

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

In the Matter of the Accusation Against:

Case No. 3289

DARRYL DONG CHIN

766 Hollyhock Drive
San Leandro, CA 94578

Original Pharmacy Technician
Registration No. RPH 28889

Respondent.

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on April 8, 2010.

It is so ORDERED on March 9, 2010.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

Kenneth H. Schell

KENNETH H. SCHELL
Board President

EDMUND G. BROWN JR.
Attorney General of California
WILBERT E. BENNETT
Supervising Deputy Attorney General
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Deputy Attorney General
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Attorneys for Complainant

**BEFORE THE
BOARD OF PHARMACY
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In the Matter of the Accusation Against:

DARRYL DONG CHIN
766 Hollyhock Drive
San Leandro, California 94578

Pharmacist License No. RPH 28889

Respondent.

Case No. 3289

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties in this proceeding that the following matters are true:

PARTIES

1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy. She brought this action solely in her official capacity and is represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California, by Shana A. Bagley, Deputy Attorney General.
2. Darryl Dong Chin (Respondent) is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

3. On or about July 17, 1974, the Board of Pharmacy issued Pharmacist License No. RPH 28889 to Respondent. The license was in full force and effect at all times relevant to the charges brought in Accusation No. 3289 and will expire on July 31, 2010, unless renewed.

JURISDICTION

4. Accusation No. 3289 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on August 4, 2009. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 3289 is attached as Exhibit "A" and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. 3289. Respondent also has carefully read, and understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 3289, agrees that cause exists for discipline and hereby surrenders his Pharmacist License No. RPH 28889 for the Board's formal acceptance.

9. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Pharmacist License without further process.

CONTINGENCY

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

11. The parties understand and agree that facsimile copies of this Stipulated Surrender of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

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

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

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ORDER

IT IS HEREBY ORDERED that the surrender of Pharmacist License No. RPH 28889, issued to Respondent Darryl Dong Chin is accepted by the Board of Pharmacy.

14. The surrender of Respondent's Pharmacist License and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

15. Respondent shall lose all rights and privileges as a pharmacist in California as of the effective date of the Board's Decision and Order.

16. Respondent shall cause to be delivered to the Board both his wall license certificate and, if one was issued, pocket license on or before the effective date of the Decision and Order.

17. Respondent fully understands and agrees that if he ever applies for licensure or petitions for reinstatement in the State of California, the Board shall treat it as a new application for licensure. Respondent must comply with all the laws, regulations and procedures for licensure in effect at the time the application or petition is filed, and all of the charges and allegations contained Accusation No. 3289 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the application.

18. Respondent shall pay the Board its costs of investigation and enforcement in the amount of \$3,340.50 prior to issuance of a new or reinstated license.

19. Respondent shall not apply for a new license or petition for reinstatement for three (3) years from the effective date of the Board's Decision and Order.

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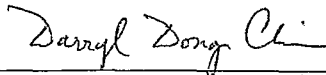
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ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Pharmacist License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 11-15-09 

DARRYL DONG CHIN
Respondent

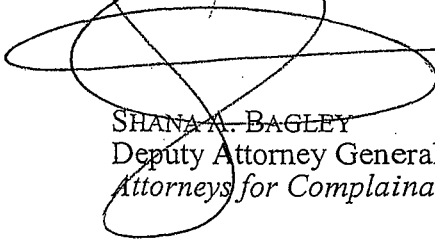
ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated: November 13, 2009

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of California
WILBERT E. BENNETT
Supervising Deputy Attorney General



SHANA A. BAGLEY
Deputy Attorney General
Attorneys for Complainant

SF2009403211

Exhibit "A"

Accusation No. 3289

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Accusation No. 3289

1 EDMUND G. BROWN JR.
Attorney General of California
2 WILBERT E. BENNETT
Supervising Deputy Attorney General
3 SHANA A. BAGLEY
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4 State Bar No. 169423
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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. 3289

13 **DARRYL DONG CHIN**
766 Hollyhock Drive
San Leandro, California 94578

A C C U S A T I O N

14 **Pharmacist License No. RPH 28889**

15 Respondent.

16
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 July 17, 1974, the Board of Pharmacy issued Pharmacist License
22 Number RPH 28889 to Darryl Dong Chin (Respondent). The Pharmacist License was in full
23 force and effect at all times relevant to the charges brought herein and will expire on July 31,
24 2010, unless renewed.

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2 JURISDICTION

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

6 4. Section 118, subdivision (b), of the Code provides that the
7 suspension/expiration/surrender/cancellation of a license shall not deprive the Board of
8 jurisdiction to proceed with a disciplinary action during the period within which the license may
9 be renewed, restored, reissued or reinstated.

10 5. Section 477 of the Code states:

11 As used in this division:

12 (a) "Board" includes "bureau," "commission," "committee," "department,"
13 "division," "examining committee," "program," and "agency."

14 (b) "License" includes certificate, registration or other means to engage in a
15 business or profession regulated by this code.

