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8	BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS		
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10	STATE OF C	CALIFORNIA	
11	In the Matter of the Accusation and Petition to	Case No. 4495	
12	Revoke Probation Against:	ACCUSATION	
13	JIMMY TSAI 17009 Glenburn Ave.	AND	
14	Torrance, CA 90504	PETITION TO REVOKE PROBATION	
15	Pharmacist License No. RPH 54445		
16	Respondent.	·	
17	Complainant alleges:	• •	
18	<u>PARTIES</u>		
19	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	<u>JURISE</u>	<u>ICTION</u>	
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.		

9.

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.

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

"The Board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

Unprofessional conduct shall include, but is not limited to, any of the following:

. . . .

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

. . .

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

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

. . . .

- (l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter....
- (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board. "
- 9. Health and Safety Code section 11550, in pertinent part, makes it unlawful for any person to use or be under the influence of any controlled substance in Schedule II (Health and safety Code section 11055), or any narcotic drug in Schedules III-V, except when administered by or under the direction of an authorized license.

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REGULATORY PROVISIONS

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

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

COST RECOVERY

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

CONTROLLED SUBSTANCES/DANGEROUS DRUGS

- 12. Alprazolam, [brand name Xanax] is a Schedule IV controlled substance, as designated by Health and Safety Code section 11057 subdivision (d)(1), and is categorized as a dangerous drug pursuant to section 4022 of the Code.
- 13. Indomethacin is a compound with anti-inflammatory, antipyretic, and analgesic properties, and is categorized as a dangerous drug pursuant to Section 4022 of the Code. It is no longer available in the United States.
- 14. Clonazepam (Klonopin) is an anticonvulsant primarily used in the treatment of seizure disorders, it may also be used for relief of anxiety; it is a member of a class of drug known as benzodiazepines. It is a Schedule IV controlled substance as defined in Health and Safety Code section 11057(d)(7) and a dangerous drug according to Business and Professions Code section 4022.
- 15. Lioresal [brand name Baleen] is a muscle relaxant and antispastic. Its chemical name is 4-amino-3-(4-chlorophenyl)-butanoic acid, and is classified as a dangerous drug pursuant to section 4022 of the Code.

ACCUSATION

FIRST CAUSE FOR DISCIPLINE

(Substantially Related Conviction)

- 16. Respondent is subject to disciplinary action under sections 490, 4300, subdivision (a), and section 4301, subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, in that, Respondent was convicted of a crime substantially related to the qualifications, functions or duties of a registered pharmacist. The circumstances are as follows:
- a. On or about June 17, 2013, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Vehicle Code Section 23152(a) [driving while under the influence of a drug] in the criminal proceeding entitled *The People of the State of California v. Jimmy Tsai* (Super. Ct. San Bernardino County, 2013, No. TVA1201232). The Court sentenced Respondent to serve 90 days in San Bernardino County Jail, with credit for 90 days served, and to pay fines totaling \$1,912.00. In addition, the Court placed Respondent on 36 months probation, and ordered Respondent to complete a 9 month Multiple Offender Alcohol/Drug Program, and to complete a 12 month residential treatment program, and terms and conditions.
- b. The circumstances underlying the conviction are that on or about September 12, 2012¹, Fontana Police Officers arrested Respondent for driving under the influence after Respondent drove his vehicle and struck a concrete center divider on Baseline Avenue near Beech Avenue in the City of Fontana. Police responded and made contact with Respondent, who displayed red and watery eyes and had slightly slurred speech. Respondent informed police that earlier that evening he had crashed into a traffic sign on the freeway causing damage to the vehicle's windshield and thereafter crashed into the center divider causing damage to the front of the vehicle. He also admitted driving from Pomona and traveling towards his home in Torrance, but became lost and thought he was in Orange County. Respondent was, in fact, in San Bernardino County. Respondent failed to adequately perform a series of field sobriety tests.

¹ Respondent's September 12, 2012 arrest was within 3 and a half months after he had signed the Stipulated Settlement and Disciplinary Order for settlement of discipline in Case No. 3894 on June 1, 2012, which was adopted by Decision dated September 19, 2012, effective October 19, 2012.

