

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

In the Matter of the Accusation Against:

**CVS PHARMACY LLC,
dba CVS/PHARMACY #3079
2224 Patterson Road
Riverbank, CA 95367**

Pharmacy Permit No. PHY 49549

and

**NIKMALA SUN TAN
5516 Gladstone Drive
Stockton, CA 95219**

Pharmacist License No. RPH 65685

Respondents.

Case No. 5927

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

(CVS #3079 ONLY)

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 at 5:00 p.m. on September 20, 2018.

It is so ORDERED on August 21, 2018.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____

Victor Law, R.Ph.
Board President

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Attorney General of California
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Supervising Deputy Attorney General
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8 **BEFORE THE**
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10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

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**STIPULATED SETTLEMENT AND
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17 **Pharmacy Permit No. PHY 49549**

(CVS #3079 ONLY)

18 **and**

19 **NIKMALA SUN TAN**
20 **5516 Gladstone Dr.**
21 **Stockton, CA 95219**

22 **Pharmacist License No. RPH 65685**

23 Respondents.

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

26 PARTIES

27 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy
28 (Board). She brought this action solely in her official capacity and is represented in this matter by
Xavier Becerra, Attorney General of the State of California, by Elena L. Almanzo, Deputy
Attorney General.

1 2. Respondent CVS Pharmacy LLC dba CVS Pharmacy #3079 (Respondent) is
2 represented in this proceeding by attorney Jeff J. Astarabadi, whose address is: 2 Park Plaza,
3 Suite 1075, Irvine, CA 92614

4 3. On or about November 10, 2008, the Board issued Pharmacy Permit No. PHY 49549
5 to CVS Pharmacy LLC dba CVS Pharmacy #3079 (Respondent CVS #3079). The Pharmacy
6 Permit was in full force and effect at all times relevant to the charges brought in Accusation No.
7 5927, and will expire on November 1, 2019, unless renewed.

8 JURISDICTION

9 4. First Amended Accusation No. 5927 was filed before the Board, and is currently
10 pending against Respondent CVS # 3079 and Nikmala Tan. The First Amended Accusation and
11 all other statutorily required documents were properly served on Respondents on January 4, 2018.
12 Respondents timely filed their Notice of Defense contesting the Accusation.

13 5. A copy of the First Amended Accusation No. 5927 is attached as exhibit A and
14 incorporated herein by reference.

15 ADVISEMENT AND WAIVERS

16 6. Respondent CVS #3079 has carefully read, fully discussed with counsel, and
17 understands the charges and allegations in the First Amended Accusation No. 5927. Respondent
18 CVS #3079 has also carefully read, fully discussed with counsel, and understands the effects of
19 this Stipulated Settlement and Disciplinary Order.

20 7. Respondent CVS #3079 is fully aware of its legal rights in this matter, including the
21 right to a hearing on the charges and allegations in the First Amended Accusation; the right to
22 confront and cross-examine the witnesses against them; the right to present evidence and to
23 testify on its own behalf; the right to the issuance of subpoenas to compel the attendance of
24 witnesses and the production of documents; the right to reconsideration and court review of an
25 adverse decision; and all other rights accorded by the California Administrative Procedure Act
26 and other applicable laws.

27 8. Respondent CVS #3079 voluntarily, knowingly, and intelligently waives and gives up
28 each and every right set forth above.

1 CULPABILITY

2 9. Respondent CVS #3079 understands and agrees that the charges and allegations in
3 First Amended Accusation No. 5927, if proven at a hearing, constitute cause for imposing
4 discipline upon its Pharmacy Permit.

5 10. For the purpose of resolving the First Amended Accusation without the expense and
6 uncertainty of further proceedings, Respondent CVS #3079 agrees that, at a hearing, Complainant
7 could establish a factual basis for the charges in the First Amended Accusation, and that
8 Respondent hereby gives up its right to contest those charges.

9
10 11. Respondent CVS #3079 agrees that its Pharmacy Permit is subject to discipline and
11 they agree to be bound by the Board's probationary terms as set forth in the Disciplinary Order
12 below.

13 CONTINGENCY

14 12. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent
15 CVS #3079 understands and agrees that counsel for Complainant and the staff of the Board of
16 Pharmacy may communicate directly with the Board regarding this stipulation and settlement,
17 without notice to or participation by Respondent CVS #3079 or its counsel. By signing the
18 stipulation, Respondent CVS #3079 understands and agrees that they may not withdraw its
19 agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it.
20 If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and
21 Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible
22 in any legal action between the parties, and the Board shall not be disqualified from further action
23 by having considered this matter.

