



California State Board of Pharmacy
 1625 N. Market Blvd, N219, Sacramento, CA 95834
 Phone: (916) 574-7900
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 www.pharmacy.ca.gov

BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY
 DEPARTMENT OF CONSUMER AFFAIRS
 GOVERNOR EDMUND G. BROWN JR.

APPLICATION FOR VOLUNTARY SURRENDER OF PHARMACIST / INTERN LICENSE

PLEASE PRINT IN BLACK OR BLUE INK OR TYPE YOUR RESPONSES

Name: <u>Esther Kim</u>	Case No. <u>AC 201300504400</u>
Address of Record: <u>Po Box 3162</u> <u>Bia Bear city, CA 92314</u>	

Pursuant to the terms and conditions of my probation with the California State Board of Pharmacy (Board) in Case No. AC 201300504400, I hereby request to surrender my license, License No. 66753. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, I will no longer be subject to the terms and conditions of probation. I understand that this surrender constitutes a record of discipline and shall become a part of my license history with the Board.

Upon the acceptance of the surrender, I shall relinquish my pocket and wall license to the Board within ten (10) days of notification by the Board that the surrender is accepted. I understand that I may not reapply for any license from the board for three (3) years from the effective date of the surrender. I further understand that I shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board, including any outstanding costs.

PLEASE BE ADVISED THAT YOU ARE NOT RELIEVED OF THE REQUIREMENTS OF YOUR PROBATION UNLESS THE BOARD NOTIFIES YOU THAT YOUR REQUEST TO SURRENDER YOUR LICENSE HAS BEEN ACCEPTED.

Esther Kim
 Applicant's Signature
D. Howard
 Executive Officer's Approval

12/30/16
 Date
1/5/17
 Date

All items on this application are mandatory in accordance with your probationary order and the Board's Disciplinary Guidelines as authorized by Title 16, California Code of Regulations section 1760. Failure to provide any of the requested information or providing unreadable information will result in the application being rejected as incomplete. The information provided on this form will be used to determine eligibility for surrender. The official responsible for information maintenance is the Executive Officer, telephone (916) 574-7900, 1625 N. Market Blvd., Suite N-219, Sacramento, CA 95834. The information you provide may also be disclosed in the following circumstances: (1) in response to a Public Records Act request; (2) to another government agency as required by state or federal law; or, (3) in response to a court or administrative order, a subpoena, or a search warrant. Each individual has the right to review the files or records maintained on them by our agency, unless the records are identified as confidential information and exempted by Section 1798.40 of the Civil Code.

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

In the Matter of the Accusation Against:

**ESTHER KIM
P.O. Box 3162
Big Bear City, CA 92314**

Pharmacist License No. RPH 66753

Respondent.

Case No. 5044

OAH No. 2014100070

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary 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 September 4, 2015.

It is so ORDERED on August 5, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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7 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

12 **ESTHER KIM**
13 **P.O. Box 3162**
Big Bear City, CA 92314

14 **Pharmacist License No. RPH 66753**

15 Respondent.

Case No. 5044

OAH No. 2014100070

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 **PARTIES**

20 1. Virginia Herold ("Complainant") is the Executive Officer of the Board of Pharmacy.
21 She brought this action solely in her official capacity and is represented in this matter by Kamala
22 D. Harris, Attorney General of the State of California, by Michael Brown, Deputy Attorney
23 General.

24 2. Respondent Esther Kim ("Respondent") is represented in this proceeding by attorney
25 Tony J. Park, whose address is: 2855 Michelle Drive, Suite 180, Irvine, CA 92606.

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1. 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
- discipline, citation, or other administrative action filed by any state or federal agency which involves Respondent's 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.

2. Report to the Board

Respondent shall report to the board quarterly, on a schedule as directed by the board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, Respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the board.

3. Interview with the Board

Upon receipt of reasonable prior notice, Respondent shall appear in person for interviews with the board or its designee, at such intervals and locations as are determined by the board or its designee. Failure to appear for any scheduled interview without prior notification to board staff,

1 or failure to appear for two (2) or more scheduled interviews with the board or its designee during
2 the period of probation, shall be considered a violation of probation.

