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7	Attorneys for Complainant									
8	I N	RE THE PHARMACY								
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA									
10		· · ·								
11	In the Matter of the Accusation Against:	Case No. 3479								
12	MARVIN YUK-KWAN FONG 2107 W. Commonwealth Avenue, #D 375									
13	Alhambra, CA 91803 Pharmacist License No. RPH 46421	ACCUSATION								
14	Respondent.									
15	Respondent.									
16	Complainant alleges:									
17	PAR	TIES								
18	Virginia Herold (Complainant) bring	s this Accusation solely in her official capacity								
19	as the Executive Officer of the Board of Pharmac	cy, Department of Consumer Affairs.								
20	2. On or about August 13, 1993, the Board of Pharmacy issued Pharmacist License									
21	Number RPH 46421 to Marvin Yuk-Kwan Fong (Respondent). The Pharmacist License was in									
22	full force and effect at all times relevant to the charges brought herein and will expire on									
23	November 30, 2012, unless renewed.									
24	JURISD	ICTION								
25	3. This Accusation is brought before the Board of Pharmacy (Board), Department of									
26	Consumer Affairs, under the authority of the following	owing laws. All section references are to the								
27	Business and Professions Code unless otherwise	indicated.								
28		•								

STATUTORY PROVISIONS

- 4. Section 118, subdivision (b), provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.
 - 5. Section 4005 states:
- "(a) The board may adopt rules and regulations, not inconsistent with the laws of this state, as may be necessary for the protection of the public. Included therein shall be the right to adopt rules and regulations as follows: for the proper and more effective enforcement and administration of this chapter; pertaining to the practice of pharmacy; relating to the sanitation of persons and establishment licensed under this chapter; pertaining to establishments wherein any drug or device is compounded, prepared, furnished, or dispensed; providing for standards of minimum equipment for establishments licensed under this chapter; pertaining to the sale of drugs by or through any mechanical device; and relating to pharmacy practice experience necessary for the licensure as a pharmacist.
- "(b) Notwithstanding any provision of this chapter to the contrary, the board may adopt regulations permitting the dispensing of drugs or devices in emergency situations, and permitting dispensing of drugs or devices pursuant to a prescription of a person licensed to prescribe in a state other than California where the person, if licensed in California in the same licensure classification would, under California law, be permitted to prescribe drugs or devices and where the pharmacist has first interviewed the patient to determine the authenticity of the prescription.
- 6. Section 4300 states, in pertinent part, that "[e]very license issued may be suspended or revoked."
 - 7. Section 4301 of the Code states:

"The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

Unprofessional conduct shall include, but is not limited to, any of the following:

. . . .

- "(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.
 - 8. Section 4070 of the Code states:
- "(a) Except as provided in Section 4019 and subdivision (b), an oral or an electronic data transmission prescription as defined in subdivision (c) of Section 4040 shall as soon as practicable be reduced to writing by the pharmacist and shall be filled by, or under the direction of, the pharmacist. The pharmacist need not reduce to writing the address, telephone number, license classification, federal registry number of the prescriber or the address of the patient or patients if the information is readily retrievable in the pharmacy."
 - 9. Section 4040, subsection (b), of the Code states:
- "(b) Notwithstanding subdivision (a), a written order of the prescriber for a dangerous drug, except for any Schedule II controlled substance, that contains at least the name and signature of the prescriber, the name and address of the patient in a manner consistent with paragraph (2) of subdivision (a) of Section 11164 of the Health and Safety Code, the name and quantity of the drug prescribed, directions for use, and the date of issue may be treated as a prescription by the dispensing pharmacist as long as any additional information required by subdivision (a) is readily retrievable in the pharmacy. In the event of a conflict between this subdivision and Section 11164 of the Health and Safety Code, Section 11164 of the Health and Safety Code shall prevail."

REGULATORY PROVISIONS

- 10. California Code of Regulations, title 16, section 1761, subsection (a) states:
- "(a) No pharmacist shall compound or dispense any prescription which contains any significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon receipt of any such prescription, the pharmacist shall contact the prescriber to obtain the information needed to

validate the prescription."

