

1 KAMALA D. HARRIS  
Attorney General of California  
2 GREGORY SALUTE  
Supervising Deputy Attorney General  
3 HEATHER HUA  
Deputy Attorney General  
4 State Bar No. 223418  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2574  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*

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

10 In the Matter of the Accusation Against:

Case No. 3479

11 **MARVIN YUK-KWAN FONG**  
12 2107 W. Commonwealth Avenue, #D 375  
Alhambra, CA 91803  
13 Pharmacist License No. RPH 46421

**A C C U S A T I O N**

14 Respondent.

15  
16 Complainant alleges:

17 **PARTIES**

18 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
19 as the Executive Officer of the Board of Pharmacy, 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 **JURISDICTION**

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

28





1 validate the prescription.”

2 **COST RECOVERY**

3 11. Section 125.3 provides that the Board may request the administrative law judge to  
4 direct a licentiate found to have committed a violation or violations of the licensing act to pay a  
5 sum not to exceed the reasonable costs of the investigation and enforcement of the case.

6 **SUMMARY OF FACTS**

7 12. The following facts are common to all charges of the Accusation:

8 a. The United States Attorney’s Office reported L.A. Good Neighbor Pharmacy  
9 (L.A. Good) had violated several provisions of the Controlled Substance Acts. Subsequently,  
10 L.A. Good surrendered their Drug Enforcement Administration (DEA) registration and the  
11 pharmacy closed.

12 b. On or about June 21, 2006, Assistant United States Attorney Shana Mintz sent  
13 the Board of Pharmacy a letter regarding the DEA’s findings at L.A. Good. In summary, the  
14 letter indicated that an April 6, 2006 inspection by the DEA found that the pharmacy had failed to  
15 maintain records of sales of “above threshold amounts” of Pseudoephedrine, failed to maintain  
16 complete/proper controlled substance records and failed to accurately complete their DEA 222  
17 ordering forms. The DEA also found L.A. Good’s purchase pattern of Pseudoephedrine was  
18 much greater (84%) than other pharmacies in the same zip code (90022).

19 c. On or about March 3, 2009, Respondent Fong as Pharmacist-in-Charge of L.A.  
20 Good Pharmacy entered into a Settlement Agreement with the DEA and U.S. Department of  
21 Justice for \$150,000 regarding the findings of the DEA investigation.

22 d. Further investigation revealed several uncertain erroneous prescriptions that  
23 were filled by L.A. Good Pharmacy during late 2005 to early 2006.

24 e. After reviewing documents obtained by the Drug Enforcement Agency,  
25 Pharmacy Board investigator D. White discovered numerous pharmacy law violations. These  
26 included oral prescriptions that were not reduced to writing and failed to contain all the required  
27 prescription information such as drug strength, quantity, directions for use before the prescription  
28 can be filled. A pharmacist cannot fill any prescription which contains any errors, omissions, or

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

RX #	DATE	DRUG	STRENGTH	QUANTITY	DIRECTIONS
502797	11-29-05	Ibuprofen	Yes	None	None
502796	11-29-05	Carisoprodol	NA	None	None
C502795	11-29-05	Promethazine VC w/Cod	NA	None	None
C502794	11-29-05	Hydrocodone W/ APAP ES	Yes	None	None
C502793	11-29-05	APAP w/ Codeine #3	Yes	Yes	None
502792	11-29-05	Doxycycline	None	None	None
C503044	12-2-05	Diazepam	Yes	None	None
503045	12-2-05	Carisoprodol	NA	None	None
503046	12-2-05	Ibuprofen	None	None	None
C503047	12-2-05	Flurazepam	None	None	None
C503048	12-2-05	Promethazine VC w/ Cod	NA	None	None
C503049	12-2-05	Hydrocodone W/APAP ES	Yes	None	None
502974	12-2-05	Amitriptyline	None	None	None
502976	12-2-05	Nifedipine ER	None	None	None
C502975	12-2-05	Flurazepam	None	None	None
502977	12-2-05	Cephalexin	None	None	None
C502978	12-2-05	Diazepam	None	None	None
C502979	12-2-05	Hydrocodone w/ APAP ES	Yes	None	None
502962	12-2-05	Quinine	None	None	None
C502963	12-2-05	APAP w/ Codeine #3	Yes	None	None
502964	12-2-05	Ibuprofen	None	None	None
502965	12-2-05	Furosemide	None	None	None
502966	12-2-05	Nexium	None	None	None
C503022	12-2-05	Promethazine VC w/Cod	NA	None	None
503020	12-2-05	Doxycycline	None	None	None
503024	12-2-05	Carisoprodol	NA	None	None
503023	12-2-05	Alprazolam	None	None	None
503021	12-2-05	Triazolam	None	None	None
503205	12-5-05	Clonidine	None	None	None
C503204	12-5-05	Clonazepam	None	None	None
C503203	12-5-05	Hydrocodone w/ APAP ES	Yes	None	None
503202	12-5-05	Carisoprodol	NA	None	None
?	12-5-05	Phenytoin	None	None	None