3 **4. Cooperate with Board Staff**

4 Respondent shall cooperate with the board's inspection program and with the board's
5 monitoring and investigation of Respondent's compliance with the terms and conditions of her
6 probation. Failure to cooperate shall be considered a violation of probation.

7 **5. Continuing Education**

8 Respondent shall provide evidence of efforts to maintain skill and knowledge as a
9 pharmacist as directed by the board or its designee.

10 **6. Notice to Employers**

11 During the period of probation, Respondent shall notify all present and prospective
12 employers of the decision in case number 5044 and the terms, conditions and restrictions imposed
13 on Respondent by the decision, as follows:

14 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
15 Respondent undertaking any new employment, Respondent shall cause her direct supervisor,
16 pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's
17 tenure of employment) and owner to report to the board in writing acknowledging that the listed
18 individual(s) has/have read the decision in case number 5044, and terms and conditions imposed
19 thereby. It shall be Respondent's responsibility to ensure that her employer(s) and/or
20 supervisor(s) submit timely acknowledgment(s) to the board.

21 If Respondent works for or is employed by or through a pharmacy employment service,
22 Respondent must notify her direct supervisor, pharmacist-in-charge, and owner at every entity
23 licensed by the board of the terms and conditions of the decision in case number 5044 in advance
24 of the Respondent commencing work at each licensed entity. A record of this notification must
25 be provided to the board upon request.

26 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
27 (15) days of Respondent undertaking any new employment by or through a pharmacy
28 employment service, Respondent shall cause her direct supervisor with the pharmacy

1 employment service to report to the board in writing acknowledging that she has read the decision
2 in case number 5044 and the terms and conditions imposed thereby. It shall be Respondent's
3 responsibility to ensure that her employer(s) and/or supervisor(s) submit timely
4 acknowledgment(s) to the board.

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

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

12 **7. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as**
13 **Designated Representative-in-Charge, or Serving as a Consultant**

14 During the period of probation, Respondent shall not supervise any intern pharmacist, be
15 the pharmacist-in-charge or designated representative-in-charge of any entity licensed by the
16 board nor serve as a consultant unless otherwise specified in this order. Assumption of any such
17 unauthorized supervision responsibilities shall be considered a violation of probation.

18 **8. Reimbursement of Board Costs**

19 As a condition precedent to successful completion of probation, Respondent shall pay to the
20 board its costs of investigation and prosecution in the amount of \$6,317.00 (Six Thousand Three
21 Hundred Seventeen Dollars). Respondent shall make payment on a plan approved by the Board.

22 There shall be no deviation from this schedule absent prior written approval by the board or
23 its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of
24 probation.

25 The filing of bankruptcy by Respondent shall not relieve Respondent of her responsibility
26 to reimburse the board its costs of investigation and prosecution.

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1 **9. Probation Monitoring Costs**

2 Respondent shall pay any costs associated with probation monitoring as determined by the
3 board each and every year of probation. Such costs shall be payable to the board on a schedule as
4 directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall
5 be considered a violation of probation.

6 **10. Status of License**

7 Respondent shall, at all times while on probation, maintain an active, current license with
8 the board, including any period during which suspension or probation is tolled. Failure to
9 maintain an active, current license shall be considered a violation of probation.

10 If Respondent's license expires or is cancelled by operation of law or otherwise at any time
11 during the period of probation, including any extensions thereof due to tolling or otherwise, upon
12 renewal or reapplication Respondent's license shall be subject to all terms and conditions of this
13 probation not previously satisfied.

14 **11. License Surrender While on Probation/Suspension**

15 Following the effective date of this decision, should Respondent cease practice due to
16 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
17 Respondent may tender her license to the board for surrender. The board or its designee shall
18 have the discretion whether to grant the request for surrender or take any other action it deems
19 appropriate and reasonable. Upon formal acceptance of the surrender of the license, Respondent
20 will no longer be subject to the terms and conditions of probation. This surrender constitutes a
21 record of discipline and shall become a part of the Respondent's license history with the board.

