

1 XAVIER BECERRA  
Attorney General of California  
2 KENT D. HARRIS  
Supervising Deputy Attorney General  
3 MABEL LEW  
Deputy Attorney General  
4 State Bar No. 158042  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 324-5337  
Facsimile: (916) 327-8643  
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 5903

13 **KAN PHARMACY INC.**  
14 **dba CARE RX PHARMACY**  
15 **CHRISTINE NGA KAN, PRESIDENT and**  
16 **PHARMACIST-IN-CHARGE**

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

17 302 E. Bullard Ave.  
18 Fresno, CA 93710

19 **Pharmacy Permit No. PHY 51049**

20 and

21 **CHRISTINA NGA KAN**  
22 8277 N. Paula Ave.  
23 Fresno, CA 93720

24 **Pharmacist License No. RPH 58228**

25 Respondents.

26 Virginia Herold ("Complainant") alleges:

27 **PARTIES**

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

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**Pharmacy Permit**

2. On or about September 12, 2012, the Board issued Pharmacy Permit Number PHY 51049 to Kan Pharmacy Inc., doing business as Care Rx Pharmacy, with Christina Nga Kan as its President and Pharmacist-in-Charge. The Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein and will expire on September 1, 2018, unless renewed.

**Pharmacist License**

3. On or about April 5, 2006, the Board issued Pharmacist License Number RPH 58228 to Christina Nga Kan. The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2019, unless renewed.

4. Kan Pharmacy Inc., dba Care Rx Pharmacy (“CRP”) and Christina Nga Kan are referred to collectively hereinafter as “Respondents”.

**JURISDICTION**

5. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code (“Code”) unless otherwise indicated.

6. Code section 4300 states, in pertinent part:

(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.

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7. Code section 4300.1 states:

The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the 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 investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

**STATUTORY PROVISIONS**

8. Code section 4301 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:

...

(d) The clearly excessive furnishing of controlled substances in violation of subdivision (a) of Section 11153 of the Health and Safety Code.

...

(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.

...

(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.

...

9. Code section 4306.5 states, in pertinent part:

Unprofessional conduct for a pharmacist may include any of the following:

...

(b) Acts or omissions that involve, in whole or in part, the failure to exercise or implement his or her best professional judgment 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.

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1 10. Code section 4113(c) states, "The pharmacist-in-charge shall be responsible for a  
2 pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of  
3 pharmacy."

4 11. Code section 4307 states, in pertinent part:

5 (a) Any person who has been denied a license or whose license has been  
6 revoked or is under suspension, or who has failed to renew his or her license while it  
7 was under suspension, or who has been a manager, administrator, owner, member,  
8 officer, director, associate, or partner of any partnership, corporation, firm, or  
9 association whose application for a license has been denied or revoked, is under  
10 suspension or has been placed on probation, and while acting as the manager,  
11 administrator, owner, member, officer, director, associate, or partner had knowledge  
12 of or knowingly participated in any conduct for which the license was denied,  
13 revoked, suspended, or placed on probation, shall be prohibited from serving as a  
14 manager, administrator, owner, member, officer, director, associate, or partner of a  
15 licensee as follows:

16 (1) Where a probationary license is issued or where an existing license is  
17 placed on probation, this prohibition shall remain in effect for a period not to exceed  
18 five years.

19 (2) Where the license is denied or revoked, the prohibition shall continue until  
20 the license is issued or reinstated.

21 (b) "Manager, administrator, owner, member, officer, director, associate, or  
22 partner," as used in this section and Section 4308, may refer to a pharmacist or to any  
23 other person who serves in that capacity in or for a licensee.

24 ...

#### 25 HEALTH & SAFETY CODE

26 12. Health and Safety Code section 11153(a), states:

27 A prescription for a controlled substance shall only be issued for a legitimate  
28 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.

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1 **REGULATORY PROVISIONS**

2 **CALIFORNIA CODE OF REGULATIONS**

3 13. Code of Federal Regulations (“CFR”), title 21, section 1306.04(a), states:

4 A prescription for a controlled substance to be effective must be issued for a  
5 legitimate medical purpose by an individual practitioner acting in the usual course of  
6 his professional practice. The responsibility for the proper prescribing and dispensing  
7 of controlled substances is upon the prescribing practitioner, but a corresponding  
8 responsibility rests with the pharmacist who fills the prescription. An order purporting  
9 to be a prescription issued not in the usual course of professional treatment or in  
legitimate and authorized research is not a prescription within the meaning and intent  
of section 309 of the Act (21 U.S.C. 829) and the person knowingly filling such a  
purported prescription, as well as the person issuing it, shall be subject to the  
penalties provided for violations of the provisions of law relating to controlled  
substances.