COST RECOVERY

11. Section 125.3 provides that the 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.

SUMMARY OF FACTS

- 12. The following facts are common to all charges of the Accusation:
- a. The United States Attorney's Office reported L.A. Good Neighbor Pharmacy (L.A. Good) had violated several provisions of the Controlled Substance Acts. Subsequently, L.A. Good surrendered their Drug Enforcement Administration (DEA) registration and the pharmacy closed.
- b. On or about June 21, 2006, Assistant United States Attorney Shana Mintz sent the Board of Pharmacy a letter regarding the DEA's findings at L.A. Good. In summary, the letter indicated that an April 6, 2006 inspection by the DEA found that the pharmacy had failed to maintain records of sales of "above threshold amounts" of Pseudoephedrine, failed to maintain complete/proper controlled substance records and failed to accurately complete their DEA 222 ordering forms. The DEA also found L.A. Good's purchase pattern of Pseudoephedrine was much greater (84%) than other pharmacies in the same zip code (90022).
- c. On or about March 3, 2009, Respondent Fong as Pharmacist-in-Charge of L.A.
 Good Pharmacy entered into a Settlement Agreement with the DEA and U.S. Department of
 Justice for \$150,000 regarding the findings of the DEA investigation.
- d. Further investigation revealed several uncertain erroneous prescriptions that were filled by L.A. Good Pharmacy during late 2005 to early 2006.
- e. After reviewing documents obtained by the Drug Enforcement Agency,
 Pharmacy Board investigator D. White discovered numerous pharmacy law violations. These
 included oral prescriptions that were not reduced to writing and failed to contain all the required
 prescription information such as drug strength, quantity, directions for use before the prescription
 can be filled. A pharmacist cannot fill any prescription which contains any errors, omissions, or

irregularity without contacting the prescriber to validate the prescription. Board investigator

White found medications at L.A. Good Pharmacy to be dispensed without any written validation
from the prescriber. Below is a sampling of 175 uncertain oral prescriptions filled by L.A. Good
Pharmacy that did not meet the requirements of a prescription:

6			STRENGTH	QUANTITY	DIRECTIONS	
	502797	11-29-05	Ibuprofen	Yes	None	None
7	502796	11-29-05	Carisoprodol	NA	None	None
8	C502795	11-29-05	Promethazine VC w/Cod	NA	None	None
9	C502794	11-29-05	Hydrocodone W/ APAP ES	Yes	None	None
10	C502793	11-29-05	APAP w/ Codeine #3	Yes	Yes	None
11	502792	11-29-05	Doxycycline	None	None	None
11	C503044	12-2-05	Diazepam	Yes	None	None
12	503045	12-2-05	Carisoprodol	NA	None	None
12	503046	12-2-05	Ibuprofen	None	None	None
13	C503047	12-2-05	Flurazepam	None	None	None
14	C503048	12-2-05	Promethazine VC w/ Cod	NA	None	None
15	C503049	12-2-05	Hydrocodone W/APAP ES	Yes	None	None
17	502974	12-2-05	Amitriptyline	None	None	None
16	502976	12-2-05	Nifedipine ER	None	None	None
10	C502975	12-2-05	Flurazepam	None	None	None
17	502977	12-2-05	Cephalexin	None	None	None
	C502978	12-2-05	Diazepam	None	None	None
18	C502979	12-2-05	Hydrocodone w/ APAP ES	Yes	None	None
19	502962	12-2-05	Quinine	None	None	None
20	C502963	12-2-05	APAP w/ Codeine #3	Yes	None	None
	502964	12-2-05	Ibuprofen	None	None	None
21	502965	12-2-05	Furosemide	None	None	None
	502966	12-2-05	Nexium	None	None	None
22	C503022	12-2-05	Promethazine VC w/Cod	NA	None	None
23	503020	12-2-05	Doxycycline	None	None	None
	503024	12-2-05	Carisoprodol	NA	None	None
24	503023	12-2-05	Alprazolam	None	None	None
ا م	503021	12-2-05	Triazolam	None	None	None
25	503205	12-5-05	Clonidine	None	None	None
ا م	C503204	12-5-05	Clonazepam	None	None	None
26	C503203	12-5-05	Hydrocodone w/ APAP ES	Yes	None	None
27	503202	12-5-05	Carisoprodol	NA .	None	None
28	?	12-5-05	Phenytoin	None	None	None

