two years

later. He has worked as a pharmacist for Central Drugs, a compounding pharmacy in La Habra, California, since October 2021.

8. Petitioner is still enrolled in the PRP. He attends AA meetings four times a week, has completed the 12 steps of recovery, and has worked with a sponsor for four years. He attends support group meetings for healthcare professionals weekly. He has attended individual psychotherapy sessions one or two times a month since June 2018. The therapist confirmed in a letter that petitioner has learned to identify triggers for his anxiety and desire to relapse, developed healthy coping skills, and improved his interpersonal communication skills. Petitioner is randomly tested for drugs and alcohol two to five times a month and has not tested positive since the month after enrolling in the PRP. He is committed to a sober lifestyle for the remainder of his life. He understands the Board's obligation to protect the public, recognizes it is a privilege to practice pharmacy and not a right, and is aware he has "so much to lose" if he relapses.

LEGAL CONCLUSIONS

Applicable Standard/Burden of Proof

1. Petitioner has the burden of proving eligibility for early termination of probation by clear and convincing evidence. (*Hippard v. State Bar of California* (1990) 49 Cal.3d 1084, 1091-1092.) "The courts have defined clear and convincing evidence as evidence which is so clear as to leave no substantial doubt and as sufficiently strong to command the unhesitating assent of every reasonable mind. [Citations.] It has been said that a preponderance calls for probability, while clear and convincing proof

demands a *high probability* [citations]." (*In re Terry D.* (1978) 83 Cal.App.3d 890, 899; italics original.)

Applicable Law

2. A licensee whose license has been placed on probation for three years or longer may petition the Board to terminate probation after two years from the effective date of the disciplinary order. (Bus. & Prof. Code, § 4309, subd. (a)(2).) Petitioner's probation began on January 25, 2018, and the Board received his petition more than two years later. Therefore, the petition is timely.

3. The Board must give notice to the Attorney General when a petition for early termination of probation is received, and the Attorney General and the petitioner must be provided an opportunity to present oral or written argument to the Board. (Gov. Code, § 11522.) When deciding a petition for early termination, the Board may consider the petitioner's activities prior to and after discipline was imposed, his reputation for truth and professional responsibility, the factual basis for discipline, and documented evidence of rehabilitation. (Bus. & Prof. Code, § 4309, subd. (d).) The Board's overriding consideration when deciding a petition is "protection of the public." (Bus. & Prof. Code, § 4001.1.)

Conclusion

4. Petitioner presented clear and convincing evidence of his ability to continue practicing pharmacy without further Board oversight. He testified credibly and persuasively about his struggles with addiction and the steps he has taken to overcome his addiction. He has been sober from alcohol for more than four years and from marijuana for almost eight. He showed significant insight into his disease and the

consequences of relapsing such that he is unlikely to relapse. Therefore, petitioner's probation should be terminated early.

ORDER

Hakyung Kim's Petition for Early Termination of Probation is GRANTED.

This Decision shall become effective on June 23, 2022.

It is so ORDERED on May 24, 2022.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



Seung W. Oh, Pharm.D.
Board President

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

In the Matter of the Statement of Issues
Against:

Case No. 5747

**HAKYUNG KIM
22935 Estoril Drive, Unit 6
Diamond Bar, CA 91765**

Intern Pharmacist Registration

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 at 5:00 p.m. on October 24, 2016.

It is so ORDERED September 23, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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

11 In the Matter of the Statement of Issues
12 Against:

13 **HAKYUNG KIM**
14 **22935 Estoril Drive, Unit 6**
15 **Diamond Bar, CA 91765**

16 **Intern Pharmacist Registration**

Respondent.

Case No. 5747.

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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

22 PARTIES

23 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
24 She brought this action solely in her official capacity and is represented in this matter by Kamala
25 D. Harris, Attorney General of the State of California, by Marc D. Greenbaum, Supervising
26 Deputy Attorney General.

