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

In the Matter of the Accusation Against: **BAILEY LIU** **25 Galilee Lane #3** **San Francisco, CA 94115** **Pharmacy Technician Registration No.** **TCH 77630** Respondent.	Case No. 3912

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 March 16, 2012.

It is so ORDERED on February 15, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____
STANLEY C. WEISSER
Board President

KAMALA D. HARRIS
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General
JOSHUA A. ROOM
Deputy Attorney General
State Bar No. 214663
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-1299
Facsimile: (415) 703-5480
Attorneys for Complainant

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

In the Matter of the Accusation Against: **BAILEY LIU** **25 Galilee Lane, # 3** **San Francisco, CA 94115** **Pharmacy Technician License No. TCH 77630** Respondent.	Case No. 3912 **STIPULATED SURRENDER OF LICENSE AND ORDER**

In the interest of a prompt and speedy resolution of this matter, consistent with the public interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs, the parties hereby agree to the following Stipulated Surrender of License and Order which will be submitted to the Board for approval and adoption as the final disposition of the Accusation.

PARTIES

1. Virginia Herold (Complainant), Executive Officer of the Board of Pharmacy, brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Joshua A. Room, Deputy Attorney General.

2. Bailey Liu (Respondent) is represented in this proceeding by attorney Tony Tamburello, whose address is Law Office of Tony Tamburello, 214 Duboce Avenue, San Francisco, CA 94103-1099.

3. On or about September 6, 2007, the Board of Pharmacy issued Pharmacy Technician License No. TCH 77630 to Bailey Liu (Respondent). The Pharmacy Technician License was in

full force and effect at all times relevant to the charges brought in Accusation No. 3912 and will expire on December 31, 2012, unless renewed.

JURISDICTION

4. Accusation No. 3912 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 April 11, 2011. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 3912 is attached as exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges in Accusation No. 3912. Respondent has also carefully read, fully discussed with counsel, 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. 3912, except that Respondent does not admit the truth of paragraph 21.c. Respondent agrees that cause exists for discipline and hereby surrenders his Pharmacy Technician License No. TCH 77630 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 Pharmacy Technician License without further process.

RESERVATION

10. Admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board of Pharmacy or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

11. 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 or his counsel. 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.

12. The parties understand and agree that facsimile copies of this stipulation, including facsimile signatures thereto, shall have the same force and effect as the originals.

13. 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.

14. 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 Pharmacy Technician License No. TCH 77630, issued to Respondent Bailey Liu, is surrendered and accepted by the Board of Pharmacy.

1. The surrender of Respondent's Pharmacy Technician 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 of Pharmacy.

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

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

4. Respondent may not apply, reapply, or petition for any licensure or registration of the Board for three (3) years from the effective date of the Decision and Order.

5. 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 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 in Accusation No. 3912, with the exception of paragraph 21.c., shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the application or petition.

6. Should Respondent apply for licensure or petition for reinstatement, Respondent shall pay the Board its costs of investigation and enforcement totaling $4,218.00 prior to issuance of a new or reinstated license.

7. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation, No. 3912, except paragraph 21.c., shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

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ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, Tony Tamburello. I understand the stipulation and the effect it will have on my Pharmacy Technician 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: 11/15/11

BAILEY LIU
Respondent

I have read and fully discussed with Respondent Bailey Liu the terms and conditions and other matters in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: 11. 15. 11

TONY TAMBURELLO
Attorney for 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: 11/22/2011

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General

JOSHUA A. ROOM
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 3912

KAMALA D. HARRIS
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General
JOSHUA A. ROOM
Deputy Attorney General
State Bar No. 214663
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-1299
Facsimile: (415) 703-5480
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In the Matter of the Accusation Against: **BAILEY LIU** **25 Galilee Lane, # 3** **San Francisco, CA 94115** **Pharmacy Technician License No. TCH 77630** Respondent.	Case No. 3912 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about September 6, 2007, the Board of Pharmacy issued Pharmacy Technician License No. TCH 77630 to Bailey Liu (Respondent). The License was in full force and effect at all times relevant to the charges herein and will expire on December 31, 2012, unless renewed.

JURISDICTION

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

4. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].

5. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.

6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not renewed within three years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of the Code provides that any other license issued by the Board may be canceled by the Board if not renewed within 60 days after its expiration, and will require a new application.

STATUTORY AND REGULATORY PROVISIONS

7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of "unprofessional conduct," defined to include, but not be 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.

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

(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of 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 or by any other state or federal regulatory agency.

8. 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 her license or registration in a manner consistent with the public health, safety, or welfare."

9. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous drug or dangerous device except upon the prescription of an authorized prescriber.

10. Section 4060 of the Code provides, in pertinent part, that no person shall possess any controlled substance, except that furnished upon a valid prescription/drug order.

11. Health and Safety Code section 11170 provides that no person shall prescribe, administer, or furnish a controlled substance for himself or herself.

12. Health and Safety Code section 11173, subdivision (a), provides that no person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

13. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess any controlled substance listed in Schedule II (Health and Safety Code section 11055), subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

COST RECOVERY

14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation of the licensing act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

CONTROLLED SUBSTANCES / DANGEROUS DRUGS

15. Section 4021 of the Code states:

"'Controlled substance' means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."