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

27 14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
28 integrated writing representing the complete, final, and exclusive embodiment of their agreement.

1 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
2 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
3 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
4 writing executed by an authorized representative of each of the parties.

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

8 **DISCIPLINARY ORDER**

9 IT IS HEREBY ORDERED that Pharmacy Permit No. PHY 49549 issued to Respondent
10 CVS Pharmacy LLC dba CVS Pharmacy #3079 is revoked. However, the revocation is stayed
11 and Respondent is placed on probation for three (3) years on the following terms and conditions.

12 **1. Definition: Respondent**

13 For the purposes of these terms and conditions, "respondent" shall refer to CVS Pharmacy
14 LLC dba CVS Pharmacy #3079. All terms and conditions stated herein shall bind and be
15 applicable to the licensed premises and to all owners, managers, officers, administrators,
16 members, directors, trustees, associates, or partners thereof. For purposes of compliance with any
17 term or condition, any report, submission, filing, payment, or appearance required to be made by
18 respondent to or before the board or its designee shall be made by an owner or executive officer
19 with authority to act on behalf of and legally bind the licensed entity.

20 **2. Obey All Laws**

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

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

- 24 • an arrest or issuance of a criminal complaint for violation of any provision of the
25 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
26 substances laws;
- 27 • a plea of guilty, or nolo contendere, no contest, or similar, in any state or federal criminal
28 proceeding to any criminal complaint, information or indictment;

- 1 • a conviction of any crime; or
- 2 • discipline, citation, or other administrative action filed by any state or federal agency
- 3 which involves respondent's pharmacy permit or which is related to the practice of
- 4 pharmacy or the manufacturing, obtaining, handling or distributing, billing, or charging
- 5 for any dangerous drug, and/or dangerous device or controlled substance.

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

7 **3. Report to the Board**

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

16 **4. Interview with the Board**

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

22 **5. Cooperate with Board Staff**

23 Respondent shall timely cooperate with the board's inspection program and with the board's
24 monitoring and investigation of respondent's compliance with the terms and conditions of the
25 probation, including but not limited to: timely responses to requests for information by board
26 staff; timely compliance with directives from board staff regarding requirements of any term or
27 condition of probation; and timely completion of documentation pertaining to a term or condition
28 of probation. Failure to timely cooperate shall be considered a violation of probation.

1 **6. Reimbursement of Board Costs**

2 As a condition precedent to successful completion of probation, respondent shall pay to the
3 board its costs of investigation and prosecution in the amount of \$10,000. Respondent shall make
4 said payments as follows: payment shall be made within ninety (90) days. There shall be no
5 deviation from this schedule absent prior written approval by the board or its designee. Failure to
6 pay costs by the deadline(s) as directed shall be considered a violation of probation.

7 Respondent shall be permitted to pay these costs in a payment plan approved by the board
8 or its designee, so long as full payment is completed no later than one (1) year prior to the end
9 date of probation.

10 **7. Probation Monitoring Costs**

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

15 **8. Status of License**

16 Respondent shall, at all times while on probation, maintain current pharmacy permit with
17 the board. Failure to maintain current licensure shall be considered a violation of probation.

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

22 **9. License Surrender While on Probation/Suspension**

23 Following the effective date of this decision, should respondent wish to discontinue
24 business, respondent may tender the premises license to the board for surrender. The board or its
25 designee shall have the discretion whether to grant the request for surrender or take any other
26 action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the
27 license, respondent will no longer be subject to the terms and conditions of probation.

28 Respondent may not apply for any new license from the board for three (3) years from the

1 effective date of the surrender. Respondent shall meet all requirements applicable to the license
2 sought as of the date the application for that license is submitted to the board.

3 Respondent further stipulates that it shall reimburse the board for its costs of investigation
4 and prosecution prior to the acceptance of the surrender.

5 **10. Sale or Discontinuance of Business**

6 During the period of probation, should respondent sell, trade or transfer all or part of the
7 ownership of the licensed entity, discontinue doing business under the license issued to
8 respondent, or should practice at that location be assumed by another full or partial owner,
9 person, firm, business, or entity, under the same or a different premises license number, the board
10 or its designee shall have the sole discretion to determine whether to exercise continuing
11 jurisdiction over the licensed location, under the current or new premises license number, and/or
12 carry the remaining period of probation forward to be applicable to the current or new premises
13 license number of the new owner.