1	503201	12-5-05	Nexium	None	None	None
	503534	12-12-05	Metoprolol	None	None	None
	503535	12-12-05	Furosemide	None	None	None
2	C503536	12-12-05	Alprazolam	None	None	None
	503537	12-12-05	Freestyle Test Strip	NA	NA	NA
3						
	503538	12-12-05	Freestyle Lancet	NA	NA	NA
4						
	503548	12-12-05	Insulin Syringes	NA	NA	NA
	503547	12-12-05	Humulin	None	None	None
5						
	C503546	12-12-05	Clonazepam	None	None	None
	503544	12-12-05	Levothroid	None	None	None
6						
	C503545	12-12-05	APAP w/ Cod #3	Yes	None	None
	503562	12-12-05	Ferrous S04	Yes	Yes	Yes
7						
	503557	12-12-05	Glipizide	None	None	None
	C503558	12-12-05	Temazepam	None	None	None
8						
	503559	12-12-05	?	None	None	None
	503560	12-12-05	Furosemide	None	None	None
9						
	503561	12-12-05	Nexium	None	None	None
10						
	503702	12-13-05	Principen	None	None	None
	C503701	12-13-05	Triazolam	None	None	None
11						
	C503700	12-13-05	Hydrocodone w/ APAP ES	Yes	None	None
12						
	503699	12-13-05	Carisoprodol	NA	None	None
	C503698	12-13-05	Alprazolam	None	None	None
13						
	C503703	12-13-05	Promethazine VC w/ Cod	Yes	None	None
14						
	C503713	12-13-05	Hydrocodone w/APAP	Yes	None	None
15						
	503712	12-13-05	Furosemide	None	None	None
16						
	C503714	12-13-05	Promethazine VC w/ Cod	Yes	None	None
17						
	503716	12-13-05	Nexium ?	none	None	None
	?	12-13-05	Buspar	None	None	None
	?	12-13-05	Doxycycline	None	None	None
18						
	C503773	12-14-05	Diazepam	None	None	None
19						
	503774	12-14-05	Doxycycline	None	None	None
	503775	12-14-05	Glipizide	None	None	None
20						
	503776	12-14-05	Captopril	Yes	None	None
	503777	12-14-05	Norvasc	None	None	None
21						
	504240	12-21-05	Metformin	None	None	None
	504244	12-21-05	Captopril	None	None	None
22						
	504243	12-21-05	Pepcid ?	None	None	None
	504242	12-21-05	Glipizide	None	None	None
23						
	504241	12-21-05	Amitriptyline	None	None	None
	C504561	12-27-05	Diazepam	None	None	None
24						
	504556	12-27-05	Carisoprodol	NA	None	None
	C504557	12-27-05	Hydrocodone w/ APAP ES	Yes	None	None
25						
	504558	12-27-05	?	None	None	None
26						
	504559	12-27-05	?	None	None	None
	504560	12-27-05	Albuterol Inhaler	Yes	None	None
27						
	C504762	12-30-05	Hydrocodone w/ APAP ES	Yes	None	None
28						
	504763	12-30-05	Carisoprodol	NA	None	None

