

**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 FOR PUBLIC  
REPROVAL**

**[Bus. & Prof. Code § 495]**

**(Nikmala Sun Tan Only)**

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order for Public Reproval 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

1 XAVIER BECERRA  
Attorney General of California  
2 DAVID BRICE  
Supervising Deputy Attorney General  
3 ELENA L. ALMANZO  
Deputy Attorney General  
4 State Bar No. 131058  
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Facsimile: (916) 327-8643  
7 *Attorneys for Complainant*

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9 **BOARD OF PHARMACY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 **CVS PHARMACY LLC,**  
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19 Pharmacist No. RPH 65685

20 Respondents.

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**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER FOR PUBLIC  
REPROVAL**

**[Bus. & Prof. Code § 495]**

**(Nikmala Sun Tan Only)**

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

23 **PARTIES**

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

2. Respondent Nikmala Sun Tan (Respondent) is represented in this proceeding by attorney Gregory P. Matzen, whose address is: 2104 Big Sandy Court, Gold River, California 95670.

#### JURISDICTION

3. On or about August 10, 2011, the Board issued Pharmacist No. RPH 65685 to Respondent. The Pharmacist was in full force and effect at all times relevant to the charges brought in Accusation No. 5927 and will expire on September 30, 2018, unless renewed.

4. First Amended Accusation No. 5927 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs and is currently pending against Respondent. The First Amended Accusation and all other statutorily required documents were properly served on Respondent on January 5, 2018. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of First Amended Accusation No. 5927 is attached as exhibit A and incorporated herein by reference.

#### ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 5927. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order for Public Reproval.

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

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

1  
2 CULPABILITY

3 8. Respondent understands and agrees that the charges and allegations in the First  
4 Amended Accusation No. 5927, if proven at a hearing, constitute cause for imposing discipline  
5 upon her Pharmacist License.

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

10 10. Respondent agrees that her Pharmacist license is subject to discipline and she agrees  
11 to be bound by the Disciplinary Order below.

12 CONTINGENCY

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

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

27 13. This Stipulated Settlement and Disciplinary Order for Public Reproval is intended by  
28 the parties to be an integrated writing representing the complete, final, and exclusive embodiment

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

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


9 DISCIPLINARY ORDER

10 IT IS HEREBY ORDERED that Pharmacist No. RPH 65685 issued to Respondent Nikmala  
11 Sun Tan (Respondent) shall be publicly reapproved by the Board of Pharmacy under Business and  
12 Professions Code section 495 in resolution of First Amended Accusation No. 5927, attached as  
13 exhibit A. Respondent is required to report this reapproval as disciplinary action.

14 ACCEPTANCE

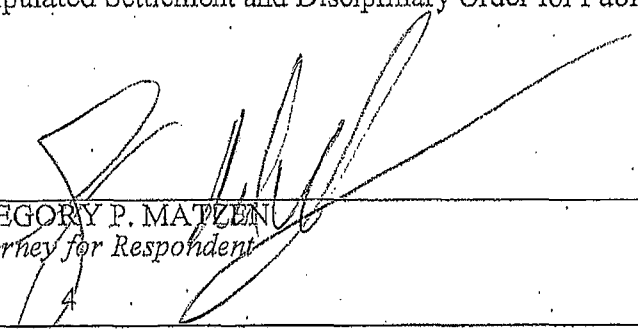
15 I have carefully read the above Stipulated Settlement and Disciplinary Order for Public  
16 Reapproval and have fully discussed it with my attorney, Gregory P. Matzen. I understand the  
17 stipulation and the effect it will have on my Pharmacist license. I enter into this Stipulated  
18 Settlement and Disciplinary Order for Public Reapproval voluntarily, knowingly, and intelligently,  
19 and agree to be bound by the Decision and Order of the Board of Pharmacy.

20  
21 DATED: 4.25.18

22   
\_\_\_\_\_  
NIKMALA SUN TAN  
Respondent

23 I have read and fully discussed with Respondent Nikmala Sun Tan the terms and conditions  
24 and other matters contained in the above Stipulated Settlement and Disciplinary Order for Public  
25 Reapproval. I approve its form and content.

26  
27 DATED: 4/26/18

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\_\_\_\_\_  
GREGORY P. MATZEN  
Attorney for Respondent

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order for Public Reapproval is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated: 5/1/18

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  
Attorney General of California  
2 KENT D. HARRIS  
Supervising Deputy Attorney General  
3 ELENA L. ALMANZO  
Deputy Attorney General  
4 State Bar No. 131058  
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Facsimile: (916) 327-8643  
7 *Attorneys for Complainant*

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14 **2224 Patterson Road**  
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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:

1  
2 (j) The violation of any of the statutes of this state, or any other state, or  
3 of the United States regulating controlled substances and dangerous drugs.

4  
5 (o) Violating or attempting to violate, directly or indirectly, or assisting in  
6 or abetting the violation of or conspiring to violate any provision or term of this  
7 chapter or of the applicable federal and state laws and regulations governing  
8 pharmacy, including regulations established by the board or by any other state or  
9 federal regulatory agency . . .

10  
11 8. Code section 4059, subdivision (a), states, in pertinent part:

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

15  
16 9. Code section 4113 provides in pertinent part:

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

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

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

25  
26 10. Code section 4306.5 (b) provides in pertinent part that unprofessional conduct may  
27 include any of the following:

28 (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 licensee 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 conspiracy<sup>1</sup>. 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  
25 identified in the records at CVS #3079. None of the patient prescription records listed any

26 <sup>1</sup> On or about February 19, 2015, Chavarin was indicted in United States District Court,  
27 Eastern District of California, Case No. 1:15CR00046-LJO-SKO, and charged with conspiracy to  
28 distribute oxycodone and hydrocodone and possession with intent to distribute controlled  
substances, aiding and abetting.

1 medication other than the controlled substances noted above, and the prescriptions were paid  
2 using cash discount cards<sup>2</sup>. 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  
8 2014. Inspector H. noticed that patient phone numbers were written on the prescriptions; some of  
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	1. 419902, 419904, 419905	RL (7/1/79)

26  
27 <sup>2</sup> 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	
19.	422868, 422869, 422871	
20.	408134, 408135, 408136	
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)



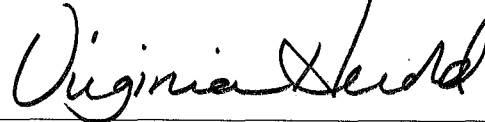
1 judgment or corresponding responsibility with regard to the dispensing or furnishing of controlled  
2 substances and dangerous drugs, as set forth above in paragraph 21.

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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