

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

In the Matter of Accusation Against:

MICKEY KU, Respondent

Pharmacist License No. RPH 77445,

Agency Case No. 7008

OAH Case No. 2021050205

DECISION AND ORDER

The attached Stipulated Surrender of License 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 November 17, 2021.

It is so ORDERED on October 18, 2021.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

A handwritten signature in black ink, appearing to read "Seung W. Oh", is written over a faint rectangular stamp.

Seung W. Oh, Pharm.D.
Board President

1 ROB BONTA
Attorney General of California
2 THOMAS L. RINALDI
Supervising Deputy Attorney General
3 DIANA PETIKYAN
Deputy Attorney General
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7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 7008

13 **MICKEY KU**
129 Santa Cruz Rd
14 **Arcadia, CA 91007**

OAH No. 2021050205

15 **Pharmacist License No. RPH 77445**

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

16 Respondent.

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

21 **PARTIES**

22 1. Anne Sodergren (Complainant) is the Executive Officer of the Board of Pharmacy
23 (Board). She brought this action solely in her official capacity and is represented in this matter by
24 Rob Bonta, Attorney General of the State of California, by Diana Petikyan, Deputy Attorney
25 General.

26 2. Mickey Ku (Respondent) is represented in this proceeding by attorney Scott Harris,
27 Esq, whose address is: 8383 Wilshire Blvd., Suite 830, Beverley Hills, CA 90211.
28

1 3. On or about September 20, 2017, the Board issued Pharmacist License No. RPH
2 77445 to Respondent. The Pharmacist License was in full force and effect at all times relevant to
3 the charges brought in Accusation No. 7008 and will expire on August 31, 2023, unless renewed.

4 **JURISDICTION**

5 4. Accusation No. 7008 was filed before the Board, and is currently pending against
6 Respondent. The Accusation and all other statutorily required documents were properly served
7 on Respondent on March 1, 2021. Respondent timely filed his Notice of Defense contesting the
8 Accusation. A copy of Accusation No. 7008 is attached as Exhibit A and incorporated by
9 reference.

10 **ADVISEMENT AND WAIVERS**

11 5. Respondent has carefully read, fully discussed with counsel, and understands the
12 charges and allegations in Accusation No. 7008. Respondent also has carefully read, fully
13 discussed with counsel, and understands the effects of this Stipulated Surrender of License and
14 Order.

15 6. Respondent is fully aware of his legal rights in this matter, including the right to a
16 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
17 the witnesses against him; the right to present evidence and to testify on his own behalf; the right
18 to the issuance of subpoenas to compel the attendance of witnesses and the production of
19 documents; the right to reconsideration and court review of an adverse decision; and all other
20 rights accorded by the California Administrative Procedure Act and other applicable laws.

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

23 **CULPABILITY**

24 8. Respondent understands that the charges and allegations in Accusation No. 7008, if
25 proven at a hearing, constitute cause for imposing discipline upon his Pharmacist License.

26 9. For the purpose of resolving the Accusation without the expense and uncertainty of
27 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual
28 basis for the charges in the Accusation and that those charges constitute cause for discipline.

1 Respondent hereby gives up his right to contest that cause for discipline exists based on those
2 charges.

3 10. Respondent understands that by signing this stipulation he enables the Board to issue
4 an order accepting the surrender of his Pharmacist License without further process.

5 **CONTINGENCY**

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

15 12. The parties understand and agree that Portable Document Format (PDF) and facsimile
16 copies of this Stipulated Surrender of License and Order, including PDF and facsimile signatures
17 thereto, shall have the same force and effect as the originals.

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

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

26 **ORDER**

27 IT IS HEREBY ORDERED that Pharmacist License No. RPH 77445, issued to Respondent
28 Mickey Ku, is surrendered and accepted by the Board.

1 1. The surrender of Respondent's Pharmacist License and the acceptance of the
2 surrendered license by the Board shall constitute the imposition of discipline against Respondent.
3 This stipulation constitutes a record of the discipline and shall become a part of Respondent's
4 license history with the Board.

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

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

9 4. If Respondent ever files an application for licensure or a petition for reinstatement in
10 the State of California, the Board shall treat it as a new application for licensure. Respondent
11 must comply with all the laws, regulations and procedures for licensure in effect at the time the
12 application or petition is filed, and all of the charges and allegations contained in Accusation No.
13 7008 shall be deemed to be true, correct and admitted by Respondent when the Board determines
14 whether to grant or deny the application or petition.

15 5. Respondent shall pay the agency its costs of investigation and enforcement in the
16 amount of \$12,000 prior to issuance of a new or reinstated license.

17 6. If Respondent should ever apply or reapply for a new license or certification, or
18 petition for reinstatement of a license, by any other health care licensing agency in the State of
19 California, all of the charges and allegations contained in Accusation, No. 7008 shall be deemed
20 to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any
21 other proceeding seeking to deny or restrict licensure.

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

ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney Scott Harris, Esq. I understand the stipulation and the effect it will have on my Pharmacist License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED:

9/10/21


MICKEY KU
Respondent

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

DATED:

Septemeber 13, 2021


SCOTT HARRIS, ESQ
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

DATED: September 13, 2021

Respectfully submitted,

ROB BONTA
Attorney General of California
THOMAS L. RINALDI
Supervising Deputy Attorney General


DIANA PETIKYAN
Deputy Attorney General
Attorneys for Complainant

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1 **ACCEPTANCE**

2 I have carefully read the above Stipulated Surrender of License and Order and have fully
3 discussed it with my attorney Scott Harris, Esq. I understand the stipulation and the effect it will
4 have on my Pharmacist License. I enter into this Stipulated Surrender of License and Order
5 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
6 Board of Pharmacy.