10 **COST RECOVERY**

11 14. Code section 125.3 provides, in pertinent part, that the Board may request the  
12 administrative law judge to direct a licentiate found to have committed a violation or violations of  
13 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
14 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
15 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
16 included in a stipulated settlement.

17 **DRUGS**

18 15. *Norco*, a brand of hydrocodone bitartrate and acetaminophen, is designated a  
19 Schedule III controlled substance by Health and Safety Code section 11056(e)(4) and is  
20 designated a Schedule II controlled substance by the Code of Federal Regulations, title 21,  
21 section 1308.12(b)(1)(vi). It is a dangerous drug pursuant to Business and Professions Code  
22 section 4022.

23 16. *Soma*, a brand name for carisoprodol, is designated a Schedule IV Controlled  
24 Substance Health & Safety Code section 11057(d)(18), by the Code of Federal Regulations, title  
25 21, section 1308.14(c)(6), and is a dangerous drug pursuant to Business and Professions Code  
26 section 4022.

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1 17. *Oxycodone* is designated a Schedule II controlled substance pursuant to Health and  
2 Safety Code section 11055(b)(1)(M), and Code of Federal Regulations, title 21, section  
3 1308.12(b)(1)(xiii), and is a dangerous drug pursuant to Business and Professions Code section  
4 4022.

5 **STATEMENT OF FACTS**

6 18. On or around June 2013, the Board received notification from Amerisource Bergen  
7 Company that they stopped sales of hydrocodone and/or oxycodone products to CRP. A Board  
8 investigation ensued and a Controlled Substance Utilization Review and Evaluation System  
9 (CURES) report<sup>1</sup> for the period January 1, 2010, to September 19, 2013, was obtained.

10 19. The CURES report showed that between November 12, 2012, and September 19,  
11 2013, Dr. Jose Luis Flores<sup>2</sup> issued prescriptions for 31% of the total controlled substance  
12 prescriptions dispensed by CRP. Prescriptions issued by Dr. Flores and filled by CRP for  
13 carisoprodol 350 mg., hydrocodone/APAP 10/325 mg., and oxycodone 30 mg., were  
14 disproportionately higher than prescriptions dispensed by CRP for other prescribers. Between  
15 November 12, 2012, and September 19, 2013, Respondent CRP dispensed: 12,738 units of  
16 carisoprodol 350 mg., of which 9,450 were written by Dr. Flores; 20,641 units of  
17 hydrocodone/APAP 10/325 mg., of which 13,680 were written by Dr. Flores; and 21,318 units of  
18 oxycodone 30 mg., of which 13,620 were written by Dr. Flores.

19 20. On or about October 28, 2013, a Board inspector conducted an on-site inspection of  
20 CRP's facility. The inspector requested patient profiles for 20 patients selected from the CURES  
21 report, a questionnaire to be completed for each of those patients, and hard copy prescriptions and  
22 dispensing records for those patients.

23  
24 <sup>1</sup> Operative January 1, 2005, Health and Safety Code section 11165(d) required  
25 pharmacies to report prescriptions for Schedule II or III controlled substances for the Department  
26 of Justice on a weekly basis. Effective January 1, 2007, 11165(d) was amended to require  
reporting of Schedule IV controlled substances as well. The purpose of such reporting is to help  
identify and prevent/deter drug abuse and diversion.

27 <sup>2</sup> Effective April 16, 2014, Jose Luis Flores, M.D. stipulated to surrender of his  
28 physician's and surgeon's certificate. Dr. Flores was disciplined for, *inter alia*, a failure to meet  
the Medical Board of California's standards for contemporary pain management practice, as  
evidenced by multiple prescriptions issued by Dr. Flores for large quantities of Oxycodone,  
Norco, and Soma for multiple patients.

1 21. Christina Nga Kan, CRP's president and PIC, provided the documentation and  
2 patient questionnaires for nineteen patients. The documentation, compiled and summarized in the  
3 course of the Board investigation, revealed that:

- 4 a. 95% of the time Respondents did not verify that the person presenting the  
5 prescription was the patient or a legitimate representative of the patient;  
6 b. 95% of the patients paid cash;  
7 c. 63% of the prescriptions were brought in by a caregiver;  
8 d. 68% of the prescriptions were picked up a caregiver without use of a consent form;  
9 e. 58% had a diagnosis of lumbosacral neuritis and 42% had a diagnosis of chronic  
10 pain;  
11 f. 47% had the same address;  
12 g. 58% had the same phone number;  
13 h. Of 33 prescriptions written by Dr. Flores for the 19 patients:  
14 (1) 97% included a prescription for oxycodone 30 mg.  
15 (2) 97% included a prescription for carisoprodol 350 mg.  
16 (3) 97% included a prescription for hydrocodone/APAP 10/325;  
17 i. CRP dispensed oxycodone for four patients who had prescriptions written by  
18 Dr. Flores for oxycodone, carisoprodol, and hydrocodone on one script  
19 (1) those patients filled Dr. Flores' prescriptions for carisoprodol and  
20 hydrocodone at other pharmacies  
21 (2) Of those patients, three had Dr. Flores' prescriptions for carisoprodol and  
22 hydrocodone filled at a pharmacy approximately 60 miles away.

