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

11 In the Matter of the Accusation Against:

Agency Case No. 6182

12 **MARTIN C. KIM**
2889 Plaza Del Amo, #525
13 Torrance, CA 90503

OAH No.

ACCUSATION

14 Pharmacist License No. RPH 38130

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity as the
20 Executive Officer of the Board of Pharmacy, Department of Consumer Affairs ("Board" or "Board of
21 Pharmacy"). All references herein to "Board" or "Board of Pharmacy" relate to the Board of
22 Pharmacy of the State of California, unless otherwise specified.

23 2. On or about September 20, 1983, the Board of Pharmacy issued Pharmacist License
24 Number RPH 38130 to Martin C. Kim (Respondent). The Pharmacist License was in full force and
25 effect at all times relevant to the charges brought herein and will expire on November 30, 2017,
26 unless renewed.

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28 ///

1 **JURISDICTION**

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

5 4. Business and Professions Code section 4011 provides that “[t]he board shall administer
6 and enforce this chapter [Pharmacy Law, (Business and Professions Code, Sec 4000 et seq.)] and the
7 Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and
8 Safety Code).”

9 5. Business and Professions Code section 4300, subdivision (a), provides that “[e]very
10 license issued may be suspended or revoked.”

11 **STATUTORY PROVISIONS**

12 6. Business and Professions Code section 4036.5 defines “Pharmacist-in-charge” as “a
13 pharmacist proposed by a pharmacy and approved by the board as the supervisor or manager
14 responsible for ensuring the pharmacy's compliance with all state and federal laws and regulations
15 pertaining to the practice of pharmacy.”

16 7. Business and Professions Code section 4301 provides, in pertinent part:

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

21 ...

22 (n) The revocation, suspension, or other discipline by another
23 state of a license to practice pharmacy, operate a pharmacy, or
24 do any other act for which a license is required by this chapter
25 that would be grounds for revocation, suspension, or other
26 discipline under this chapter. Any disciplinary action taken by
27 the board pursuant to this section shall be coterminous with
28 action taken by another state, except that the term of any
discipline taken by the board may exceed that of another state,
consistent with the board's enforcement guidelines. The
evidence of discipline by another state is conclusive proof of
unprofessional conduct. . . .

1 **COST RECOVERY**

2 8. Business and Professions Code section 125.3 states, in pertinent part, that the Board may
3 request the administrative law judge to direct a licentiate found to have committed a violation or
4 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case. Failure of the licentiate to comply subject the license to not being renewed
6 or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a
7 stipulated settlement.

8 **CAUSE FOR DISCIPLINE**

9 **(Unprofessional Conduct – Discipline By Another State)**

10 9. Respondent is subject to disciplinary action under section 4301, subdivision (n) in that
11 Respondent committed acts constituting unprofessional conduct, as follows:

12 a. On or about May 14, 2014, Respondent made fraudulent statements and misrepresented
13 facts to the Oregon Board of Pharmacy (ORBP) during the course of renewing his Oregon pharmacist
14 license. Specifically, Respondent answered “no” to the following question: “Within the last five years,
15 have you been arrested, charged with, convicted of or been sentenced for any violation of the law, or
16 any crime in any state or by the federal government whether or not sentence was imposed, suspended,
17 or whether you were pardoned from any such offense?” In fact, on or about May 11, 2014, he was
18 arrested by the California Highway Patrol and thereafter convicted on August 11, 2014, of violating
19 California Vehicle Code section 23152, subdivision (b) [DUI Alcohol/BAC 0.08% or Above], a
20 misdemeanor.

21 b. On or around January 25, 2016, as a result of Respondent’s fraudulent statement, the
22 ORBP served a Notice of Proposed Disciplinary Action on Respondent in a disciplinary action
23 entitled *In the Matter of the Pharmacist License of Martin Choongsub Kim* before the Board of
24 Pharmacy of the State of Oregon, case no. 2015-0442. The Notice of Proposed Disciplinary action
25 proposed revocation of Respondent’s Oregon pharmacist license and imposed a \$1,000.00 civil
26 penalty.

1 c. On or around February 13, 2017, pursuant to a Stipulated Consent Order, Respondent
2 voluntarily surrendered his Oregon pharmacist license and agreed to no longer perform the duties of a
3 pharmacist in the state of Oregon.

4 **DISCIPLINE CONSIDERATIONS**

5 10. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant
6 further alleges as follows:

7 a. On or about April 14, 1988, in a prior disciplinary action entitled *In the Matter of the*
8 *Accusation Against Martin C. Kim* before the Board of Pharmacy of the State of California, Case No.
9 1377, pursuant to a Stipulated Settlement, Respondent's license was revoked, stayed, and placed on
10 probation for three years. The circumstances of that disciplinary action are that between October 1,
11 1986 and February 5, 1987, Respondent committed the following violations:

12 (1) Respondent refilled three Tussionex prescriptions without authorization from the
13 prescriber;

14 (2) Respondent filled 19 Tussionex prescriptions, which had significant errors,
15 irregularities, uncertainties, and ambiguities, and which Respondent knew or had reason to know
16 were not issued for legitimate medical purposes; and

17 (3) Respondent filled nine Tussionex prescriptions at intervals shorter than that which
18 would have been consistent with directions for use.