16 6. Section 4300 of the Code states, in pertinent part:

17 (a) Every license issued may be suspended or revoked.

18 (b) The board shall discipline the holder of any license issued by the board, whose
19 default has been entered or whose case has been heard by the board and found
20 guilty, by any of the following methods:

21 (1) Suspending judgment.

22 (2) Placing him or her upon probation.

23 (3) Suspending his or her right to practice for a period not exceeding one year.

24 (4) Revoking his or her license.

25 (5) Taking any other action in relation to disciplining him or her as the board in its
26 discretion may deem proper.

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STATUTORY PROVISIONS

7. Section 4022 of the Code states:

"Dangerous drug" or "dangerous device" means any drug or device 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.

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

(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.

8. Section 4059 of the Code states, in pertinent part, that a person may not furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

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

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, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer. . . .

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1 10. Section 4077 of the Code states, in pertinent part, that except as provided in
2 subdivisions (b) and (c) of this section, no person shall dispense any dangerous drug upon
3 prescription except in a container correctly labeled with the information required by Section
4 4076.

5 11. Section 4301 of the Code states, in pertinent part:

6
7 The board shall take action against any holder of a license who is guilty of
8 unprofessional conduct or whose license has been procured by fraud or
9 misrepresentation or issued by mistake. Unprofessional conduct shall include, but
10 is not limited to, any of the following:

11 ...

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

15 ...

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

22 ...

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

25

26 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
27 abetting the violation of or conspiring to violate any provision or term of this
28 chapter or of the applicable federal and state laws and regulations governing
pharmacy, including regulations established by the board or by any other state or
federal regulatory agency.

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1 12. Health and Safety Code section 11170, subdivision (a), provides:

2 No person shall obtain or attempt to obtain controlled substances, or procure or
3 attempt to procure the administration of or prescription for controlled substances,
4 (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by concealment of a
5 material fact.

6 COST RECOVERY

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

11 DRUG SUMMARY

12 14. "LORAZEPAM", the trade name for Ativan (a benzodiazepine with CNS
13 depressant, anxiolytic, and sedative properties), is a Schedule IV controlled substance pursuant to
14 Health and Safety Code Section 11057(d)(11) and a dangerous drug pursuant to Business and
15 Professions Code section 4022.

16 FACTUAL SUMMARY

17 15. On or about August 28, 2008, while employed as a pharmacist at the Kaiser
18 Permanente Skyview Pharmacy, Richmond Medical Center, in Richmond, California, Respondent
19 diverted approximately 18 tablets of LORAZEPAM 0.5 mg from the pharmacy stock and put
20 them in his pocket. He later threw them in the garbage in an effort to conceal his actions.

21 16. On or about August 28, 2008, Respondent resigned from his employment with Kaiser
22 Permanente Skyview Pharmacy, Richmond Medical Center.

23 FIRST CAUSE FOR DISCIPLINE

24 (Unprofessional Conduct: Stealing Controlled Substance)

25 17. Respondent is subject to disciplinary action under Code section 4301, subdivision (f),
26 in that he engaged in acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, by
27 attempting to divert and ingest controlled substances in violation of Code section 4060 and Health
28 and Safety Code section 11173, subdivision (a), as set forth in paragraphs 15 and 16, above.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 (Attempted Administration of Controlled Substances)

3 18. Respondent is subject to disciplinary action under Code section 4301, subdivisions
4 (h) and (o), and Health and Safety Code section 11170 in that he furnished, and attempted to
5 administer to himself, controlled substances, as set forth in paragraphs 15 and 16, above.

6 **THIRD CAUSE FOR DISCIPLINE**

7 (Unlawful Possession of Controlled Substances)

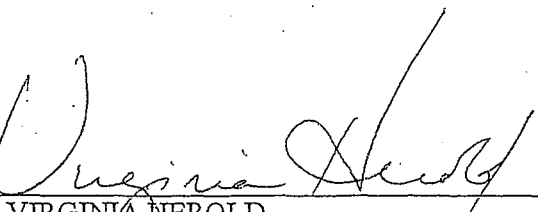
8 19. Respondent is subject to disciplinary action under Code section 4301, subdivisions (j)
9 and (o), as they relate to Code section 4060, in that he unlawfully possessed controlled substances
10 in an attempt to divert and ingest them, as set forth in paragraphs 15 and 16, above.

11 **PRAYER**

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

- 14 1. Revoking or suspending Pharmacist License Number RPH 28889, issued to Darryl
15 Dong Chin.
- 16 2. Ordering Darryl Dong Chin to pay the Board of Pharmacy the reasonable costs of the
17 investigation and enforcement of this case, pursuant to Business and Professions Code section
18 125.3; and
- 19 3. Taking such other and further action as deemed necessary and proper.

20
21
22 DATED: 8/4/09



23 VIRGINIA HEROLD
24 Executive Officer
25 Board of Pharmacy
26 Department of Consumer Affairs
27 State of California
28 *Complainant*

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