14 **11. Notice to Employees**

15 Respondent shall, upon or before the effective date of this decision, ensure that all
16 employees involved in permit operations are made aware of all the terms and conditions of
17 probation, either by posting a notice of the terms and conditions, circulating such notice, or both.
18 If the notice required by this provision is posted, it shall be posted in a prominent place and shall
19 remain posted throughout the probation period. Respondent shall ensure that any employees hired
20 or used after the effective date of this decision are made aware of the terms and conditions of
21 probation by posting a notice, circulating a notice, or both. Additionally, respondent shall submit
22 written notification to the board, within fifteen (15) days of the effective date of this decision, that
23 this term has been satisfied. Failure to timely provide such notification to employees, or to timely
24 submit such notification to the board shall be considered a violation of probation.

25 "Employees" as used in this provision includes all full-time, part-time,
26 volunteer, temporary and relief employees and independent contractors employed or
27 hired at any time during probation.
28

1 **12. Owners and Officers: Knowledge of the Law**

2 Respondent CVS shall provide, within thirty (30) days after the date of this Decision,
3 signed and dated statement(s) from an authorized corporate agent other than its PIC stating under
4 penalty of perjury that said individual(s) has read and is familiar with state and federal laws and
5 regulations governing the practice of pharmacy. The failure to timely provide said statements
6 under penalty of perjury shall be considered a violation of probation.

7 **13. Premises Open for Business**

8 Respondent shall remain open and engaged in its ordinary business as a pharmacy in
9 California for a minimum of 40 hours per calendar month. Any month during which this
10 minimum is not met shall toll the period of probation, i.e., the period of probation shall be
11 extended by one month for each month during which this minimum is not met. During any such
12 period of tolling of probation, respondent must nonetheless comply with all terms and conditions
13 of probation, unless respondent is informed otherwise in writing by the board or its designee. If
14 respondent is not open and engaged in its ordinary business as a pharmacy for a minimum of 40
15 hours in any calendar month, for any reason (including vacation), respondent shall notify the
16 board in writing within ten (10) days of the conclusion of that calendar month. This notification
17 shall include at minimum all of the following: the date(s) and hours respondent was open; the
18 reason(s) for the interruption or why business was not conducted; and the anticipated date(s) on
19 which respondent will resume business as required. Respondent shall further notify the board in
20 writing with ten (10) days following the next calendar month during which respondent is open
21 and engaged in its ordinary business as a pharmacy in California for a minimum of 40 hours.
22 Any failure to timely provide such notification(s) shall be considered a violation of probation.

23 **14. Posted Notice of Probation**

24 Respondent shall prominently post a probation notice provided by the board or its designee
25 in a place conspicuous to and readable by the public within two (2) days of receipt thereof from
26 the board or its designee. Failure to timely post such notice, or to maintain the posting during the
27 entire period of probation, shall be considered a violation of probation.

28 Respondent shall not, directly or indirectly, engage in any conduct or make any statement

1 which is intended to mislead or is likely to have the effect of misleading any patient, customer,
2 member of the public, or other person(s) as to the nature of and reason for the probation of the
3 licensed entity.

4 **15. Violation of Probation**

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

10 If respondent violates probation in any respect, the board, after giving respondent notice
11 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
12 was stayed. If a petition to revoke probation or an accusation is filed against respondent during
13 probation, the board shall have continuing jurisdiction and the period of probation shall be
14 automatically extended until the petition to revoke probation or accusation is heard and decided.

15 **16. Completion of Probation**

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

18 **17. Community Services Program**

19 Within sixty (60) days of the effective date of this decision, respondent shall submit to the
20 board or its designee, for prior approval, a community service program in which respondent shall
21 provide free health-care related services to a community or charitable facility or agency for
22 \$10,000 worth of Naloxone and/or sharps containers per year of probation.

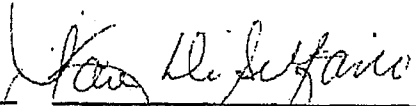
23 Within thirty (30) days of board approval thereof, respondent shall submit documentation to
24 the board demonstrating commencement of the community service program. Respondent shall
25 report on progress with the community service program in the quarterly reports.