503201	12-5-05	Nexium	None	None	None
503534	12-12-05	Metoprolol	None	None	None
503535	12-12-05	Furosemide	None	None	None
C503536	12-12-05	Alprazolam	None	None	None
503537	12-12-05	Freestyle Test	NA	NA	NA
503538	12-12-05	Strip Freestyle Lancet	NA	NA	NA
503548	12-12-05	Insulin Syringes	NA NA	NA NA	NA NA
503548 503547	12-12-05	Humulin	None	None	None
C503546	12-12-05	Clonazepam	None	None	None
503544 503544	12-12-05	Levothroid	None	None	None
C503545	12-12-05	APAP w/ Cod #3	Yes	None	None
503562	12-12-05	Ferrous S04	Yes	Yes	Yes
503557	12-12-05	Glipizide	None	None	None
C503558	12-12-05	Temazepam	None	None	None
503559	12-12-05	? · ·	None	None	None
503560	12-12-05	Furosemide	None	None	None
503561	12-12-05	Nexium	None	None	None
503702	12-13-05	Principen	None	None	None
C503701	12-13-05	Triazolam	None	None	None
C503701 C503700	12-13-05	Hydrocodone w/	Yes	None	None
		APAP ES			
503699	12-13-05	Carisoprodol	NA	None	None
C503698	12-13-05	Alprazolam	None	None	None
C503703	12-13-05	Promethazine VC w/ Cod	Yes	None	None
C503713	12-13-05	Hydrocodone w/APAP	Yes	None	None
503712	12-13-05	Furosemide	None	None	None
C503714	12-13-05	Promethazine VC w/ Cod	Yes	None	None
503716	12-13-05	Nexium?	none	None	None
?	12-13-05	Buspar	None	None	None
?	12-13-05	Doxycycline	None	None	None
C503773	12-14-05	Diazepam	None	None	None
503774	12-14-05	Doxycycline	None	None	None
503775	12-14-05	Glipizide	None	None	None
503776	12-14-05	Captopril	Yes	None	None
503777	12-14-05	Norvasc	None	None	None
504240	12-21-05	Metformin	None	None	None
504244	12-21-05	Captopril	None	None	None
504243	12-21-05	Pepcid?	None	None	None
504242	12-21-05	Glipizide	None	None	None
504241	12-21-05	Amitriptyline	None	None	None
C504561	12-27-05	Diazepam	None	None	None
504556	12-27-05	Carisoprodol	NA	None	None
C504557	12-27-05	Hydrocodone w/ APAP ES	Yes	None	None
504558	12-27-05	?	None	None	None
504559	12-27-05	?	None	None	None
504560	12-27-05	Albuterol Inhaler	Yes	None	None
C504762	12-30-05	Hydrocodone w/	Yes	None	None
504763	12-30-05	APAP ES Carisoprodol	NA	None	None