19 Tussionex (hydrocodone and phenyltoloxamine) is a Schedule III controlled substance as
20 designated by Health and Safety Code section 11056(e)(2), and is a dangerous drug pursuant to
21 Business and Professions Code section 4022.

22 That decision is now final and is incorporated by reference as if fully set forth.

23 b. On or about March 17, 2002, in a prior disciplinary action entitled *In the Matter of the*
24 *Accusation Against Martin C. Kim* before the Board of Pharmacy of the State of California, case no.
25 2275, pursuant to a Stipulated Settlement, the Board revoked, stayed, and placed Respondent's
26 license on probation for three years and ordered him to pay costs in the amount of \$10,000.00. The
27 circumstances of that disciplinary action are as follows: Between approximately April 8, 1998 to
28

1 December 1, 1998, Martin Pharmacy¹, of which Respondent was the sole owner, operated as a
2 wholesaler without a permit, exported Viagra and Meridia to Brazil without a proper permit and
3 registration², and failed to maintain accountability of dangerous drug inventory. The Board also found
4 that Respondent left the pharmacy unsecured. That decision is now final and is incorporated by
5 reference as if fully set forth.

6 c. On or about May 29, 2008, the Board of Pharmacy issued citation no. CI 2007-36181
7 and ordered Respondent to pay \$4,500.00 after it found violations at Plaza Pharmacy related to
8 compounding drugs for future use and manufacturing and/or furnishing dangerous drugs without a
9 prescription. That Citation is now final and is incorporated by reference as if fully set forth.

10 d. On or about October 2, 2014, the Board issued citation no. CI 2013-60882, a \$5,000
11 fine, and an Order of Abatement to Respondent. The circumstances of that disciplinary action are that
12 on or about August 11, 2014, Respondent was convicted of a misdemeanor violation of Vehicle Code
13 section 23152, subdivision (b) [DUI Alcohol/BAC 0.08% or above] in the criminal proceeding
14 entitled *The People of the State of California v. Martin Choongsub Kim* (Super. Ct. Los Angeles
15 County, 2013, case no. 4MP02922). Respondent was sentenced to three years of probation and 13
16 days in jail. Respondent was also ordered to pay fines and complete a nine-month DUI education
17 program. The record of the criminal proceeding is incorporated as if fully set forth. That Citation is
18 now final and is incorporated by reference as if fully set forth.

19 e. On or about May 13, 2015, the Board issued citation no. CI 2014-65423 and ordered
20 Respondent to pay \$500.00 for violation of Business and Professions Code section 4115, subdivision
21 (f)(1) [ratio of pharmacy technician to pharmacist shall not exceed 2:1]. The Board found that

22 _____
23 ¹ On or around November 18, 1985, the Board issued Pharmacy Permit no. 32469 to Martin
24 Pharmacy, which was in full force and effect at the time of the violations alleged in the Accusation in
25 case no. 2275 and was to expire on November 1, 2000 unless renewed. On or around November 1,
26 2000, Pharmacy Permit no. 32469 expired and was cancelled due to change of ownership.

27 ² "Viagra" is a brand name for sildenafil, a dangerous drug as designated by Business and Professions
28 Code section 4022, and is intended as a treatment for erectile dysfunction.

"Meridia," a brand name for the generic drug Sibutramine, is classified as a Schedule IV controlled
substance as defined by Title 21, Code of Federal Regulations, section 1308.14, and categorized as a
dangerous drug pursuant to section 4022 of the Code.

1 Respondent, while working at Plaza Pharmacy in Torrance, California, allowed three pharmacy
2 technicians to perform technician duties at the same time while Respondent was the only pharmacist
3 on duty. That citation is now final and is incorporated by reference as if fully set forth.

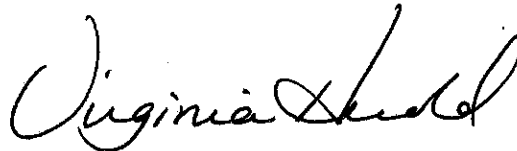
4 PRAYER

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

- 7 1. Revoking or suspending Pharmacist License Number RPH 38130, issued to Martin C.
8 Kim;
- 9 2. Ordering Martin C. Kim to pay the Board of Pharmacy the reasonable costs of the
10 investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
11 and,
- 12 3. Taking such other and further action as deemed necessary and proper.

13
14
15 DATED: _____

9/22/17



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

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