

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

In the Matter of the Accusation Against:

**WALGREENS PHARMACY NO. 2306
1138 West Tennyson
Hayward, CA 94544**

Original Permit No. PHY 36136

**LAI WING CHENG
5413 Reseda Circle
Fremont, CA 94538**

Pharmacist License No. RPH 46865

**EZBON PRYOR
249 W. Jackson Street, #104
Hayward, CA 94544**

**Pharmacy Technician License No. TCH
11293**

Case No. 5058

OAH No. 2014100373

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER – AS TO LAI
WING CHENG ONLY**

Respondents.

DECISION AND ORDER

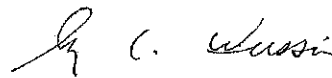
The attached Stipulated Settlement and Disciplinary Order is here by adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on May 20, 2015.

It is so ORDERED on May 13, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STAN C. WEISSER, Board President

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 CHAR SACHSON
Deputy Attorney General
4 State Bar No. 161032
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5558
6 Facsimile: (415) 703-5480
Attorneys for Complainant

7
8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 5058

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STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER – as to LAI
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Hayward, CA 94544

20 **Pharmacy Technician License No. TCH**
21 **11293**

22 Respondents.

23 In the interest of a prompt and speedy settlement of this matter, consistent with the public
24 interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs,
25 the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will
26 be submitted to the Board for approval and adoption as the final disposition of the Accusation.

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1 court review of an adverse decision; and all other rights accorded by the California
2 Administrative Procedure Act and other applicable laws.

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

5 CULPABILITY

6 9. Respondent admits the truth of each and every charge and allegation in Accusation
7 No. 5058.

8 10. Respondent agrees that his Pharmacist License is subject to discipline and he agrees
9 to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

10 CONTINGENCY

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

20 12. The parties understand and agree that Portable Document Format (PDF) and facsimile
21 copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format
22 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

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

1 is provided to the board or its designee.

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

7 **3. No Ownership of Licensed Premises**

8 Respondent shall not own, have any legal or beneficial interest in, or serve as a manager,
9 administrator, member, officer, director, trustee, associate, or partner of any business, firm,
10 partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell
11 or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90)
12 days following the effective date of this decision and shall immediately thereafter provide written
13 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide
14 documentation thereof shall be considered a violation of probation.

15 **4. Obey All Laws**

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

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

- 19 • an arrest or issuance of a criminal complaint for violation of any provision of the
20 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
21 substances laws
- 22 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
23 criminal complaint, information or indictment
- 24 • a conviction of any crime
- 25 • discipline, citation, or other administrative action filed by any state or federal agency
26 which involves respondent's Original Pharmacist license or which is related to the
27 practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing,
28 or charging for any drug, device or controlled substance.

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

2 **5. Report to the Board**

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

11 **6. Interview with the Board**

12 Upon receipt of reasonable prior notice, respondent shall appear in person for interviews
13 with the board or its designee, at such intervals and locations as are determined by the board or its
14 designee. Failure to appear for any scheduled interview without prior notification to board staff,
15 or failure to appear for two (2) or more scheduled interviews with the board or its designee during
16 the period of probation, shall be considered a violation of probation.

17 **7. Cooperate with Board Staff**

18 Respondent shall cooperate with the board's inspection program and with the board's
19 monitoring and investigation of respondent's compliance with the terms and conditions of his
20 probation. Failure to cooperate shall be considered a violation of probation.

21 **8. Continuing Education**

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

24 **9. Notice to Employers**

25 -During the period of probation, respondent shall notify all present and prospective
26 employers of the decision in case number 5058 and the terms, conditions and restrictions imposed
27 on respondent by the decision, as follows:

28

1 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
2 respondent undertaking any new employment, respondent shall cause his direct supervisor,
3 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's
4 tenure of employment) and owner to report to the board in writing acknowledging that the listed
5 individual(s) has/have read the decision in case number 5058, and terms and conditions imposed
6 thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s)
7 submit timely acknowledgment(s) to the board.

8 If respondent works for or is employed by or through a pharmacy employment service,
9 respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity
10 licensed by the board of the terms and conditions of the decision in case number 5058 in advance
11 of the respondent commencing work at each licensed entity. A record of this notification must be
12 provided to the board upon request.

13 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
14 (15) days of respondent undertaking any new employment by or through a pharmacy employment
15 service, respondent shall cause his direct supervisor with the pharmacy employment service to
16 report to the board in writing acknowledging that he has read the decision in case number 5058
17 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure
18 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

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28 **10. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as**

1 **Designated Representative-in-Charge, or Serving as a Consultant**

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

6 **11. Probation Monitoring Costs**

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

11 **12. Status of License**

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

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

19 **13. License Surrender While on Probation/Suspension**

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

27 Upon acceptance of the surrender, respondent shall relinquish his pocket and wall license to
28 the board within ten (10) days of notification by the board that the surrender is accepted.