22 Upon acceptance of the surrender, Respondent shall relinquish her pocket and wall license
23 to the board within ten (10) days of notification by the board that the surrender is accepted.

24 Respondent may not reapply for any license from the board for three (3) years from the effective
25 date of the surrender. Respondent shall meet all requirements applicable to the license sought as
26 of the date the application for that license is submitted to the board, including any outstanding
27 costs.

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1 **12. Notification of a Change in Name, Residence Address, Mailing Address or**
2 **Employment**

3 Respondent shall notify the board in writing within ten (10) days of any change of
4 employment. Said notification shall include the reasons for leaving, the address of the new
5 employer, the name of the supervisor and owner, and the work schedule if known. Respondent
6 shall further notify the board in writing within ten (10) days of a change in name, residence
7 address, mailing address, or phone number.

8 Failure to timely notify the board of any change in employer(s), name(s), address(es), or
9 phone number(s) shall be considered a violation of probation.

10 **13. Tolling of Probation**

11 Except during periods of suspension, Respondent shall, at all times while on probation, be
12 employed as a pharmacist in California for a minimum of (forty) 40 hours per calendar month.
13 Any month during which this minimum is not met shall toll the period of probation, i.e., the
14 period of probation shall be extended by one month for each month during which this minimum is
15 not met. During any such period of tolling of probation, Respondent must nonetheless comply
16 with all terms and conditions of probation.

17 Should Respondent, regardless of residency, for any reason (including vacation) cease
18 practicing as a pharmacist for a minimum of (forty) 40 hours per calendar month in California,
19 Respondent must notify the board in writing within ten (10) days of the cessation of practice, and
20 must further notify the board in writing within ten (10) days of the resumption of practice. Any
21 failure to provide such notification(s) shall be considered a violation of probation.

22 It is a violation of probation for Respondent's probation to remain tolled pursuant to the
23 provisions of this condition for a total period, counting consecutive and non-consecutive months,
24 exceeding thirty-six (36) months.

25 "Cessation of practice" means any calendar month during which respondent is
26 not practicing as a pharmacist for at least 40 (forty) hours, as defined by Business and
27 Professions Code section 4000 et seq. "Resumption of practice" means any calendar
28 month during which respondent is practicing as a pharmacist for at least 40 (forty)

1 hours, as a pharmacist as defined by Business and Professions Code section 4000 et
2 seq.

3 **14. Violation of Probation**

4 If a Respondent has not complied with any term or condition of probation, the board shall
5 have continuing jurisdiction over Respondent, and probation shall automatically be extended,
6 until all terms and conditions have been satisfied or the board has taken other action as deemed
7 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and
8 to impose the penalty that was stayed.

9 If Respondent violates probation in any respect, the board, after giving Respondent notice
10 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
11 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a
12 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If
13 a petition to revoke probation or an accusation is filed against Respondent during probation, the
14 board shall have continuing jurisdiction and the period of probation shall be automatically
15 extended until the petition to revoke probation or accusation is heard and decided.

16 **15. Completion of Probation**

17 Upon written notice by the board or its designee indicating successful completion of
18 probation, Respondent's license will be fully restored.

19 **16. Suspension**

20 As part of probation, Respondent is suspended from the practice of pharmacy for one (1)
21 year beginning the effective date of this decision.

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

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

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

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

11 **17. Random Drug Screening**

12 Respondent, at her own expense, shall participate in random testing, including but not
13 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug
14 screening program as directed by the board or its designee when Respondent returns back to work
15 after the one (1) year suspension. Respondent may be required to participate in testing for the
16 entire probation period and the frequency of testing will be determined by the board or its
17 designee. At all times, Respondent shall fully cooperate with the board or its designee, and shall,
18 when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics,
19 dangerous drugs or other controlled substances as the board or its designee may direct. Failure to
20 timely submit to testing as directed shall be considered a violation of probation. Upon request of
21 the board or its designee, Respondent shall provide documentation from a licensed practitioner
22 that the prescription for a detected drug was legitimately issued and is a necessary part of the
23 treatment of the Respondent. Failure to timely provide such documentation shall be considered a
24 violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully
25 prescribed by a licensed practitioner as part of a documented medical treatment shall be
26 considered a violation of probation and shall result in the automatic suspension of practice of
27 pharmacy by Respondent. Respondent may not resume the practice of pharmacy until notified by
28 the board in writing.