_		T				
\parallel	505056	1-4-06	Lipitor	None	None	None
\parallel	505057	1-4-06	Captopril	Yes	None	None
	C505058	1-4-06	APAP w/ Cod #3	Yes	None	None
	C505059	1-4-06	Promethazine VC w/ Cod?	Yes	None	None
$\parallel \parallel$	C505060	1-4-06	Alprazolam	None	None	None
╟	505061	1-4-06	Famotidine	None	None	None
111	C505184	1-6-06	APAP w/Cod #4	Yes	None	None
╟	C505189	1-6-06	Alprazolam	None	None	None
	C505191	1-6-06	Promethazine VC w/ Cod	Yes	None	None
⊪	C505192	1-6-06	Triazolam	None	None	None
₩	505193	1-6-06	Principen	None	None	None
⊪	505210	1-6-06	Flurazepam	None	None	None
⊪	C505211	1-6-06	Promethazine VC	Yes	None .	None
			w/ Cod			
	C505212	1-6-06	Tobradex	Yes	None	None
اا	505213	1-6-06	Principen	None	None	None
Ш	505215	1-6-06	Clotrimazole	Yes	None	None
$\ \ $	505216	1-6-06	Benazepril	None	None	None
	505241	1-6-06	Insulin	None	None	None
	505242	1-6-06	Prempro	Yes	None	None
	505243	1-6-06	Nexium	None	None	None
	C505245	1-6-06	Promethazine VC w/ Cod	Yes	None	None
	C505244	1-6-06	APAP w/ Cod #3	Yes	None	None
	505246	1-6-06	Syringes	None	None	None
╟	505239	1-6-06	Levothyroid	None	Yes	None
۱	505253	1-6-06	Advair	None	None	None
III	505255	1-6-06	APAP w/ Cod #3	None	None	None
	505256	1-6-06	Syringes?	None	None	None
	505257	1-6-06	Promethazine VC w/ Cod	Yes	None	None
W	505254	1-6-06	Benazepril	None	None	None
	505258	1-6-06	Gemfibrozil	None	None	None
	505438	1-9-06	Hydrocodone w/ APAP ES	Yes	None	None
	505529	1-10-06	Ibuprofen	None	None	None
	505530	1-10-06	Benazepril	None	None	None
	505532	1-10-06	Ferrous S04	None	None	None
	C505533	1-10-06	Alprazolam	None	None	None
	505534	1-10-06	Singulair	None	None	None
	505535	1-10-06	Doxycycline	None	None	None
	505540	1-10-06				
I	C505542	1-10-06	Bactracin/Polymix	Yes	None	None
			APAP w/Cod #4	Yes	None	None
	C505543	1-10-06	Hydrocodone w/APAP ES	Yes	None	None
	C505541	1-10-06	Promethazine VC w/ Cod	Yes	None	None
	C505605	1-11-06	Hydrocodone w/APAP ES	Yes	None	None
$\ $	505606	1-11-06	Carisoprodol	Yes	None	None
	C505607	1-11-06	Clonazepam	None	None	None
Ш	505608	1-11-06	Amitriptyline	None	None	None

C505610	1-11-06	Diazepam	None	None	None
505611	1-11-06	Doxycycline	None	None	None
C505612	1-11-06	Promethazine VC	Yes	None	None
0000012		w/ Cod			
C505613	1-11-06	Uniretic	Yes	None	None
509326	3-10-06	Lancet	NA	NA	NA
C509325	3-10-06	Diazepam	None	None	None
509324	3-10-06	Syringes	None	None	None
509323	3-10-06	Test Strips	NA	None	None
C509320	3-10-06	APAP w/ Cod #3	Yes	None	None
509319	3-10-06	Humulin 70/30	Yes	None	None
509318	3-10-06	Humulin R	Yes	None	None
C509330	3-10-06	Ambien	None	None	None
509322	3-10-06	7	None	None	None
509393	3-13-06	Nexium	None	None	None
509394	3-13-06	Doxycycline	None	None	None
509402	3-13-06	Metoclopramide	None	None	None
509405	3-13-06	Tobradex	Yes	None	None
509405 509406	3-13-06	Aspirin EC	None	None	None
509406 509407	3-13-06	Nitro quick	None	None	None
C510348	3-13-06				None
C510348 C510347	3-27-06	Clonazepam Promethazine w/	None	None	
C510347	3-27-06	VC Cod	Yes	None	None
510345	3-27-06	Gabapentin	None	None	None
C510344	3-27-06	Diazepam	None	None	None
510343	3-27-06	APAP 500mg	Yes	None	None
510441	3-28-06	APAP 325mg	Yes	None	None
C510441	3-28-06	Promethazine VC	Yes	None	None
C310 44 2	3-20-00	w/ Cod	1 68	None	INOTIC
510438	3-28-06	Clotrimazole	NA	None	None
510439	3-28-06	Mylanta?	NA NA	None	None
510439	3-28-06	Tetracycline	None	None	none
510440	3-28-06	Baclofen	None	None	None
510437	3-28-06	Ibuprofen	None	None	None
510434	3-28-06		None	None	None
C510434	3-28-06	Doxycycline Promethazine VC	Yes		
C310433	3-20-00	w/ Cod	res	None	None
C510436	3-28-06	APAP w/ Cod #3	Yes	None	None
C510730 C510???	4-3-06	Hydrocodone w/	Yes	None	None
0010:::	1-3-00	APAP ES	103	TOTIC	TOTIC
5106??	4-3-06	Gabapentin	None	None	None
C50944?	4-3-06	Diazepam	None .	None	None
510685	4-3-06	Promethazine w/	Yes	None	None
		DM			
510697	4-3-06	APAP	None	None	None
510686	4-3-06	Calcium	None	None	None
510659	4-3-06	Ferrous S04	Yes	None	None
510658	4-3-06	Glipizide	None	None	None
510657	4-3-06	Nexium	None	None	None
510656	4-3-06	?	None	None	None
C510655	4-3-06	ASA w/ Cod #4	Yes	None	None
C510660	4-3-06	Temazepam	None	None	None
C510646	4-3-06	Diazepam	None	None	None
C510646		ASA w/ Cod #4	Yes		
C2 10044	4-3-06	ASA W/ COU #4	I I G2	None	None