27 2. Respondent Hakyung Kim ("Respondent") is representing himself in this proceeding
28 and has chosen not to exercise his right to be represented by counsel.

1 CONTINGENCY

2 11. 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. By signing the stipulation, Respondent understands and agrees
6 that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the
7 Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and
8 Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for
9 this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall
10 not be disqualified from further action by having considered this matter.

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

14 13. 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 14. In consideration of the foregoing admissions and stipulations, the parties agree that
21 the Board may, without further notice or formal proceeding, issue and enter the following
22 Disciplinary Order:

23 DISCIPLINARY ORDER

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

28 ///

1 IT IS FURTHER HEREBY ORDERED that, should Respondent Hakyung Kim
2 subsequently be issued a Pharmacist License by the Board, any remaining probation period shall
3 apply to that Pharmacist License. That is, upon satisfaction of statutory and regulatory
4 requirements for issuance thereof, a Pharmacist License shall be issued to Respondent Hakyung
5 Kim and shall be immediately revoked, with the revocation stayed and Respondent placed on
6 probation for the remainder of the five (5) years originally ordered (plus any extensions), on the
7 following terms and conditions.

8 **1. Obey All Laws**

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

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

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

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

23 **2. Report to the Board**

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

1 in submission of reports as directed may be added to the total period of probation. Moreover, if
2 the final probation report is not made as directed, probation shall be automatically extended until
3 such time as the final report is made and accepted by the board.

4 **3. Interview with the Board**

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

10 **4. Cooperate with Board Staff**

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

14 **5. Continuing Education**

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

17 **6. Notice to Employers**

18 During the period of probation, respondent shall notify all present and prospective
19 employers of the decision in case number 5747 and the terms, conditions and restrictions imposed
20 on respondent by the decision, as follows:

21 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
22 respondent undertaking any new employment, respondent shall cause his direct supervisor,
23 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's
24 tenure of employment) and owner to report to the board in writing acknowledging that the listed
25 individual(s) has/have read the decision in case number 5747, and terms and conditions imposed
26 thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s)
27 submit timely acknowledgment(s) to the board.

28 If respondent works for or is employed by or through a pharmacy employment service,

1 respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity
2 licensed by the board of the terms and conditions of the decision in case number 5747 in advance
3 of the respondent commencing work at each licensed entity. A record of this notification must be
4 provided to the board upon request.

5 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
6 (15) days of respondent undertaking any new employment by or through a pharmacy employment
7 service, respondent shall cause his direct supervisor with the pharmacy employment service to
8 report to the board in writing acknowledging that he has read the decision in case number 5747
9 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure
10 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

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

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

24 **8. Probation Monitoring Costs**

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

1 **9. Status of License**

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

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

9 **10. License Surrender While on Probation/Suspension**

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

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

23 **11. Notification of a Change in Name, Residence Address, Mailing Address or**
24 **Employment**

25 Respondent shall notify the board in writing within ten (10) days of any change of
26 employment. Said notification shall include the reasons for leaving, the address of the new
27 employer, the name of the supervisor and owner, and the work schedule if known. Respondent
28 shall further notify the board in writing within ten (10) days of a change in name, residence

1 address, mailing address, or phone number.

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

4 **12. Employment Requirement: Tolling of Probation**

5 Except during periods of suspension, respondent shall, at all times while on probation, be
6 employed for the following minimum number of hours per calendar month in California: If he
7 holds only an intern pharmacist license, he shall be employed as an intern pharmacist for a
8 minimum of ten (10) hours per month. If he holds a pharmacist license, she shall be employed as
9 a pharmacist in California for a minimum of forty (40) hours per month.

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

17 Any failure to provide such notification(s) shall be considered a violation of probation.

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

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

27 **13. Violation of Probation**

28 If a respondent has not complied with any term or condition of probation, the board shall

1 have continuing jurisdiction over respondent, and probation shall automatically be extended, until
2 all terms and conditions have been satisfied or the board has taken other action as deemed
3 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and
4 to impose the penalty that was stayed.