26 Failure to timely submit, commence, or comply with the program shall be considered a
27 violation of probation.

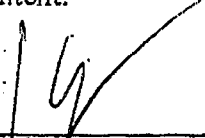
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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Jeff J. Astarabadi. I understand the stipulation and the effect it will have on my Pharmacy Permit. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 4/12/18 
CVS PHARMACY LLC DBA CVS PHARMACY
#3079 Director, Pharmacy Reg. Affairs
Respondent

I have read and fully discussed with Respondent CVS Pharmacy LLC dba CVS Pharmacy #3079 the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 4/25/18 
JEFF J. ASTARABADI
Attorney for Respondent

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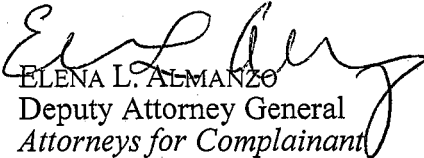
ENDORSEMENT

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

Dated: 4/25/18

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
DAVID BRICE
Supervising Deputy Attorney General


ELENA L. ALMANZO
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

First Amended Accusation No. 5927

1 XAVIER BECCERA
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3 ELENA L. ALMANZO
Deputy Attorney General
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FIRST AMENDED
ACCUSATION

15 **Pharmacy Permit No. PHY 49549**

16 **and**

17 **NIKMALA SUN TAN**
18 **5516 Gladstone Dr.**
Stockton, CA 95219

19 **Pharmacist License No. RPH 65685**

20 Respondent.

21 Complainant alleges:

22 **PARTIES**

23 1. Virginia Herold (“Complainant”) brings this First Amended Accusation solely in her
24 official capacity as the Executive Officer of the Board of Pharmacy (“Board”), Department of
25 Consumer Affairs.

26 2. On or about November 10, 2008, the Board issued Pharmacy Permit Number PHY
27 49549 to CVS Pharmacy LLC (“Respondent”), doing business as CVS/Pharmacy #3079. On and
28 between March 24, 2013 to October 5, 2013, Nikmala Sun Tan (“Respondent Tan”) was the

1 pharmacist-in-charge. The pharmacy permit was in full force and effect at all times relevant to
2 the charges brought herein and will expire on November 1, 2017, unless renewed.

3 3. On or about August 10, 2011, the Board issued Pharmacist License No. RPH 65685
4 to Nikmala Sun Tan. At all relevant times herein said license was in full force and effect and will
5 expire on September 30, 2018, unless renewed.

6 JURISDICTION

7 4. This Accusation is brought before the Board under the authority of the following
8 laws. All section references are to the Business and Professions Code ("Code") unless otherwise
9 indicated.

10 5. Code section 4300 states, in pertinent part:

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

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

14 (1) Suspending judgment.

15 (2) Placing him or her upon probation.

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

18 (4) Revoking his or her license.

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

20 6. Code section 4300.1 states:

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

25 STATUTORY PROVISIONS

26 7. Code section 4301 states, in pertinent part:

27 The board shall take action against any holder of a license who is guilty
28 of unprofessional conduct . . . Unprofessional conduct shall include, but is not limited
to, any of the following:

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

....

(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. Code section 4059, subdivision (a), states, in pertinent part:

A person may not furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7 . . .

9. Code section 4113 provides in pertinent part:

(a) Every pharmacy shall designate a pharmacist-in-charge and, within 30 days thereof, shall notify the Board in writing of the identify and license number of that pharmacist and the date he or she was designated.

(b) The proposed pharmacist-in-charge shall be subject to approval by the board. The board shall not issue or renew a pharmacy license without identification of an approved pharmacist-in-charge for the pharmacy.

(c) The pharmacist in charge shall be responsible for a pharmacy's compliance with all state and federal laws and regulations to the practice of pharmacy...."

10. Code section 4306.5 (b) provides in pertinent part that unprofessional conduct may include any of the following:

(b) Acts or omissions that involve, in whole or in part, the failure to exercise or implement his or her best professional judgement or corresponding, responsibility with regard to the dispensing or furnishing of controlled substances, dangerous drugs, or dangerous devices, or with regard to the provision of services

11. Health and Safety Code section 11153, subdivision (a), states:

A prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. Except as authorized by this division, the following are not legal prescriptions: (1) an order purporting to be a prescription which is issued not in the usual course of professional treatment or in legitimate and authorized research; or (2) an order for an addict or habitual user of controlled substances, which is issued not in the course of professional treatment or as part of an authorized narcotic treatment program, for the purpose of providing the user with controlled substances, sufficient to keep him or her

comfortable by maintaining customary use.

COST RECOVERY

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

DRUG CLASSIFICATIONS

13. "Roxicodone", a brand name for oxycodone, is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(M). Roxicodone is also a dangerous drug pursuant to Code section 4022 and is used to treat pain.

14. "Norco", a brand name for hydrocodone/acetaminophen, is a Schedule III controlled substance pursuant to Health and Safety Code section 11056 (e) (4). Norco is also a dangerous drug pursuant to Code section 4022 and is used to treat pain.