1 If Respondent test positive for any unauthorized prescription, within fifteen (15) days of the
2 positive test for any unauthorized prescriptions, Respondent shall contact the Pharmacists
3 Recovery Program (PRP) for evaluation, and shall immediately thereafter enroll, successfully
4 participate in, and complete the treatment contract, and any subsequent addendums as
5 recommended and provided by the PRP and as approved by the board or its designee. The cost
6 for PRP participation shall be borne by the Respondent.

7 Failure to timely contact or enroll in the PRP, or successfully participate in and complete
8 the treatment contract and/or any addendums, shall be considered a violation of probation.

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

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

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

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

25 **18. Prescription Coordination and Monitoring of Prescription Use**

26 Within thirty (30) days of the effective date of this decision, Respondent shall submit to the
27 board, for its prior approval, the name and qualifications of a single physician, nurse practitioner,
28 physician assistant, or psychiatrist of Respondent's choice, who shall be aware of the

1 Respondent's history controlled substances and/or dangerous drugs and who will coordinate and
2 monitor any prescriptions for Respondent for dangerous drugs, controlled substances or mood-
3 altering drugs. The approved practitioner shall be provided with a copy of the board's Accusation
4 and decision. A record of this notification must be provided to the board upon request.
5 Respondent shall sign a release authorizing the practitioner to communicate with the board about
6 Respondent's treatment(s). The coordinating physician, nurse practitioner, physician assistant, or
7 psychiatrist shall report to the board on a quarterly basis for the duration of probation regarding
8 Respondent's compliance with this condition. If any substances considered addictive have been
9 prescribed, the report shall identify a program for the time limited use of any such substances.
10 The board may require that the single coordinating physician, nurse practitioner, physician
11 assistant or psychiatrist be a specialist in addictive medicine, or consult a specialist in addictive
12 medicine. Should Respondent, for any reason, cease supervision by the approved practitioner,
13 Respondent shall notify the board immediately and, within thirty (30) days of ceasing treatment,
14 submit the name of a replacement physician, nurse practitioner, physician assistant, or psychiatrist
15 of Respondent's choice to the board or its designee for its prior approval. Failure to timely
16 submit the selected practitioner or replacement practitioner to the board for approval, or to ensure
17 the required reporting thereby on the quarterly reports, shall be considered a violation of
18 probation.

19 If at any time an approved practitioner determines that Respondent is unable to practice
20 safely or independently as a pharmacist, the practitioner shall notify the board immediately by
21 telephone and follow up by written letter within three (3) working days. Upon notification from
22 the board or its designee of this determination, Respondent shall be automatically suspended and
23 shall not resume practice until notified by the board that practice may be resumed.

24 During suspension, Respondent shall not enter any pharmacy area or any portion of the
25 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
26 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices
27 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
28 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient

1 consultation; nor shall Respondent manage, administer, or be a consultant to any licensee of the
2 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
3 and controlled substances. Respondent shall not resume practice until notified by the board.

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

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

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

12 **19. Community Services Program**

13 Within sixty (60) days of the effective date of this decision, Respondent shall submit to the
14 board or its designee, for prior approval, a community service program in which Respondent shall
15 provide free health-care related services on a regular basis to a community or charitable facility or
16 agency for at least sixty-four (64) hours per year for the second to fourth years of probation.

17 Within thirty (30) days of board approval thereof, Respondent shall submit documentation to the
18 board demonstrating commencement of the community service program. A record of this
19 notification must be provided to the board upon request. Respondent shall report on progress
20 with the community service program in the quarterly reports. Failure to timely submit,
21 commence, or comply with the program shall be considered a violation of probation.

