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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 Accusation and Petition to
12 Revoke Probation Against:

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

15 **Pharmacist License No. RPH 54445**

16 Respondent.

Case No. 4495

ACCUSATION

AND

PETITION TO REVOKE PROBATION

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, 2014, unless
24 renewed.

25 **JURISDICTION**

26 3. This Accusation and Petition to Revoke Probation is brought before the Board of
27 Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws.

28 All section references are to the Business and Professions Code unless otherwise indicated.

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:

5

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.

9

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.

15

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.

18

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

21 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
22 violation or conspiring to violate any provision or term of this chapter or of the applicable federal
23 and state laws and regulations governing pharmacy, including regulations established by the
24 board. "

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

1 **REGULATORY PROVISIONS**

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

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

9 **COST RECOVERY**

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

14 **CONTROLLED SUBSTANCES/DANGEROUS DRUGS**

15 12. Alprazolam, [brand name Xanax] is a Schedule IV controlled substance, as
16 designated by Health and Safety Code section 11057 subdivision (d)(1), and is categorized as a
17 dangerous drug pursuant to section 4022 of the Code.

18 13. Indomethacin is a compound with anti-inflammatory, antipyretic, and analgesic
19 properties, and is categorized as a dangerous drug pursuant to Section 4022 of the Code. It is no
20 longer available in the United States.

21 14. Clonazepam (Klonopin) is an anticonvulsant primarily used in the treatment of
22 seizure disorders, it may also be used for relief of anxiety; it is a member of a class of drug known
23 as benzodiazepines. It is a Schedule IV controlled substance as defined in Health and Safety
24 Code section 11057(d)(7) and a dangerous drug according to Business and Professions Code
25 section 4022.

26 15. Lioresal [brand name Baleen] is a muscle relaxant and antispastic. Its chemical name
27 is 4-amino-3-(4-chlorophenyl)-butanoic acid, and is classified as a dangerous drug pursuant to
28 section 4022 of the Code.

1 c. During the search of Respondent's vehicle incident to the arrest, police officers
2 located:

- 3 • One bottle containing 453 pills of Alprazolam under the right front passenger seat;
- 4 • One bottle containing 9 and 1/2 additional Alprazolam pills and second bottle
5 containing 99 pills of Pseudoephedrine in a black duffel bag on the right front
6 passenger seat;
- 7 • One bottle containing 80 pills of Indomethacin in the trunk;

8 Several miscellaneous loose pills, including 4 additional Alprazolam, and 1 pill of
9 Clonazepam in the center console

10 d. During the search of Respondent's person incident to arrest, police officers located

- 11 • 12 pills of Baclofen 20 mg in his left front pants pocket.

12 e. When asked about the hundreds of prescription medications in his vehicle,
13 Respondent told police that he works for Santa Elena Pharmacy in Lynwood, California, and
14 claimed he was delivering pills to another pharmacy. However, Respondent was unable to
15 produce any paperwork to corroborate his statement or explain why the seals were broken on the
16 pill bottles.

17 **SECOND CAUSE FOR DISCIPLINE**

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

19 17. Respondent is subject to disciplinary action under sections 4300, subdivision (a),
20 and 4301, subdivision (h), on the grounds of unprofessional conduct for violating sections 4022
21 and 4060, in that, on or about September 12, 2012, Respondent was in possession of controlled
22 substances and dangerous drugs without valid prescriptions: Alprazolam, Pseudoephedrine,
23 Clonazepam, Indomethacin and Baclofen. Complainant refers to, and by this reference
24 incorporates, the allegations set forth above in paragraph 16, subparagraphs a through e,
25 inclusive, as though fully set forth herein.

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1 a. At all times after the effective date of Respondent's probation, Conditions 1, 2 and 7
2 of the Board's Decision stated:

3 CONDITION NO. 1

4 "(1) Suspension.

5 As part of probation, respondent is suspended from the practice of pharmacy for sixty (60)
6 [sic] beginning the effective date of this decision.

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

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

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

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

23 CONDITION NO. 2

24 "(2). Obey All Laws.

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

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

28 ///

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

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

12 **CONDITION NO. 7**

13 “(7). Notice to Employers.

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

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

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

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

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

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

14 **GROUND FOR REVOKING PROBATION AND STAY OF REVOCATION**

15 23. Grounds exist to revoke Respondent Jimmy Tsai's probation and reimpose the order
16 of revocation that was previously stayed, in that, he failed to comply with the following terms and
17 conditions of probation:

18 a. Condition 1: Respondent failed to comply with probation condition No. 1 by
19 continuing to work during a period of time he had been suspended from the practice of pharmacy
20 by the board. Respondent worked at W & P Pharmacy located at 9205 Whittier Boulevard in Pico
21 Rivera, California 90660 on October 19, 23, 25, 2012 and on November 20, 2012, despite the
22 suspension of his license for 60 days effective October 19, 2012.

23 b. Condition 2: Respondent failed to comply with probation condition No. 2 by
24 failing to comply with all federal, state, and local laws governing the practice of pharmacy in
25 California as further described in paragraph 16, subparagraphs a through e, above.

26 c. Condition 7: Respondent failed to comply with condition No. 7 by failing to
27 notify his direct supervisor at W & P Pharmacy of the terms of his probation and suspension
28 within 30 days of the effective date of the board's decision.

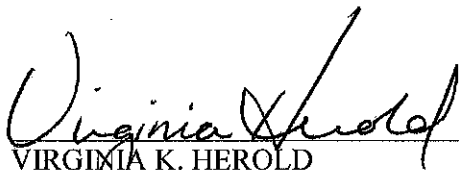
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PRAYER

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. Revoking or suspending Pharmacist License No. RPH 54445, issued to Jimmy Tsai;
2. Revoking the probation that was granted by the Board in Case No. 3894 and imposing the disciplinary order that was stayed, thereby revoking Pharmacist License No. RPH 54445, issued to Jimmy Tsai;
3. Ordering Jimmy Tsai to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
4. Taking such other and further action as deemed necessary and proper.

DATED: 12/5/14



VIRGINIA K. HEROLD
Executive Officer
California State Board of Pharmacy