15. "Xanax", a brand name for alprazolam, is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d)(1). Xanax is also a dangerous drug pursuant to Code section 4022 and is used to treat anxiety.

16. "Adipex-P", a brand name for phentermine, is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (f)(4). Adipex-P is also a dangerous drug pursuant to Code section 4022 and is used as an appetite suppressant.

17. "Soma", a brand name for carisoprodol, is a Schedule IV Controlled Substance pursuant to Title 21, Code of Federal Regulations, section 1308.14, subdivision (c)(6). Soma is also a dangerous drug pursuant to Code section 4022 and is used as a muscle relaxant.

18. "Adderall", a brand name for amphetamine salts, is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (d)(1). Adderall is also a dangerous drug pursuant to Code section 4022 and is used to treat Attention Deficit Hyperactivity Disorder.

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1 **FACTUAL ALLEGATIONS**

2 19. On or about January 13, 2015, pharmacy technician Mona Chavarin ("Chavarin") was
3 arrested by the Modesto Police Department for, among other things, filling altered prescriptions
4 and criminal conspiracy¹. The police department sent a copy of the arrest report to the Board.
5 The report indicated that Lenele Nunez ("Nunez") stole prescription pads belonging to physician
6 assistant R. S. and sold them to Christina Martinez ("Martinez"). Martinez forged the
7 prescriptions, and she and Lance Wilson had the prescriptions filled at CVS/Pharmacy #9248
8 ("CVS #9248") located in Modesto California, where Chavarin was employed as a pharmacy
9 technician. Chavarin verified the prescriptions through Nunez. Fourteen patient names, 8 actual
10 and 6 fictional, were connected to the fraud and approximately 286 prescriptions were issued.
11 The prescriptions were filled for approximately 17,350 oxycodone tablets, 23,760 hydrocodone
12 tablets, and 7,650 tablets of Schedule IV controlled drugs.

13 20. On or about February 4, 2015, Board Inspector H. conducted an inspection at
14 CVS/Pharmacy #3079 ("CVS #3079") and was assisted by Inspector T. Frank Michael Sasaki
15 ("Sasaki") was present and informed Inspector H. that he was the interim pharmacist-in-charge.
16 Sasaki had an envelope containing copies of prescriptions and other documents that had recently
17 been removed by the MNET, and a pharmacy technician made copies of the documents for the
18 inspectors' use. Inspector H. reviewed the documents and noticed that most of the patient names
19 were the same patient names used on the fraudulent prescriptions obtained from CVS #9248.
20 Inspector H. asked Sasaki if she (Inspector H.) could review each known fraudulent patient's
21 payment information in the pharmacy's computer. Sasaki agreed. Inspector H. obtained copies
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24 patient prescription profiles. Nine of the 13 fraudulent patients identified at CVS #9248 were
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26 ¹ On or about February 19, 2015, Chavarin was indicted in United States District Court,
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28 distribute oxycodone and hydrocodone and possession with intent to distribute controlled
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1 medication other than the controlled substances noted above, and the prescriptions were paid
 2 using cash discount cards². Inspector H. noted that the prescriptions were written on prescription
 3 forms belonging to physician assistant R. S. at CVPM and had been forged. Most of the
 4 prescriptions were for "Holy Trinity" drugs ("Holy Trinity" is the street name for the combination
 5 of oxycodone IR 30 mg, Norco or H/APAP 10/325 mg, and Xanax 2 mg), and large quantities (90
 6 to 240 tablets) of each controlled substance in the "Holy Trinity" had been written in on the
 7 prescription forms. The date range for the fraudulent prescriptions was from June 2013 to March
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 9 the same phone numbers were written on prescriptions for different patients. None of the
 10 prescriptions were dispensed on the date the prescriptions were written, and most were dispensed
 11 several days later. There were 15 pages of additional patient records contained in the envelope
 12 provided by Sasaki for patients not previously identified as fraudulent at CVS #9248. Inspector
 13 H. confirmed with Detective M. that these additional patients were also fraudulent.

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Unlawful Furnishing of Dangerous Drugs)**

16 21. Respondent CVS is subject to disciplinary action pursuant to Code section 4301,
 17 subdivision (o), for unprofessional conduct, in that Respondent violated or attempted to violate,
 18 directly or indirectly, assisted in or abetted the violation of, or conspired to violate state laws
 19 governing pharmacy, specifically, Code section 4059, subdivision (a), as follows: In and between
 20 June 2013 and March 2014, while employed and on duty at CVS/Pharmacy #3079, Respondent's
 21 pharmacists verified and dispensed approximately 60 fraudulent prescriptions for the controlled
 22 substances oxycodone, mixed amphetamine salts, hydrocodone/acetaminophen, alprazolam,
 23 phentermine, and carisoprodol, including the following:

24

	Prescription Numbers	Fraudulent Patient: Initials & Date of Birth
25	419902, 419904, 419905	RL (7/1/79)

26

27 ² A cash discount card is often billed the same way as regular insurance and includes an
 28 ID number. However, the patient must provide his or her name, address, and date of birth.
 Patients sometimes receive a discounted cash price for a prescription.