1	505056	1-4-06	Lipitor	None	None	None
	505057	1-4-06	Captopril	Yes	None	None
	C505058	1-4-06	APAP w/ Cod #3	Yes	None	None
2	C505059	1-4-06	Promethazine VC w/ Cod ?	Yes	None	None
3	C505060	1-4-06	Alprazolam	None	None	None
	505061	1-4-06	Famotidine	None	None	None
4	C505184	1-6-06	APAP w/Cod #4	Yes	None	None
	C505189	1-6-06	Alprazolam	None	None	None
5	C505191	1-6-06	Promethazine VC w/ Cod	Yes	None	None
6	C505192	1-6-06	Triazolam	None	None	None
7	505193	1-6-06	Principen	None	None	None
	505210	1-6-06	Flurazepam	None	None	None
8	C505211	1-6-06	Promethazine VC w/ Cod	Yes	None	None
9	C505212	1-6-06	Tobradex	Yes	None	None
	505213	1-6-06	Principen	None	None	None
10	505215	1-6-06	Clotrimazole	Yes	None	None
	505216	1-6-06	Benazepril	None	None	None
11	505241	1-6-06	Insulin	None	None	None
	505242	1-6-06	Prempro	Yes	None	None
12	505243	1-6-06	Nexium	None	None	None
	C505245	1-6-06	Promethazine VC w/ Cod	Yes	None	None
13	C505244	1-6-06	APAP w/ Cod #3	Yes	None	None
14	505246	1-6-06	Syringes	None	None	None
	505239	1-6-06	Levothyroid	None	Yes	None
15	505253	1-6-06	Advair	None	None	None
	505255	1-6-06	APAP w/ Cod #3	None	None	None
16	505256	1-6-06	Syringes ?	None	None	None
	505257	1-6-06	Promethazine VC w/ Cod	Yes	None	None
17	505254	1-6-06	Benazepril	None	None	None
18	505258	1-6-06	Gemfibrozil	None	None	None
19	505438	1-9-06	Hydrocodone w/ APAP ES	Yes	None	None
20	505529	1-10-06	Ibuprofen	None	None	None
	505530	1-10-06	Benazepril	None	None	None
21	505532	1-10-06	Ferrous S04	None	None	None
	C505533	1-10-06	Alprazolam	None	None	None
22	505534	1-10-06	Singulair	None	None	None
	505535	1-10-06	Doxycycline	None	None	None
23	505540	1-10-06	Bactracin/Polymix	Yes	None	None
	C505542	1-10-06	APAP w/Cod #4	Yes	None	None
24	C505543	1-10-06	Hydrocodone w/APAP ES	Yes	None	None
25	C505541	1-10-06	Promethazine VC w/ Cod	Yes	None	None
26	C505605	1-11-06	Hydrocodone w/APAP ES	Yes	None	None
27	505606	1-11-06	Carisoprodol	Yes	None	None
	C505607	1-11-06	Clonazepam	None	None	None
28	505608	1-11-06	Amitriptyline	None	None	None