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

5 **14. Notification of a Change in Name, Residence Address, Mailing Address or**
6 **Employment**

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

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

14 **15. Tolling of Probation**

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

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

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

1 "Cessation of practice" means any calendar month during which respondent is
2 not practicing as a pharmacist, as defined by Business and Professions Code section
3 4000 et seq, for at least 40 hours. "Resumption of practice" means any calendar
4 month during which respondent is practicing as a pharmacist, as defined by Business
5 and Professions Code section 4000 et seq., for at least 40 hours.

6 **16. Violation of Probation**

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

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

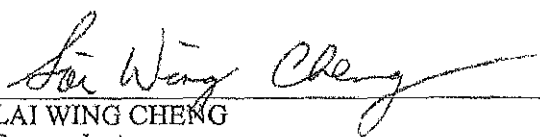
19 **17. Completion of Probation**

20 Upon written notice by the board or its designee indicating successful completion of
21 probation, respondent's license will be fully restored.

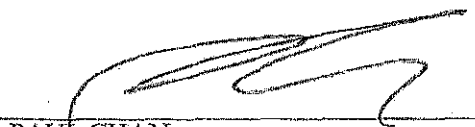
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23 ACCEPTANCE

24 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
25 discussed it with my attorney, Swetha Patel. I understand the stipulation and the effect it will
26 have on my Original Pharmacist License. I enter into this Stipulated Settlement and Disciplinary
27 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
28 of the Board of Pharmacy.

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DATED: 3-5-2015 
LAI WING CHENG
Respondent

I have read and fully discussed with Respondent Lai Wing Cheng the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

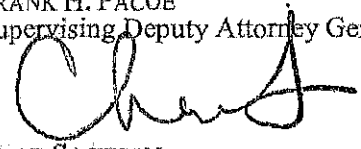
DATED: 3-5-15 
PAUL CHAN
Attorney for Respondent

ENDORSEMENT

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

Dated: 4/16/15

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


CHAR SACHSON
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 5058

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 CHAR SACHSON
Deputy Attorney General
4 State Bar No. 161032
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5558
6 Facsimile: (415) 703-5480
Attorneys for Complainant

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ACCUSATION

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Hayward, CA 94544

20 **Pharmacy Technician License No. TCH**
11293

21 Respondents.

22
23 Complainant alleges:

24 **PARTIES**

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

27 2. On or about March 5, 1990, the Board of Pharmacy issued Original Permit Number
28 PHY 36136 to Walgreens No. 2306 (Respondent Walgreens). The Original Permit was in full

1 force and effect at all times relevant to the charges brought herein and will expire on May 1,
2 2015, unless renewed.

3 3. On or about March 4, 1994, the Board of Pharmacy issued Pharmacist License
4 Number RPH 46865 to Lai Wing Cheng (Respondent Cheng). The Pharmacist License was in
5 full force and effect at all times relevant to the charges brought herein and will expire on October
6 31, 2015, unless renewed.

7 4. On or about January 5, 1994, the Board of Pharmacy issued Pharmacy Technician
8 Registration No. TCH 11293 to Ezbon Pryor (Respondent Pryor). The Pharmacy Technician
9 Registration was in full force and effect at all times relevant to the charges brought herein and
10 will expire on February 28, 2015, unless renewed.

11 JURISDICTION

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

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

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

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

1 violate, and/or assisted in or abetted violation of, laws or regulations governing the practice of
2 pharmacy, by acts including failure(s) to maintain an accurate and secure inventory of all
3 controlled substances.

4 THIRD CAUSE FOR DISCIPLINE

5 (Illegal Possession of Controlled Substances)

6 27. Respondent Pryor is subject to discipline under section 4301(j) and/or (o), in
7 combination with section 4060 of the Code and Health and Safety Code section 11377(a), in that,
8 as described in paragraphs 22-25 above, Respondent Pryor illegally possessed controlled
9 substances.

10 FOURTH CAUSE FOR DISCIPLINE

11 (Unprofessional Conduct – Dishonesty, Fraud, Deceit or Corruption)

12 28. Respondent Pryor is subject to discipline under section 4301(f), in that, as described
13 in paragraphs 22-25 above, Respondent Pryor committed acts involving moral turpitude,
14 dishonesty, fraud, deceit, or corruption.

15 PRAYER

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

18 1. Revoking or suspending Original Permit Number PHY 36136, issued to Respondent
19 Walgreens Pharmacy No. 2306;

20 2. Revoking or suspending Pharmacist License Number RPH 46865, issued to
21 Respondent Lai Wing Cheng;

22 3. Revoking or suspending Pharmacist Technician License Number TCH 11293, issued
23 to Respondent Ezbon Pryor;

24 4. Ordering Respondents to pay the Board of Pharmacy the reasonable costs of the
25 investigation and enforcement of this case, pursuant to Business and Professions Code section
26 125.3;

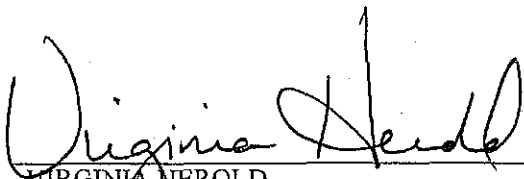
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5. Taking such other and further action as deemed necessary and proper.

DATED: 7/26/14



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

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