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2.	411381, 411382	
3.	401816, 401817, 401818	
4.	411199, 411200	CC (11/8/77)
5.	391545	
6.	394068	CL (4/1/80)
7.	410799, 410800, 410801	
8.	420394, 420395, 420396	ID (9/8/69)
9.	399221, 399222, 399223	
10.	406172, 406173, 406174	DS (3/8/74)
11.	411693, 411694, 411695	
12.	405543, 405544, 405545	PS (2/3/58)
13.	392811, 392812	
14.	411734, 411735, 411736	
15.	380641	JW (7/28/51)
16.	409391, 409392, 409393	
17.	428927, 428928, 428929	RA (9/3/67)
18.	396625, 396626	
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21.	400160, 400161, 400163	AA (2/16/54)
22.	389158	AM (5/11/55)
23.	392895, 392896	CW (5/4/56)
24.	378047	RM (3/20/76)
25.	397220, 397221	BM (5/18/81)
26.	377993	CM (2/4/87)

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Failure to Exercise Corresponding Responsibility with Regard to**
3 **the Dispensing or Furnishing of Controlled Substances)**

4 22. Respondent CVS is subject to disciplinary action pursuant to Code section 4301,
5 subdivision (j), for unprofessional conduct, in that Respondent violated state laws regulating
6 controlled substances, specifically, Health and Safety Code section 11153, subdivision (a), as
7 follows: In and between June 2013 and March 2014, while employed and on duty at
8 CVS/Pharmacy #3079, Respondent's pharmacists failed to exercise or implement their best
9 professional judgment or corresponding responsibility with regard to the dispensing or furnishing
10 of controlled substances and dangerous drugs, as set forth in paragraph 21 above.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Unlawful Furnishing of Dangerous Drugs)**

13 23. Respondent Tan is subject to disciplinary action pursuant to Code section 4301,
14 subdivision (o), for unprofessional conduct, in that Respondent, as pharmacist-in-charge of
15 CVS/Pharmacy #3079, violated or attempted to violate, directly or indirectly, assisted in or
16 abetted the violation of, or conspired to violate state laws governing pharmacy, specifically, Code
17 section 4059, subdivision (a), as follows: In and between March 24, 2013 and October 5, 2013,
18 Respondent verified and dispensed RX #378047 on June 22, 2013 and RX # 394068 on
19 September 20, 2013, both were fraudulent prescriptions.

20 **FOURTH CAUSE FOR DISCIPLINE**

21 **(Failure to Exercise Corresponding Responsibility with Regard to**
22 **the Dispensing or Furnishing of Controlled Substances)**

23 24. Respondent Tan is subject to disciplinary action pursuant to Code section 4301,
24 subdivision (j) and 4306.5 (b), for unprofessional conduct, in that Respondent, as pharmacist-in-
25 charge of CVS/Pharmacy #3079, violated state laws regulating controlled substances,
26 specifically, Health and Safety Code section 11153, subdivision (a), as follows: In and between
27 March 2013 and October 2013, Respondent failed to exercise or implement her best professional
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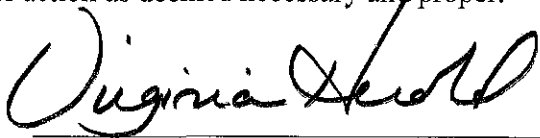
1 judgment or corresponding responsibility with regard to the dispensing or furnishing of controlled
2 substances and dangerous drugs, as set forth above in paragraph 21.

3 **PRAYER**

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

- 6 1. Revoking or suspending Pharmacy Permit Number PHY 49549, issued to CVS
7 Pharmacy LLC, doing business as CVS/Pharmacy #3079;
- 8 2. Revoking or suspending Pharmacist License No. RPH 65685 issued to Nikmala Sun
9 Tan;
- 10 3. Ordering CVS Pharmacy LLC, doing business as CVS/Pharmacy #3079 and Nikmala
11 sun Tan, to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement
12 of this case, pursuant to Business and Professions Code section 125.3; and
- 13 4. Taking such other and further action as deemed necessary and proper.

