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

12 In the Matter of the Accusation Against:

Case No. 3894

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

ACCUSATION

14 Pharmacist License No. RPH 54445

15 Respondent.

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17 Complainant alleges:

18 **PARTIES**

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

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

25 **JURISDICTION**

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

STATUTORY PROVISIONS

4. Section 490 of the Code states:

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

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

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

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

....

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

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

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

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

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1 8. Section 4301 of the Code states, in pertinent part:

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

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6 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
7 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
8 whether the act is a felony or misdemeanor or not.

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

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

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

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

25 **REGULATORY PROVISIONS**

26 10. California Code of Regulations, title 16, section 1770, states:

27 "For the purpose of denial, suspension, or revocation of a personal or facility license
28 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a

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

5 **COST RECOVERY**

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

10 **CONTROLLED SUBSTANCES/DANGEROUS DRUGS**

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

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

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

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

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

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

24 **FIRST CAUSE FOR DISCIPLINE**

25 **(Substantially Related Convictions)**

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

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

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

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

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

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

24 **SECOND CAUSE FOR DISCIPLINE**

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

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

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

5 **THIRD CAUSE FOR DISCIPLINE**

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

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

13 **FOURTH CAUSE FOR DISCIPLINE**

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

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

20 **FIFTH CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct)**

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

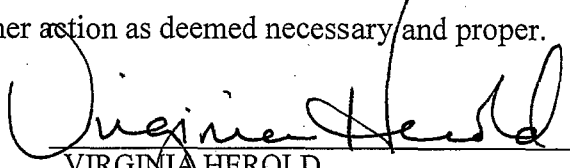
26 **PRAYER**

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

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

DATED: 6/21/11



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

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