1	C505610	1-11-06	Diazepam	None	None	None
	505611	1-11-06	Doxycycline	None	None	None
2	C505612	1-11-06	Promethazine VC w/ Cod	Yes	None	None
	C505613	1-11-06	Uniretic	Yes	None	None
3	509326	3-10-06	Lancet	NA	NA	NA
	C509325	3-10-06	Diazepam	None	None	None
4	509324	3-10-06	Syringes	None	None	None
	509323	3-10-06	Test Strips	NA	None	None
5	C509320	3-10-06	APAP w/ Cod #3	Yes	None	None
	509319	3-10-06	Humulin 70/30	Yes	None	None
6	509318	3-10-06	Humulin R	Yes	None	None
	C509330	3-10-06	Ambien	None	None	None
7	509322	3-10-06	?	None	None	None
	509393	3-13-06	Nexium	None	None	None
8	509394	3-13-06	Doxycycline	None	None	None
	509402	3-13-06	Metoclopramide	None	None	None
9	509405	3-13-06	Tobradex	Yes	None	None
	509406	3-13-06	Aspirin EC	None	None	None
10	509407	3-13-06	Nitro quick	None	None	None
	C510348	3-27-06	Clonazepam	None	None	None
11	C510347	3-27-06	Promethazine w/ VC Cod	Yes	None	None
12	510345	3-27-06	Gabapentin	None	None	None
	C510344	3-27-06	Diazepam	None	None	None
13	510343	3-27-06	APAP 500mg	Yes	None	None
	510441	3-28-06	APAP 325mg	Yes	None	None
14	C510442	3-28-06	Promethazine VC w/ Cod	Yes	None	None
15	510438	3-28-06	Clotrimazole	NA	None	None
	510439	3-28-06	Mylanta ?	NA	None	None
16	510440	3-28-06	Tetracycline	None	None	none
	510437	3-28-06	Baclofen	None	None	None
17	510435	3-28-06	Ibuprofen	None	None	None
	510434	3-28-06	Doxycycline	None	None	None
18	C510433	3-28-06	Promethazine VC w/ Cod	Yes	None	None
19	C510436	3-28-06	APAP w/ Cod #3	Yes	None	None
20	C510???	4-3-06	Hydrocodone w/ APAP ES	Yes	None	None
21	5106??	4-3-06	Gabapentin	None	None	None
	C50944?	4-3-06	Diazepam	None	None	None
22	510685	4-3-06	Promethazine w/ DM	Yes	None	None
23	510697	4-3-06	APAP	None	None	None
	510686	4-3-06	Calcium	None	None	None
24	510659	4-3-06	Ferrous S04	Yes	None	None
	510658	4-3-06	Glipizide	None	None	None
25	510657	4-3-06	Nexium	None	None	None
	510656	4-3-06	?	None	None	None
26	C510655	4-3-06	ASA w/ Cod #4	Yes	None	None
	C510660	4-3-06	Temazepam	None	None	None
27	C510646	4-3-06	Diazepam	None	None	None
28	C510644	4-3-06	ASA w/ Cod #4	Yes	None	None



1	C510645	4-3-06	Promethazine w/ Cod	Yes	None	None
2	C510652	4-3-06	ASA w/ Cod #4	Yes	None	None
3						

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Failure to Completely Reduce an Oral Prescription to Writing)**

6 13. Respondent Fong is subject to disciplinary action under Code section 4070 as it  
7 relates to Code section 4040, subsection (b). Pharmacy law requires an oral prescription to be  
8 reduced to writing and contain all the information including drug name, strength, quantity, and  
9 directions for use, as required by a prescription. Respondent Fong as Pharmacist-in-Charge of  
10 LA Good Neighbor Pharmacy located at 4562 East Cesar Chavez Avenue in Los Angeles failed  
11 to comply. The circumstances are as follows:

12 14. Specifically, from November 2005 through April 2006, L.A. Good Neighbor  
13 Pharmacy filled at least 175 oral prescriptions that were not completely reduced to writing and  
14 did not contain all the information including drug strength, quantity, and directions for use, as  
15 required by a prescription. This is a violation of pharmacy law. Paragraphs 12(a) - (e) are  
16 incorporated herein by reference.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Dispensing Uncertain, Erroneous Prescriptions)**

19 15. Respondent Fong is subject to disciplinary action under California Code of  
20 Regulations, title 16, section 1761, subsection (a), for filling a prescription that contains  
21 uncertainty, errors or omissions. The circumstances are as follows:

22 16. Specifically, from November 2005 through April 2006, Respondent Fong was  
23 pharmacist-in-charge of L.A. Good Neighbor Pharmacy located at 4562 East Cesar Chavez  
24 Avenue in Los Angeles. L.A. Good Neighbor Pharmacy filled at least 175 oral prescriptions that  
25 contained significant omissions, and uncertainties. Pharmacy law requires the pharmacist not fill  
26 a prescription that contains any uncertainty, errors or omissions. Respondent Fong failed to  
27 comply. Paragraphs 12(a) - (e) are incorporated herein by reference.

28

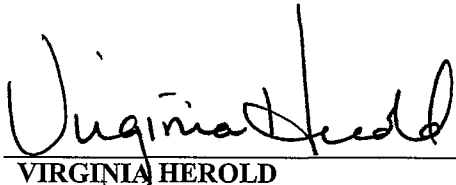
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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*

LA2009604507  
60502669\_3.doc