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

12 14. **Completion of Probation**

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

15 15. **Pharmacists Recovery Program (PRP)**

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

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

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

27 Probation shall be automatically extended until respondent successfully completes the PRP.
28 Any person terminated from the PRP program shall be automatically suspended by the board.

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

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

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

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

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

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

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

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

25 **16. Random Drug Screening**

26 Respondent, at his own expense, shall participate in random testing, including but not
27 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug
28 screening program as directed by the board or its designee. Respondent may be required to

1 participate in testing for the entire probation period and the frequency of testing will be
2 determined by the board or its designee. At all times, respondent shall fully cooperate with the
3 board or its designee, and shall, when directed, submit to such tests and samples for the detection
4 of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its
5 designee may direct. Failure to timely submit to testing as directed shall be considered a violation
6 of probation. Upon request of the board or its designee, respondent shall provide documentation
7 from a licensed practitioner that the prescription for a detected drug was legitimately issued and is
8 a necessary part of the treatment of the respondent. Failure to timely provide such documentation
9 shall be considered a violation of probation. Any confirmed positive test for alcohol or for any
10 drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment
11 shall be considered a violation of probation and shall result in the automatic suspension of
12 practice of pharmacy by respondent. Respondent may not resume the practice of pharmacy until
13 notified by the board in writing.

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

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

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

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

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

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

14 **18. Prescription Coordination and Monitoring of Prescription Use**

15 Within thirty (30) days of the effective date of this decision, respondent shall submit to the
16 board, for its prior approval, the name and qualifications of a single physician, nurse practitioner,
17 physician assistant, or psychiatrist of respondent's choice, who shall be aware of the respondent's
18 history with the use of alcohol, controlled substances, and/or dangerous drugs, and who will
19 coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled
20 substances or mood-altering drugs. The approved practitioner shall be provided with a copy of
21 the board's Statement of Issues and decision. A record of this notification must be provided to
22 the board upon request. Respondent shall sign a release authorizing the practitioner to
23 communicate with the board about respondent's treatment(s). The coordinating physician, nurse
24 practitioner, physician assistant, or psychiatrist shall report to the board on a quarterly basis for
25 the duration of probation regarding respondent's compliance with this condition. If any
26 substances considered addictive have been prescribed, the report shall identify a program for the
27 time limited use of any such substances. The board may require that the single coordinating
28 physician, nurse practitioner, physician assistant or psychiatrist be a specialist in addictive

1 medicine, or consult a specialist in addictive medicine. Should respondent, for any reason, cease
2 supervision by the approved practitioner, respondent shall notify the board immediately and,
3 within thirty (30) days of ceasing treatment, submit the name of a replacement physician, nurse
4 practitioner, physician assistant, or psychiatrist of respondent's choice to the board or its designee
5 for its prior approval. Failure to timely submit the selected practitioner or replacement
6 practitioner to the board for approval, or to ensure the required reporting thereby on the quarterly
7 reports, shall be considered a violation of probation.

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

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

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

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

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

1 **19. 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 5747 and is familiar with the required level of supervision as determined
14 by the board or its designee. It shall be the respondent's responsibility to ensure that his
15 employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the
16 board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
17 acknowledgements 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 acknowledgement(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 5747 and is familiar with the level of
23 supervision as determined by the board. Respondent shall not practice pharmacy and his license
24 shall be automatically suspended until the board or its designee approves a new supervisor.
25 Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
26 acknowledgements to the board shall be considered a violation of probation.

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

28 During suspension, respondent shall not enter any pharmacy area or any portion of the

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

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

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

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

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

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

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

25 Respondent shall provide a copy of the conditions of any criminal probation/parole to the
26 board, in writing, within ten (10) days of the issuance or modification of those conditions.
27 Respondent shall provide the name of his probation/parole officer to the board, in writing, within
28 ten (10) days after that officer is designated or a replacement for that officer is designated.