14
15 DATED: 12/12/17



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

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19 SA2016103133

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6 Telephone: (916) 322-5524
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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5927

12 **CVS PHARMACY LLC,**
dba CVS/PHARMACY #3079
13 **2224 Patterson Road**
Riverbank, CA 95367

ACCUSATION

14 **Pharmacy Permit No. PHY 49549**

15 **and**

16 **NIKMALA SUN TAN**
17 **5516 Gladstone Dr.**
Stockton, CA 95219

18 **Pharmacist License No. RPH 65685**

19 Respondent.
20

21 Complainant alleges:

22 **PARTIES**

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

25 2. On or about November 10, 2008, the Board issued Pharmacy Permit Number PHY
26 49549 to CVS Pharmacy LLC ("Respondent"), doing business as CVS/Pharmacy #3079. On and
27 between March 24, 2013 to October 5, 2013, Nikmala Sun Tan ("Respondent Tan") was the
28

1 pharmacist-in-charge. The pharmacy permit was in full force and effect at all times relevant to
2 the charges brought herein and will expire on November 1, 2017, unless renewed.

3 3. On or about August 10, 2011, the Board issued Pharmacist License No. RPH 65685
4 to Nikmala Sun Tan. At all relevant times herein said license was in full force and effect and will
5 expire on September 30, 2018, unless renewed.

6 JURISDICTION

7 4. This Accusation is brought before the Board under the authority of the following
8 laws. All section references are to the Business and Professions Code ("Code") unless otherwise
9 indicated.

10 5. Code section 4300 states, in pertinent part:

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

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

14 (1) Suspending judgment.

15 (2) Placing him or her upon probation.

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

18 (4) Revoking his or her license.

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

20 6. Code section 4300.1 states:

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

25 STATUTORY PROVISIONS

26 7. Code section 4301 states, in pertinent part:

27 The board shall take action against any holder of a license who is guilty
28 of unprofessional conduct . . . Unprofessional conduct shall include, but is not limited
to, any of the following:

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

....

(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. Code section 4059, subdivision (a), states, in pertinent part:

A person may not furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7 . . .

9. Code section 4113 provides in pertinent part:

(a) Every pharmacy shall designate a pharmacist-in-charge and, within 30 days thereof, shall notify the Board in writing of the identify and license number of that pharmacist and the date he or she was designated.

(b) The proposed pharmacist-in-charge shall be subject to approval by the board. The board shall not issue or renew a pharmacy license without identification of an approved pharmacist-in-charge for the pharmacy.

(c) The pharmacist in charge shall be responsible for a pharmacy's compliance with all state and federal laws and regulations to the practice of pharmacy...."

10. Code section 4306.5 (b) provides in pertinent part that unprofessional conduct may include any of the following:

(b) Acts or omissions that involve, in whole or in part, the failure to exercise or implement his or her best professional judgement or corresponding, responsibility with regard to the dispensing or furnishing of controlled substances, dangerous drugs, or dangerous devices, or with regard to the provision of services

11. Health and Safety Code section 11153, subdivision (a), states:

A prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. Except as authorized by this division, the following are not legal prescriptions: (1) an order purporting to be a prescription which is issued not in the usual course of professional treatment or in legitimate and authorized research; or (2) an order for an addict or habitual user of controlled substances, which is issued not in the course of professional treatment or as part of an authorized narcotic treatment program, for the purpose of providing the user with controlled substances, sufficient to keep him or her

comfortable by maintaining customary use.

COST RECOVERY

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

DRUG CLASSIFICATIONS

13. "Roxicodone", a brand name for oxycodone, is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(M). Roxicodone is also a dangerous drug pursuant to Code section 4022 and is used to treat pain.

14. "Norco", a brand name for hydrocodone/acetaminophen, is a Schedule III controlled substance pursuant to Health and Safety Code section 11056 (e) (4). Norco is also a dangerous drug pursuant to Code section 4022 and is used to treat pain.

15. "Xanax", a brand name for alprazolam, is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d)(1). Xanax is also a dangerous drug pursuant to Code section 4022 and is used to treat anxiety.

16. "Adipex-P", a brand name for phentermine, is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (f)(4). Adipex-P is also a dangerous drug pursuant to Code section 4022 and is used as an appetite suppressant.

17. "Soma", a brand name for carisoprodol, is a Schedule IV Controlled Substance pursuant to Title 21, Code of Federal Regulations, section 1308.14, subdivision (c)(6). Soma is also a dangerous drug pursuant to Code section 4022 and is used as a muscle relaxant.