22 **20. Remedial Education**

23 Within sixty (60) days of the effective date of this decision, Respondent shall submit to the
24 board or its designee, for prior approval, an appropriate program of remedial education related to
25 pharmacy law. The program of remedial education shall consist of at least 15 units in pharmacy
26 law, which shall be completed within thirty-six (36) months at Respondent's own expense. All
27 remedial education shall be in addition to, and shall not be credited toward, continuing education
28 (CE) courses used for license renewal purposes.

1 Failure to timely submit or complete the approved remedial education shall be considered a
2 violation of probation. The period of probation will be automatically extended until such
3 remedial education is successfully completed and written proof, in a form acceptable to the board,
4 is provided to the board or its designee.

5 Following the completion of each course, the board or its designee may require the
6 Respondent, at her own expense, to take an approved examination to test the Respondent's
7 knowledge of the course. If the Respondent does not achieve a passing score on the examination,
8 this failure shall be considered a violation of probation. Any such examination failure shall
9 require Respondent to take another course approved by the board in the same subject area.

10 **21. Supervised Practice**

11 During the period of probation, Respondent shall practice only under the supervision of a
12 licensed pharmacist not on probation with the board. Upon and after the effective date of this
13 decision, Respondent shall not practice pharmacy and her license shall be automatically
14 suspended until a supervisor is approved by the board or its designee. The supervision shall be,
15 as required by the board or its designee, either:

16 Continuous – At least 75% of a work week

17 Substantial - At least 50% of a work week

18 Partial - At least 25% of a work week

19 Daily Review - Supervisor's review of probationer's daily activities within 24 hours

20 Within thirty (30) days of the effective date of this decision, Respondent shall have her
21 supervisor submit notification to the board in writing stating that the supervisor has read the
22 decision in case number 5044 and is familiar with the required level of supervision as determined
23 by the board or its designee. It shall be the Respondent's responsibility to ensure that her
24 employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the
25 board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
26 acknowledgements to the board shall be considered a violation of probation.

27 If Respondent changes employment, it shall be the Respondent's responsibility to ensure
28 that her employer(s), pharmacist-in-charge and/or supervisor(s) submit timely

1 acknowledgement(s) to the board. Respondent shall have her new supervisor, within fifteen (15)
2 days after employment commences, submit notification to the board in writing stating the direct
3 supervisor and pharmacist-in-charge have read the decision in case number 5044 and is familiar
4 with the level of supervision as determined by the board. Respondent shall not practice pharmacy
5 and her license shall be automatically suspended until the board or its designee approves a new
6 supervisor. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
7 acknowledgements to the board shall be considered a violation of probation.

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

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

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

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

25 **22. No Ownership of Licensed Premises**

26 Respondent shall not own, have any legal or beneficial interest in, or serve as a manager,
27 administrator, member, officer, director, trustee, associate, or partner of any business, firm,
28 partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell

1 or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90)
2 days following the effective date of this decision and shall immediately thereafter provide written
3 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide
4 documentation thereof shall be considered a violation of probation.

5 **23. Tolling of Suspension**

6 During the period of suspension, Respondent shall not leave California for any period
7 exceeding ten (10) days, regardless of purpose (including vacation). Any such absence in excess
8 of the (10) days during suspension shall be considered a violation of probation. Moreover, any
9 absence from California during the period of suspension exceeding ten (10) days shall toll the
10 suspension, i.e., the suspension shall be extended by one day for each day over ten (10) days
11 Respondent is absent from California. During any such period of tolling of suspension,
12 Respondent must nonetheless comply with all terms and conditions of probation.

13 Respondent must notify the board in writing within ten (10) days of departure, and must
14 further notify the board in writing within ten (10) days of return. The failure to provide such
15 notification(s) shall constitute a violation of probation. Upon such departure and return,
16 Respondent shall not resume the practice of pharmacy until notified by the board that the period
17 of suspension has been satisfactorily completed.

18 **24. Ethics Course**

19 Proof of enrollment in an ethics course, approved in advance by the Board or its designee,
20 meeting the requirements of California Code of Regulations, title 16, section 1773.5. Respondent
21 shall thereafter initiate and successfully participate in the ethics course within twelve (12) months
22 of the effective date of the decision and shall successfully complete the approved ethics course. If
23 the ethics course is not successfully completed within twelve (12) months, Respondent has
24 twenty-four (24) months from the effective date of decision to successfully complete the ethic
25 course. Failure to complete the ethics course within twenty-four (24) months from the effective
26 date of decision will result in the revocation of Respondent's license.