1 Respondent shall provide a copy of all criminal probation/parole reports to the board within ten
2 (10) days after respondent receives a copy of such a report. Failure to timely make any of the
3 submissions required hereby shall be considered a violation of probation.

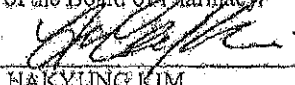
4 **22. Ethics Course**

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

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

11 ACCEPTANCE


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

16 DATED: 8-22-2016 
17 HAKYUNG KIM
18 *Respondent*

18 ENDORSEMENT

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

21 Dated: 8/23/2016

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
LINDA K. SCHNEIDER
Senior Assistant Attorney General

MARC D. GREENBAUM
Supervising Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Statement of Issues No. 5747

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Senior Assistant Attorney General
3 MARC D. GREENBAUM
Supervising Deputy Attorney General
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5 Los Angeles, CA 90013
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6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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

11 In the Matter of the Statement of Issues
Against:
12 **HAKYUNG KIM**
13
14 **Intern Pharmacist Registration Applicant**
15 **Respondent.**

Case No. 5747

STATEMENT OF ISSUES

16
17
18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
21 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
22 2. On or about September 14, 2015, the Board of Pharmacy, Department of Consumer
23 Affairs received an application for an Intern Pharmacist Registration from Hakyung Kim
24 (Respondent). On or about August 18, 2015, Hakyung Kim certified under penalty of perjury to
25 the truthfulness of all statements, answers, and representations in the application. The Board
26 denied the application on December 3, 2015.

27 ///
28 ///

1 JURISDICTION

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

5 4. Section 118, subdivision (a) states:

6 "(a) The withdrawal of an application for a license after it has been filed with a board in the
7 department shall not, unless the board has consented in writing to such withdrawal, deprive the
8 board of its authority to institute or continue a proceeding against the applicant for the denial of
9 the license upon any ground provided by law or to enter an order denying the license upon any
10 such ground."

11 5. Section 4300 of the Code states, in pertinent part:

12 "(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The
13 board may, in its sole discretion, issue a probationary license to any applicant for a license who is
14 guilty of unprofessional conduct and who has met all other requirements for licensure. The board
15 may issue the license subject to any terms or conditions not contrary to public policy, including,
16 but not limited to, the following:

17 "(1) Medical or psychiatric evaluation.

18 "(2) Continuing medical or psychiatric treatment.

19 "(3) Restriction of type or circumstances of practice.

20 "(4) Continuing participation in a board-approved rehabilitation program.

21 "(5) Abstention from the use of alcohol or drugs.

22 "(6) Random fluid testing for alcohol or drugs.

23 "(7) Compliance with laws and regulations governing the practice of pharmacy.

24 "(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary
25 certificate of licensure for any violation of the terms and conditions of probation. Upon
26 satisfactory completion of probation, the board shall convert the probationary certificate to a
27 regular certificate, free of conditions."

28 ///

1 STATUTORY PROVISIONS

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

3 "(a) A board may deny a license regulated by this code on the grounds that the applicant
4 has one of the following:

5 "(1) Been convicted of a crime. A conviction within the meaning of this section means a
6 plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a
7 board is permitted to take following the establishment of a conviction may be taken when the
8 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when
9 an order granting probation is made suspending the imposition of sentence, irrespective of a
10 subsequent order under the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

11 ...

12 "(3) (A) Done any act that if done by a licensee of the business or profession in question,
13 would be grounds for suspension or revocation of license.

14 "(B) The board may deny a license pursuant to this subdivision only if the crime or act is
15 substantially related to the qualifications, functions, or duties of the business or profession for
16 which application is made."

17 7. Section 4301 of the Code states, in pertinent part:

18 "The board shall take action against any holder of a license who is guilty of unprofessional
19 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
20 Unprofessional conduct shall include, but is not limited to, any of the following:

21 ...

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

24 ...

