

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 DAVID E. HAUSFELD  
Deputy Attorney General  
4 State Bar No. 110639  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2025  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 3860

12 **YIN TAT WILLIAM KHO**  
13 **2033 Christie Street**  
14 **Fullerton, CA 92833**

**FIRST AMENDED ACCUSATION**

15 **Pharmacist License No. RPH 49713**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about August 27, 1997, the Board of Pharmacy issued Original Pharmacist  
23 License Number RPH 49713 to Yin Tat William Kho (Respondent). The Original Pharmacist  
24 License was in full force and effect at all times relevant to the charges brought herein and will  
25 expire on May 31, 2013, unless renewed.

26 ///

27 ///

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

**JURISDICTION**

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

4. Section 4300 of the Code states:

- (a) Every license issued may be suspended or revoked.
  - (b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:
    - (1) Suspending judgment.
    - (2) Placing him or her upon probation.
    - (3) Suspending his or her right to practice for a period not exceeding one year.
    - (4) Revoking his or her license.
    - (5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.
- .....

5. Section 118, subdivision (b), of the Code 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.

**STATUTORY PROVISIONS**

6. Section 490 of the Code provides, in pertinent part, that a Board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

7. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

1 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and  
'registration.'

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

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

6 . . . .

7 (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.

8 . . . .

9 (l) The conviction of a crime substantially related to the qualifications,  
10 functions, and duties of a licensee under this chapter. . . . [T]he record of  
conviction shall be conclusive evidence only of the fact that the conviction  
11 occurred. The board may inquire into the circumstances surrounding the  
commission of the crime, in order to fix the degree of discipline or, in the case of a  
12 conviction not involving controlled substances or dangerous drugs, to determine if  
the conviction is of an offense substantially related to the qualifications, functions,  
and duties of a licensee under this chapter. A plea or verdict of guilty or a  
13 conviction following a plea of nolo contendere is deemed to be a conviction within  
the meaning of this provision. The board may take action when the time for  
14 appeal has elapsed, or the judgment of conviction has been affirmed on appeal or  
when an order granting probation is made suspending the imposition of sentence,  
15 irrespective of a subsequent order under Section 1203.4 of the Penal Code  
allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
16 guilty, or setting aside the verdict of guilty, or dismissing the accusation,  
information, or indictment.

17 . . . .

18 **REGULATORY PROVISIONS**

19 9. California Code of Regulations, title 16, section 1770, states:

20 “For the purpose of denial, suspension, or revocation of a personal or facility license  
21 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a  
22 crime or act shall be considered substantially related to the qualifications, functions or duties of a  
23 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a  
24 licensee or registrant to perform the functions authorized by his license or registration in a manner  
25 consistent with the public health, safety, or welfare.”

26 ///

27 ///

28 ///

1 10. California Code of Regulations, title 16, section 1769, states, in pertinent part:

2 “....

3 “(b) When considering the suspension or revocation of a facility or a personal license on the  
4 ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating  
5 the rehabilitation of such person and his present eligibility for a license will consider the  
6 following criteria:

7 (1) Nature and severity of the act(s) or offense(s).

8 (2) Total criminal record.

9 (3) The time that has elapsed since commission of the act(s) or offense(s).

10 (4) Whether the licensee has complied with all terms of parole, probation, restitution  
11 or any other sanctions lawfully imposed against the licensee.

12 (5) Evidence, if any, of rehabilitation submitted by the licensee.”

13 **COST RECOVERY**

14 11. Section 125.3 of the Code states, in pertinent part, that the Board may request the  
15 administrative law judge to direct a licentiate found to have committed a violation or violations of  
16 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
17 enforcement of the case.

18 **FACTS**

19 12. Respondent was employed from 1997 until 2010 in a part time position as a  
20 pharmacist at the CVS Pharmacy on North Harbor Boulevard in Fullerton, California. In 2010,  
21 the Loss Prevention Department of the pharmacy surreptitiously observed the activities of  
22 Respondent while on duty at the pharmacy. These observations included the use of surveillance  
23 cameras, personal observation and review of inventory documents of the store.

24 13. It was determined that beginning in approximately March of 2009 until April of 2010,  
25 Respondent removed from the store without authorization and without paying for the items, 352  
26 One Touch Ultra diabetic test kits. Each kit contained 100 test strips and had a value of  
27 approximately \$122.00. Respondent also took 6 bottles of Florastor, a non-prescription pro-biotic  
28

1 product, from the store. The total value of the items taken by Respondent was in the amount of  
2 \$43,064.

3 14. On April 3, 2010, Respondent was arrested by the Fullerton Police Department for his  
4 unlawful acts while employed at the CVS Pharmacy.

5 15. On or about October 7, 2010, a felony criminal complaint was filed in a criminal  
6 proceeding entitled *People of the State of California v. Yintat William Kho*, in the County of  
7 Orange, North Justice Center, Superior Court, case number 10NF3139. Respondent was charged  
8 with one count of violations of Penal Code sections 459-460 (b), second degree commercial  
9 burglary and one count of a violation of Penal Code section 487 (a), grand theft.

10 16. On or about July 13, 2011, Respondent was convicted on his plea of guilty of one  
11 count of misdemeanor violations of Penal Code sections 459-460 (b), second degree commercial  
12 burglary and one count of a misdemeanor violation of Penal Code section 487 (a), grand theft.

13 17. As a result of the conviction, on or about July 13, 2011, Respondent was sentenced to  
14 three years informal probation, serve 30 days in the Orange County jail, payment of fees and fines  
15 and payment of restitution in the sum of \$43,000.00.

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Unprofessional Conduct - Dishonesty)**

18 18. Respondent is subject to disciplinary action under Code section 4301, subdivision (f),  
19 for the unlawful taking of 352 One Touch Ultra diabetic test kits and 6 bottles of Florastor, as  
20 more particularly described in paragraphs 12 through 17, above.

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(July 13, 2011 Criminal Convictions for Burglary and Theft)**

23 19. Respondent has subjected his license to disciplinary action under sections 490 and  
24 4301, subdivision (l) of the Code, in that Respondent was convicted of crimes that are  
25 substantially related to the qualifications, functions, and duties of a pharmacist, as more  
26 particularly described in paragraphs 12 through 17, above.

27 ///

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

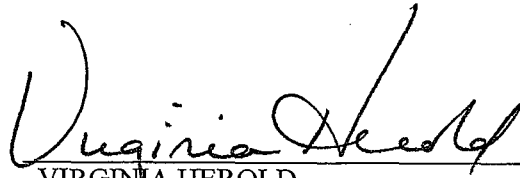
PRAYER

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 Original Pharmacist License Number RPH 49713, issued to Yin Tat William Kho;
2. Ordering Yin Tat William Kho 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: \_\_\_\_\_

*1/24/12*



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

SD2010702935  
70409867.doc