27 Respondent's suspension will be in effect until Respondent successfully completes the ethic
28 course within twenty-four (24) months of the effective date of decision.

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy.

Dated: June 15, 2015

Respectfully submitted,

KAMALA D. HARRIS
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Exhibit A

Accusation No. 5044

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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. 5044

13 **ESTHER KIM**
P.O. Box 3162
Big Bear City, CA 92314

ACCUSATION

14 Pharmacist License No. RPH 66753.

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 January 9, 2012, the Board of Pharmacy issued Pharmacist License
22 Number RPH 66753 to Esther Kim (Respondent). The Pharmacist License was in full force and
23 effect at all times relevant to the charges brought herein and will expire on June 30, 2015, 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.

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

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

8 6. Section 4300(a) of the Code states that every license issued by the Board may be
9 suspended or revoked.

10 7. Section 4300.1 of the Code states:

11 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by
12 operation of law or by order or decision of the board or a court of law, the placement of a license
13 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
14 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
15 proceeding against, the licensee or to render a decision suspending or revoking the license."

16 STATUTORY PROVISIONS

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

22 9. Section 4060 of the Code states:

23 "No person shall possess any controlled substance, except that furnished to a person upon
24 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
25 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
26 nurse-midwife pursuant to Section 2746.51; a nurse practitioner pursuant to Section 2836.1, or a
27 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
28 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of

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

6 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a
7 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and
8 devices."

9 10. Section 4301 of the Code states:

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

13 ...

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

17 ...

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

20 ...

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

25 **HEALTH AND SAFETY CODE SECTIONS**

26 11. Health and Safety Code section 11150, subdivision (a), states:

27 "Except as otherwise provided in this division, every person who possesses (1) any
28 controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of

1 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or
2 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section
3 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic
4 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian
5 licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of
6 Section 1170 of the Penal Code."

7 12. Health and Safety Code section 11173, subdivision (a), states:

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

11 COST RECOVERY

12 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
13 administrative law judge to direct a licensee found to have committed a violation or violations of
14 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
15 enforcement of the case, with failure of the licensee to comply subjecting the license to not being
16 renewed or reinstated.

17 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

18 14. Section 4021 of the Code states:

19 "Controlled substance" means any substance listed in Chapter 2 (commencing with Section
20 11053) of Division 10 of the Health and Safety Code."

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

22 "'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self-use,
23 except veterinary drugs that are labeled as such, and includes the following:

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

26 ...

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

1 16. Ambien, a brand name for Zolpidem 10 mg, is used for treating insomnia, is a
2 Schedule IV controlled substance as designated by Health and Safety Code section 11057,
3 subdivision (d)(32). It is categorized as a dangerous drug pursuant to Business and Professions
4 Code section 4022.

5 17. Cozzar, a brand name of Losartan, is used for treating hypertension. It is categorized
6 as a dangerous drug pursuant to section 4022 of the Code.

7 18. Cymbalta, a brand name of Duloxetine 60mg, is used for treating depression. It is
8 categorized as a dangerous drug pursuant to Business and Professions Code section 4022.

9 19. Neurontin, a brand name for Gabapentin 800mg, is an anticonvulsant that is used for
10 preventing seizures and reducing pain-related responses. It is categorized as a dangerous drug
11 pursuant to section 4022 of the Code.

12 20. Ionamin/Adipex-P, a brand name for Phentermine 37.5mg, a class of drug called
13 anorectics, is used for treating obesity, is a Scheduled IV controlled substance as designated by
14 Health and Safety Code section 11057, subdivision (f)(4). It is categorized as a dangerous drug
15 pursuant to section 4022 of the Code.