C510645	4-3-06	Promethazine w/ Cod	Yes	None	None		
C510652	4-3-06	ASA w/ Cod #4	Yes	None	None		
			·				
		FIRST CAUSE F	ማይ ከ፤ፍሮ	IDI INE			
	(Failure to	Completely Reduce			:4:na)		
13.	•	ong is subject to discip		_	.		
	- ·		•				
		10, subsection (b). Pha	-	_	_		
	_	tain all the informatio			• • • • • • • • • • • • • • • • • • • •		
	•	red by a prescription.	-	· ·	Ŭ		
LA Good N	eighbor Pharm	acy located at 4562 E	ast Cesar C	havez Avenue in I	os Angeles failed		
to comply.	The circumstar	nces are as follows:					
14.	Specifically, fr	om November 2005 tl	hrough Apr	il 2006, L.A. Good	d Neighbor		
Pharmacy fi	lled at least 17	5 oral prescriptions th	at were not	completely reduce	ed to writing and		
did not cont	ain all the info	rmation including dru	g strength,	quantity, and direc	tions for use, as		
required by	a prescription.	This is a violation of	pharmacy	law. Paragraphs 1	2(a) - (e) are		
incorporated	l herein by refe	erence.					
		SECOND CAUSE	FOR DISC	CIPLINE			
	(Dis	spensing Uncertain,	Erroneous	Prescriptions)			
15.	Respondent Fo	ong is subject to discip	linary actio	on under California	ı Code of		
Regulations	, title 16, section	on 1761, subsection (a), for filling	g a prescription tha	t contains		
uncertainty,	errors or omis	sions. The circumstar	nces are as i	follows:			
16. Specifically, from November 2005 through April 2006, Respondent Fong was							
pharmacist-in-charge of L.A. Good Neighbor Pharmacy located at 4562 East Cesar Chavez							
Avenue in Los Angeles. L.A. Good Neighbor Pharmacy filled at least 175 oral prescriptions that							
contained significant omissions, and uncertainties. Pharmacy law requires the pharmacist not fill							
a prescriptio	n that contains	s any uncertainty, erro	rs or omiss:	ions. Respondent	Fong failed to		
comply. Pa	ragraphs 12(a)	- (e) are incorporated	herein by r	eference.			

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 46421, issued to Respondent Marvin Yuk-Kwan Fong;
- 2. Ordering Respondent Marvin Yuk-Kwan Fong 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;
 - 3. Taking such other and further action as deemed necessary and proper.

DATED: 9/1/11

VIRGINIA HEROLD

Executive Officer Board of Pharmacy

Department of Consumer Affairs

State of California

Complainant

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