7
8 DATED: _____

9 MICKEY KU
Respondent

10 I have read and fully discussed with Respondent Mickey Ku the terms and conditions and
11 other matters contained in this Stipulated Surrender of License and Order. I approve its form and
12 content.

13 DATED: _____

14 SCOTT HARRIS, ESQ
Attorney for Respondent

15 **ENDORSEMENT**

16
17 The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted
18 for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

19 DATED: _____

Respectfully submitted,

20 ROB BONTA
Attorney General of California
21 THOMAS L. RINALDI
Supervising Deputy Attorney General

22
23
24 DIANA PETIKYAN
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 7008

1 XAVIER BECERRA
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2 THOMAS L. RINALDI
Supervising Deputy Attorney General
3 DIANA PETIKYAN
Deputy Attorney General
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E-mail: Diana.Petikyan@doj.ca.gov
7 *Attorneys for Complainant*

8
9 **BEFORE THE**
BOARD OF PHARMACY
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11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 7008

13 **MICKEY KU**
14 **129 Santa Cruz Rd**
Arcadia, CA 91007

ACCUSATION

15 **Pharmacist License No. RPH 77445**

16 Respondent.
17

18 **PARTIES**

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

21 2. On or about September 20, 2017, the Board of Pharmacy issued Pharmacist License
22 Number RPH 77445 to Mickey Ku (Respondent). The Pharmacist License was in full force and
23 effect at all times relevant to the charges brought herein and will expire on August 31, 2021,
24 unless renewed.

25 **JURISDICTION**

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

STATUTORY PROVISIONS

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

5. Section 4301 of the Code states, in pertinent part:

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

...

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

....

(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.

....

6. Section 4081 of the Code states:

(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

(b) The owner, officer, and partner of any pharmacy, wholesaler, or veterinary food-animal drug retailer shall be jointly responsible, with the pharmacist-in-charge or representative-in-charge, for maintaining the records and inventory described in this section.

(c) The pharmacist-in-charge or representative-in-charge shall not be criminally responsible for acts of the owner, officer, partner, or employee that violate this section and of which the pharmacist-in-charge or representative-in-charge had no knowledge, or in which he or she did not knowingly participate.

REGULATORY PROVISIONS

7. California Code of Regulations, title 16, section 1718, states:

“Current Inventory” as used in Sections 4081 and 4332 of the Business and Professions Code shall be considered to include complete accountability for all dangerous drugs handled by every licensee enumerated in Sections 4081 and 4332.

The controlled substances inventories required by Title 21, CFR, Section 1304 shall be available for inspection upon request for at least 3 years after the date of the inventory. (b) Every person who has in his or her possession any drugs secured by a forged prescription shall be punished by imprisonment in the state prison, or by imprisonment in the county jail for not more than one year.

COST RECOVERY

8. Section 125.3 of the Code provides, in pertinent part, that the 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, with failure of the licensee to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

DEFINITIONS

9. Section 4022 of the Code states:

Dangerous drug or dangerous device means any drug or device unsafe for self-use in humans or animals, and includes the following:

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

(b) Any device that bears the statement: Caution: federal law restricts this device to sale by or on the order of a _____, Rx only, or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

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

FACTUAL ALLEGATIONS

10. Between approximately November 2018 and April 2020, Respondent, while working as a Pharmacist at Rite Aid Pharmacy #5451, processed hundreds of fraudulent prescriptions for Freestyle Lite Test Strips (diabetic test strips.)

1 11. On April 21, 2020, Respondent admitted to Rite Aid personnel that his friend (a
2 physician) issued Respondent continuous prescriptions for the diabetic test strips under family
3 member names.

4 12. Respondent admitted to filling these prescriptions and paying for them using Rite Aid
5 gift cards that he purchased online.

6 13. Respondent then resold the diabetic test strips to a third-party distributor located in
7 another state.

8 14. Respondent amassed an estimated \$27,500 profit from his transactions while Rite Aid
9 lost \$195,709.64.

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(Unprofessional Conduct – Processing Fraudulent Prescriptions)**

12 15. Respondent is subject to disciplinary action under Code section 4301, subdivision (f)
13 in that Respondent processed hundreds of fraudulent prescriptions for diabetic test strips between
14 2018 to 2020. Complainant hereby incorporates the allegations set forth above in paragraphs 10
15 through 14, as though set forth fully herein.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Records of Dangerous Drugs – Failure to Account for Inventory)**

18 16. Respondent is subject to disciplinary action under Code section 4301, subdivision (o)
19 in conjunction with section 4081, subdivision (a) and California Code of Regulations, title 16,
20 section 1718 in that an audit conducted at Rite Aid Pharmacy #5451 while Respondent was
21 Pharmacist-in-Charge revealed discrepancies in the inventory of diabetic test strips. A
22 verification audit of acquisition and disposition records from December 1, 2018 to March 18,
23 2020 of Freestyle Lite Test Strips revealed that Rite Aid could not account for the loss of 169
24 Freestyle Lite Test Strips 100 count boxes and had an overage of 228 Freestyle Lite Test Strips 50
25 count boxes.

PRAYER

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

1. Revoking or suspending Pharmacist License Number RPH 77445, issued to Mickey Ku;
2. Ordering Mickey Ku to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 2/21/2021

Signature on File

ANNE SODERGREN
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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