25 "(l) The conviction of a crime substantially related to the qualifications, functions, and
26 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
27 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
28 substances or of a violation of the statutes of this state regulating controlled substances or

1 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
2 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
3 The board may inquire into the circumstances surrounding the commission of the crime, in order
4 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
5 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
6 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
7 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
8 of this provision. The board may take action when the time for appeal has elapsed, or the
9 judgment of conviction has been affirmed on appeal or when an order granting probation is made
10 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
11 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
12 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
13 indictment."

14 CONTROLLED SUBSTANCES

15 8. Marijuana is a Schedule I controlled substance as designated by Health and Safety
16 Code section 11054, subdivision (d)(13).

17 FACTUAL ALLEGATIONS

18 9. On or about October 26, 2009, in Case No. 9PK07103 in Los Angeles County
19 Superior Court, Respondent was charged with possessing one ounce of marijuana or less (Health
20 & Saf. Code, § 11357, subd. (b)). On or about December 29, 2009, the court dismissed the case.
21 The underlying circumstances are that on or about October 16, 2009, Los Angeles County
22 Sheriff's Department officer observed Respondent in a vehicle in a park after hours, smelled
23 marijuana emanating from the vehicle, searched Respondent's wallet, and found a substance
24 resembling marijuana in the wallet .

25 10. On or about May 6, 2014, in *People v. Hakyung Kim*, Case No. 3480715HK in San
26 Bernardino County Superior Court, the court convicted Respondent of possession of one ounce of
27 marijuana or less (Health & Saf. Code, § 11357, subd. (b)) and fined him \$510. Respondent paid
28 the fine in full. The underlying circumstances are that on or about May 24, 2014, the San

1 Bernardino County Sheriff's Department cited Respondent for possessing one ounce or less of
2 marijuana.

3 **FIRST CAUSE FOR DENIAL OF APPLICATION**

4 (Conviction of a Crime)

(Bus. & Prof. Code, § 480, subd. (a)(1))

5 11. Respondent's application for an Intern Pharmacist Registration is subject to denial
6 because he has been convicted of a crime. (Bus. & Prof. Code, § 480, subd. (a)(1).) The
7 circumstances are set forth in paragraph 9, above.

8 **SECOND CAUSE FOR DENIAL OF APPLICATION**

9 (Unprofessional Conduct: Violation of a Statute Regulating Controlled Substances)

10 (Bus. & Prof. Code, §§ 480, subd. (a)(3), 4301, subd. (j); Health & Saf. Code, § 11054, subd.
11 (d)(13))

12 12. Respondent's application for an Intern Pharmacist Registration is subject to denial
13 because he engaged in unprofessional conduct by violating a statute regulating controlled
14 substances. (Bus. & Prof. Code, § 480, subd. (a)(3), 4301, subd. (j); Health & Saf. Code, §
15 11054, subd. (d)(13).) The circumstances are set forth in paragraphs 8 and 9, above.

16 **THIRD CAUSE FOR DENIAL OF APPLICATION**

(Unprofessional Conduct: Conviction of a Substantially Related Crime)

17 (Bus. & Prof. Code, §§ 480, subd. (a)(3), 4301, subd. (j); Health & Saf. Code, § 11054, subd.
18 (d)(13))

19 13. Respondent's application for an Intern Pharmacist Registration is subject to denial
20 because he engaged in unprofessional conduct by being convicted of a substantially related crime
21 involving a controlled substance. (Bus. & Prof. Code, § 480, subd. (a)(3), 4301, subd. (j); Health
22 & Saf. Code, § 11054, subd. (d)(13).) The circumstances are set forth in paragraphs 8 and 9,
23 above.

24 **PRAYER**

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

27 1. Denying the application of Hakyung Kim for a Intern Pharmacist Registration; and

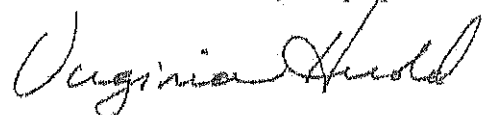
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2. Taking such other and further action as deemed necessary and proper.

DATED: 7/19/16



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

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