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

"'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self use, except veterinary drugs that are labeled as such, 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."

17. **Norco**, **Vicodin**, **Vicodin ES**, **Lortab**, and **Lorcet** are among the brand names for compounds of varying dosages of acetaminophen (aka APAP) and **hydrocodone**, a Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4) and dangerous drug as designated by Business and Professions Code section 4022. The varying compounds are also known generically as **Hydrocodone with APAP**. These are all narcotic drugs.

18. **Viagra** is a brand name for **sildenafil**, a dangerous drug as designated by Business and Professions Code section 4022. It is an erectile-dysfunction treatment drug.

FACTUAL BACKGROUND

19. From an unknown start date until on or about March 17, 2010, Respondent worked as a "floater" pharmacy technician at Walgreens Pharmacy stores in San Francisco, CA, where by virtue of his employment he had access to controlled substances and dangerous drugs.

20. During the tenure of his employment with Walgreens, Respondent used his access to divert/steal controlled substances and dangerous drugs, including **Norco** or other **Hydrocodone with APAP** controlled substance/dangerous drug products, and **Viagra**.

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21. The exact number of instances of diversion/theft by Respondent, and the full quantity of controlled substances or dangerous drugs diverted/stolen, are not known, but in the course of investigations conducted by Walgreens and by police, the following were reported:

a. On or prior to March 15, 2010, one or more supervisors and/or members of the Walgreens Loss Prevention staff received an anonymous tip stating that Respondent had been stealing "pain killers" from the stock of Walgreens pharmacies for the past 2-3 years.

b. When confronted, Respondent subsequently admitted to Loss Prevention that he had been diverting/stealing 3-4 **Hydrocodone with APAP 5/500** tablets, once or twice a week, for the past six (6) months, for his own use. During his interview, Respondent identified three (3) stores where he had worked as a floater technician and diverted/stole **Hydrocodone with APAP**. Respondent further admitted to diverting/stealing five (5) tablets of **Viagra**, which he sold for a total of $100.00 ($20.00 for each tablet). Loss Prevention calculated Respondent's admitted theft to be 192 tablets of **Hydrocodone with APAP 5/500** (retail: $128.64) and 5 tablets of **Viagra** (retail; $115.19), for a total retail value of the admitted theft of $243.83.

c. Subsequent audit(s) by Loss Prevention and/or pharmacy staff of the controlled substance stocks of seven (7) Walgreens Pharmacy stores at which Respondent had worked as a pharmacy technician revealed shortages including: 966 tablets **Hydrocodone with APAP 5/500** at Walgreens #3624 (PHY 44989); 375 tablets **Hydrocodone with APAP 5/500** and 32 tablets **Hydrocodone with APAP 7.5/500** at Walgreens #3358 (PHY 40652); 324 tablets **Hydrocodone with APAP 10/500** at Walgreens #5599 (PHY 44955); 938 tablets **Hydrocodone with APAP 10/500** at Walgreens #3383 (PHY 41649); 1,034 tablets **Hydrocodone with APAP 5/500** at Walgreens #11385 (PHY 48579); 154 tablets **Hydrocodone with APAP 5/500** and 445 tablets **Hydrocodone with APAP 10/325** at Walgreens #5487 (PHY 44589); 311 tablets **Hydrocodone with APAP 7.5/500** at Walgreens #3707 (PHY 40791), for a total documented shortage/loss of approximately 4,579 tablets of **Hydrocodone** drug products where Respondent worked.

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FIRST CAUSE FOR DISCIPLINE

(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

22. Respondent is subject to discipline under section 4301(f) of the Code, in that Respondent, as described in paragraphs 19 to 21 above, committed numerous acts involving moral turpitude, dishonesty, fraud, deceit, or corruption.

SECOND CAUSE FOR DISCIPLINE

(Self-Administration of Controlled Substance)

23. Respondent is subject to discipline under section 4301(h) of the Code, in that Respondent, as described in paragraphs 19 to 21 above, administered one or more controlled substances to himself, including **Hydrocodone with APAP** products.

THIRD CAUSE FOR DISCIPLINE

(Furnishing of Controlled Substance(s))

24. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section 4059 of the Code, and/or Health and Safety Code section 11170, in that Respondent, as described in paragraphs 19 to 21 above, furnished to himself or another, and/or conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance/dangerous drug, without a prescription.

FOURTH CAUSE FOR DISCIPLINE

(Possession of Controlled Substance(s))

25. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described in paragraphs 19 to 21 above, possessed, conspired to possess, and/or assisted in or abetted possession of, a controlled substance, without a prescription.

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FIFTH CAUSE FOR DISCIPLINE

(Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

26. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs 19 to 21 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

SIXTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

27. Respondent is subject to discipline under section 4301 of the Code in that Respondent, as described in paragraphs 19 to 26 above, engaged in unprofessional conduct.

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 Pharmacy Technician License Number TCH 77630, issued to Bailey Liu (Respondent);

2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as is deemed necessary and proper.

DATED: 4/7/11

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

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