- c. During the search of Respondent's vehicle incident to the arrest, police officers located:
 - One bottle containing 453 pills of Alprazolam under the right front passenger seat;
 - One bottle containing 9 and 1/2 additional Alprazolam pills and second bottle containing 99 pills of Pseudoephedrine in a black duffel bag on the right front passenger seat;
 - One bottle containing 80 pills of Indomethacin in the trunk;

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

- d. During the search of Respondent's person incident to arrest, police officers located
- 12 pills of Baclofen 20 mg in his left front pants pocket.
- e. When asked about the hundreds of prescription medications in his vehicle, Respondent told police that he works for Santa Elena Pharmacy in Lynwood, California, and claimed he was delivering pills to another pharmacy. However, Respondent was unable to produce any paperwork to corroborate his statement or explain why the seals were broken on the pill bottles.

SECOND CAUSE FOR DISCIPLINE

(Unlawful Possession of Controlled Substances/Dangerous Drugs)

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

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THIRD CAUSE FOR DISCIPLINE

(Under the Influence of Controlled Substances/Dangerous Drugs)

18. Respondent is subject to disciplinary action under sections 4300, subdivision (a), and 4301, subdivision (j) on the grounds of unprofessional conduct, in conjunction with Health and Safety Code section 11550, in that, on or about September 12, 2012, Respondent administered to himself controlled substances, and/or used dangerous drugs without valid prescriptions. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 16, subparagraphs a through e, inclusive, as though fully set forth herein.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Violation of Pharmacy Law)

19. Respondent is subject to disciplinary action under sections 4300, subdivision (a), and 4301, subdivision (o), in that, Respondent committed acts of unprofessional conduct by violating applicable federal and state laws and regulations governing the practice of pharmacy. Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 16, subparagraphs a through e, inclusive, as though fully set forth herein.

PETITION TO REVOKE STAY OF REVOCATION ORDER

(Violation of Administrative Decision and Order)

- 20. The allegations of paragraphs 1 through 19 are incorporated herein by reference as though fully set forth herein.
- 21. On or about June 21, 2011, a prior disciplinary action was filed by the Board of Pharmacy against respondent (Case No. 3894). On September 19, 2012, the Board issued a decision effective October 19, 2012, revoking respondent's pharmacist license. The revocation was stayed, and respondent's pharmacist license was placed on probation for a five year period subject to the Board's standard terms and conditions. Respondent was suspended from the practice of pharmacy for a period of sixty (60) days. The Board's decision is incorporated herein by reference.
- 22. Respondent is subject to having his probation and stay of revocation revoked, in that, he violated terms and conditions of his probation as follows:

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

CONDITION NO. 1

"(1) Suspension.

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

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

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

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

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

CONDITION NO. 2

"(2). Obey All Laws.

Respondent shall obey all state and federal laws and regulations.

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

- an arrest or issuance of a criminal complaint for violation of any provision of the
 Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- which involves respondent's pharmacist license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report such occurrence shall be considered a violation of probation." CONDITION NO. 7

"(7). Notice to Employers.

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

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

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

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

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

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

GROUNDS FOR REVOKING PROBATION AND STAY OF REVOCATION

- 23. Grounds exist to revoke Respondent Jimmy Tsai's probation and reimpose the order of revocation that was previously stayed, in that, he failed to comply with the following terms and conditions of probation:
- a. Condition 1: Respondent failed to comply with probation condition No. 1 by continuing to work during a period of time he had been suspended from the practice of pharmacy by the board. Respondent worked at W & P Pharmacy located at 9205 Whittier Boulevard in Pico Rivera, California 90660 on October 19, 23, 25, 2012 and on November 20, 2012, despite the suspension of his license for 60 days effective October 19, 2012.
- b Condition 2: Respondent failed to comply with probation condition No. 2 by failing to comply with all federal, state, and local laws governing the practice of pharmacy in California as further described in paragraph 16, subparagraphs a through e, above.
- c. Condition 7: Respondent failed to comply with condition No. 7 by failing to notify his direct supervisor at W & P Pharmacy of the terms of his probation and suspension within 30 days of the effective date of the board's decision.

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
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VIRGINIA K. HEROLD

Executive Officer

California State Board of Pharmacy

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