16 21. Valtrex, a brand name for Valacyclovir 1gm, an antiviral used in patients with
17 normal immune systems to treat herpes zoster infections (shingles) or to treat or suppress genital
18 herpes or cold sores (herpes simplex) or other conditions as directed by a physician. It is
19 categorized as a dangerous drug pursuant to section 4022 of the Code.

20 22. Vestura, a brand name of Drospirenone/Ethinyl Estradiol, is used for birth control. It
21 is categorized as a dangerous drug pursuant to Business and Professions Code section 4022.

22 23. Xanax, a brand name for Alprazolam 1mg, is an anti-anxiety benzodiazepin and is a
23 Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(1).
24 It is categorized as a dangerous drug pursuant to section 4022(c) of the Code.

25 **FIRST CAUSE FOR DISCIPLINE**

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

27 24. Respondent is subject to disciplinary action under sections 4300 and 4301,
28 subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed acts

1 involving moral turpitude, dishonesty, fraud, deceit, or corruption with the intent to substantially
2 benefit herself, or substantially injure another, as follows:

3 a. On or about October 24, 2012, during an investigation by Loss Prevention officers at
4 Walgreens Pharmacy in Big Bear Lake, Respondent admitted that between December 2011 to
5 October 22, 2012, she stole controlled substances and dangerous drugs:

- 6 a) 900 tablets of Phentermine 37.5mg;
- 7 b) 60 tablets of Alprazolam 1mg;
- 8 c) 150 tablets of Zolpidem 10mg;
- 9 d) 280 tablets of Vestura;
- 10 e) 360 tablets of Gabapentin 800mg;
- 11 f) 200 tablets of Losartan 50mg;
- 12 g) 300 tablets of Cymbalta 60mg; and
- 13 h) 200 tablets of Valacyclovir 1gm.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Obtain/Procure Administration/Prescription of Controlled Substances by Fraud, Deceit,
16 Misrepresentation, Subterfuge, and/or Concealment of Material Fact)**

17 25. Respondent is subject to disciplinary action under sections 4301, subdivision (j) and
18 Health and Safety Code section 11173, subdivision (a), on the grounds of unprofessional conduct,
19 in that between December 2011 to October 22, 2012, Respondent stole controlled substances and
20 dangerous drugs. Complainant refers to, and by this reference incorporates, the allegations set
21 forth above in paragraph 24, subparagraph (a), as though set forth fully.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct/ Violation of Licensing Chapter)**

24 26. Respondent is subject to disciplinary action under section 4301, subdivision (j) and
25 (o), in that Respondent committed acts of unprofessional conduct and/ or violated provisions of
26 the licensing chapter. Complainant refers to, and by this reference incorporates, the allegations
27 set forth above in paragraph 24, subparagraph (a) and 25, as though set forth fully.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct-Unlawful Possession of a Controlled Substance)**

3 27. Respondent subject to disciplinary action for unprofessional conduct under Code
4 section 4301, subdivision (j), in violation of section 4060, in that Respondent stole 900 tablets of
5 Phentermine 37.5mg, 60 tablets of Alprazolam 1mg, 150 tablets of Zolpidem 10mg, from the
6 pharmacy while working as a pharmacist at Walgreens Pharmacy. Complainant refers to, and by
7 this reference incorporates, the allegations set forth above in paragraph 24, subparagraph (a) and
8 25, as though set forth fully

9 **FIFTH CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct-Unlawful Possession of a Dangerous Drug)**

11 28. Respondent s subject to disciplinary action for unprofessional conduct under Code
12 section 4301, subdivision (j), in that Respondent stole 280 tablets of Vestura, 360 tablets of
13 Gabapentin 800mg, 200 tablets of Losartan 50mg, 300 tablets of Cymbalta 60mg and 200 tablets
14 of Valacyclovir 1gm from the pharmacy while working as a pharmacist at Walgreens Pharmacy.
15 Complainant refers to, and by this reference incorporates, the allegations set forth above in
16 paragraph 24, subparagraph (a) and 25, as though set forth fully.

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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 Number RPH 66753, issued to Esther Kim;
2. Ordering Esther Kim 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
3. Taking such other and further action as deemed necessary and proper.

DATED: 8/12/14 Virginia Herold
VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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