23 **FIRST CAUSE FOR DISCIPLINE**

24 (Unprofessional Conduct – Corresponding Responsibility)

25 22. Respondents are subject to disciplinary action pursuant to Code sections 4301(j) and  
26 (o) and 4306.5(b) for unprofessional conduct, in that Respondents failed to exercise or implement  
27 their corresponding responsibility with regard to the dispensing or furnishing of controlled  
28 substances and dangerous drugs for a legitimate medical purpose, in violation of Health & Safety

1 Code section 11153(a) ( and CFR, title 21, section 1306.04(a). Specifically, between on or about  
2 November 12, 2012, and September 19, 2013, Respondents dispensed carisoprodol 350 mg.,  
3 oxycodone 30 mg., and hydrocodone/APAP 10/325 mg. on multiple prescriptions issued by  
4 Dr. Flores for multiple patients without questioning the legitimacy of those prescriptions despite  
5 Dr. Flores' repetitive prescribing habits, his multiple patients residing at one address and having  
6 the same phone number, the high percentage of cash transactions, and the fact that the  
7 prescriptions were being dropped off and picked up by someone other than the patient, as set forth  
8 more fully in paragraphs 19 to 21, above.

9 **SECOND CAUSE FOR DISCIPLINE**

10 (Clearly Excessive Furnishing of Controlled Substances)

11 23. Respondents are subject to disciplinary action pursuant to Code section 4301(d) for  
12 unprofessional conduct, in that between on or about November 12, 2012, and September 19,  
13 2013, Respondents clearly excessively furnished controlled substances, including carisoprodol  
14 350 mg., oxycodone 30 mg., and hydrocodone/APAP 10/325 mg., as set forth in paragraphs 19  
15 through 22, above, in violation of Health and Safety Code section 11153(a).

16 **OTHER MATTERS**

17 24. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit No. PHY  
18 51049, issued to Kan Pharmacy, Inc., dba Care Rx Pharmacy, Care Rx Pharmacy shall be  
19 prohibited from serving as a manager, administrator, owner, member, officer, director, associate,  
20 or partner of a licensee for five years if Pharmacy Permit Number PHY 51049 is placed on  
21 probation or until Pharmacy Permit Number PHY 51049 is reinstated if it is revoked.

22 25. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit No.  
23 PHY 51049, issued to Kan Pharmacy, Inc., dba Care Rx Pharmacy, while Christina Nga Kan has  
24 been an officer and/or pharmacist-in-charge, and had knowledge of or knowingly participated in  
25 any conduct for which the permit was disciplined, Christina Nga Kan shall be prohibited from  
26 serving as a manager, administrator, owner, member, officer, director, associate, or partner of  
27 any licensed or permitted entity for five (5) years if Pharmacy Permit Number PHY 51049 is  
28 placed on probation, or until Pharmacy Permit Number PHY 51049 is reinstated, if revoked.



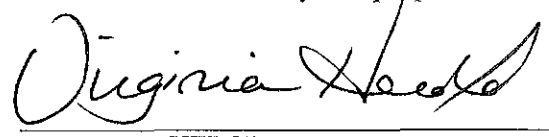
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**PRAYER**

**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 Pharmacy Permit Number PHY 51049, issued to Kan Pharmacy, Inc., dba Care Rx Pharmacy;
- 2. Prohibiting Kan Pharmacy, Inc., dba Care Rx Pharmacy from serving as a manager, administrator, owner, member, officer, director, associate, or partner of any licensed or permitted entity for five (5) years if Pharmacy Permit Number PHY 51049 is placed on probation, or until Pharmacy Permit Number PHY 51049 is reinstated, if revoked;
- 3. Revoking or suspending Pharmacist License Number RPH 37855, issued to Christina Nga Kan;
- 4. Prohibiting Christina Nga Kan from serving as a manager, administrator, owner, member, officer, director, associate, or partner of any licensed or permitted entity for five (5) years if Pharmacy Permit Number PHY 51049 is placed on probation, or until Pharmacy Permit Number PHY 51049 is reinstated, if revoked;
- 5. Ordering Kan Pharmacy, Inc., dba Care Rx Pharmacy Care Rx Pharmacy and Christina Nga Kan 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,
- 6. Take such other and further action as deemed necessary and proper.

DATED: 3/8/18



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

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