18. "Adderall", a brand name for amphetamine salts, is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (d)(1). Adderall is also a dangerous drug pursuant to Code section 4022 and is used to treat Attention Deficit Hyperactivity Disorder.

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1 FACTUAL ALLEGATIONS

2 19. On or about January 13, 2015, pharmacy technician Mona Chavarin ("Chavarin") was
3 arrested by the Modesto Police Department for, among other things, filling altered prescriptions
4 and criminal conspiracy¹. The police department sent a copy of the arrest report to the Board.
5 The report indicated that Lenele Nunez ("Nunez") stole prescription pads belonging to physician
6 assistant R. S. and sold them to Christina Martinez ("Martinez"). Martinez forged the
7 prescriptions, and she and Lance Wilson had the prescriptions filled at CVS/Pharmacy #9248
8 ("CVS #9248") located in Modesto California, where Chavarin was employed as a pharmacy
9 technician. Chavarin verified the prescriptions through Nunez. Fourteen patient names, 8 actual
10 and 6 fictional, were connected to the fraud and approximately 286 prescriptions were issued.
11 The prescriptions were filled for approximately 17,350 oxycodone tablets, 23,760 hydrocodone
12 tablets, and 7,650 tablets of Schedule IV controlled drugs.

13 20. On or about February 4, 2015, Board Inspector H. conducted an inspection at
14 CVS/Pharmacy #3079 ("CVS #3079") and was assisted by Inspector T. Frank Michael Sasaki
15 ("Sasaki") was present and informed Inspector H. that he was the interim pharmacist-in-charge.
16 Sasaki had an envelope containing copies of prescriptions and other documents that had recently
17 been removed by the MNET, and a pharmacy technician made copies of the documents for the
18 inspectors' use. Inspector H. reviewed the documents and noticed that most of the patient names
19 were the same patient names used on the fraudulent prescriptions obtained from CVS #9248.
20 Inspector H. asked Sasaki if she (Inspector H.) could review each known fraudulent patient's
21 payment information in the pharmacy's computer. Sasaki agreed. Inspector H. obtained copies
22 of 88 pages of prescription documents and patient prescription profiles; the documents were
23 grouped by patient and included copies of the forged prescriptions as well as the associated
24 patient prescription profiles. Nine of the 13 fraudulent patients identified at CVS #9248 were
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8 2014. Inspector H. noticed that patient phone numbers were written on the prescriptions; some of
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25.	397220, 397221	BM (5/18/81)
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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Failure to Exercise Corresponding Responsibility with Regard to**
3 **the Dispensing or Furnishing of Controlled Substances)**

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9 professional judgment or corresponding responsibility with regard to the dispensing or furnishing
10 of controlled substances and dangerous drugs, as set forth in paragraph 21 above.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Unlawful Furnishing of Dangerous Drugs)**

13 23. Respondent Tan is subject to disciplinary action pursuant to Code section 4301,
14 subdivision (o), for unprofessional conduct, in that Respondent, as pharmacist-in-charge of
15 CVS/Pharmacy #9248, violated or attempted to violate, directly or indirectly, assisted in or
16 abetted the violation of, or conspired to violate state laws governing pharmacy, specifically, Code
17 section 4059, subdivision (a), as follows: In and between March 24, 2013 and October 5, 2013,
18 Respondent verified and dispensed RX #378047 on June 22, 2013 and RX # 394068 on
19 September 20, 2013, both were fraudulent prescriptions.

20 **FOURTH CAUSE FOR DISCIPLINE**

21 **(Failure to Exercise Corresponding Responsibility with Regard to**
22 **the Dispensing or Furnishing of Controlled Substances)**

23 24. Respondent Tan is subject to disciplinary action pursuant to Code section 4301,
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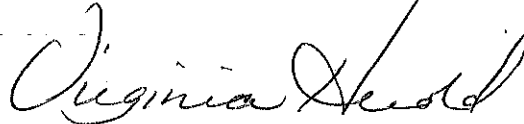
3 **PRAYER**

4 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
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7 Pharmacy LLC, doing business as CVS/Pharmacy #3079;
- 8 2. Revoking or suspending Pharmacist License No. RPH 65685 issued to Nikmala Sun
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- 10 3. Ordering CVS Pharmacy LLC, doing business as CVS/Pharmacy #3079 and Nikmala
11 sun Tan, to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement
12 of this case, pursuant to Business and Professions Code section 125.3; and
- 13 4. Taking such other and further action as deemed necessary and proper.

14
15 DATED: _____

10/7/17



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

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