

**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**SAN GABRIEL MEDICAL CENTER
PHARMACY,**
1250 S. Sunset Avenue
West Covina, CA 91790
ROBERT H. KO, Partner
NANCY M. KO, Partner

Pharmacy Permit No. No. PHY 22300
Pharmacist-In-Charge No. RPH 31137

and

ROBERT H. KO
20107 Covina Hills Rd.
Covina, CA 91724

Original Pharmacist License
No. RPH 31137

and

NANCY. M. WONG
a.k.a. NANCY M. KO
20107 Covina Hills Rd.
Covina, CA 91724

Original Pharmacist License
No. RPH 31746

Respondents.

Case No. 2942

OAH No. L-2007030020

DECISION AND ORDER

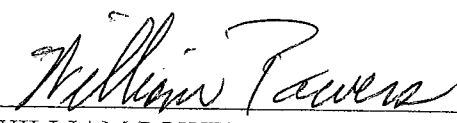
DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, as its Decision in this matter.

This Decision shall become effective on February 13, 2008.

It is so ORDERED January 14, 2008.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By 
WILLIAM POWERS
Board President

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BOARD OF PHARMACY

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EDMUND G. BROWN JR., Attorney General
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Attorneys for Complainant

**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 2942

**SAN GABRIEL MEDICAL CENTER
PHARMACY,**
1250 S. Sunset Avenue
West Covina, CA 91790
ROBERT H. KO, Partner
NANCY M. KO, Partner

OAH No. L-2007030020

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

Pharmacy Permit No. No. PHY 22300
Pharmacist-In-Charge No. RPH 31137

and

ROBERT H. KO
20107 Covina Hills Rd.
Covina, CA 91724

Original Pharmacist License No. RPH 31137

and

NANCY. M. WONG
a.k.a. NANCY M. KO
20107 Covina Hills Rd.
Covina, CA 91724

Original Pharmacist License No. RPH 31746

Respondents.

///

1 *IT IS HEREBY STIPULATED AND AGREED* by and between the parties to the
2 above-entitled proceedings that the following matters are true:

3 **PARTIES**

4 1. Virginia K. Herold (Complainant) is the Executive Officer of the Board of
5 Pharmacy. She brought this action solely in her official capacity and is represented in this matter
6 by Edmund G. Brown Jr., Attorney General of the State of California, by Desiree Tulleners,
7 Deputy Attorney General.

8 2. Respondents San Gabriel Medical Center Pharmacy, Robert H. Ko and
9 Nancy M. Wong, a.k.a. Nancy M. Ko, (Respondents) are represented in this proceeding by
10 attorney Donald Brown, Esq., whose address is Brown & Brown, 3848 Carson Street, Suite
11 206, Torrance, California 90503.

12 3. On or about August 1, 1977, the Board of Pharmacy issued Original
13 Pharmacist License No. RPH 31137 to Robert H. Ko (Respondent Ko). The Pharmacist License
14 was in full force and effect at all times relevant to the charges brought herein, and will expire on
15 February 28, 2008, unless renewed.

16 4. On or about January 10, 1978, the Board of Pharmacy issued Original
17 Pharmacist License No. RPH 31746 to Nancy M. Wong, a.k.a. Nancy M. Ko (Respondent
18 Wong). The Pharmacist License was in full force and effect at all times relevant to the charges
19 brought herein, and will expire on August 31, 2008, unless renewed.

20 5. On or about February 19, 1982, the Board of Pharmacy issued Pharmacy
21 Permit No. PHY 22300 to San Gabriel Medical Center Pharmacy, Robert H. Ko and Nancy M.
22 Ko (Respondents). The Pharmacy Permit was in full force and effect at all times relevant to the
23 charges brought in Accusation Case No. 2942, and will expire on February 1, 2008, unless
24 renewed. Respondent Ko has been the Pharmacist-In-Charge since February 19, 1982.

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1 **JURISDICTION**

2 6. Accusation¹ Case No. 2942 was filed before the Board of Pharmacy, and is
3 currently pending against Respondents. The Accusation and all other statutorily required
4 documents were properly served on Respondents on November 30, 2006. Respondents timely
5 filed their Notice of Defense contesting the Accusation. A copy of Accusation Case No. 2942 is
6 attached as Exhibit A, and incorporated herein by reference.

7 **ADVISEMENT AND WAIVERS**

8 7. Respondents have carefully read, discussed with counsel, and fully
9 understand the charges and allegations in Accusation Case No. 2942. Respondents have also
10 carefully read, discussed with counsel, and fully understand the effects of this Stipulated
11 Settlement and Disciplinary Order.

12 8. Respondents are fully aware of their legal rights in this matter, including
13 the right to a hearing on the charges and allegations in the Accusation; the right to be represented
14 by counsel at their own expense; the right to confront and cross-examine the witnesses against
15 them; the right to present evidence and to testify on their own behalf; the right to the issuance of
16 subpoenas to compel the attendance of witnesses and the production of documents; the right to
17 reconsideration and court review of an adverse decision; and all other rights accorded by the
18 California Administrative Procedure Act and other applicable laws.

19 9. Respondents voluntarily, knowingly, and intelligently waive and give up
20 each and every right set forth above.

21 **CULPABILITY**

22 10. Respondents admit the truth of each and every charge and allegation in
23 Accusation Case No. 2942.

24 11. Respondents agree that their Pharmacy Permit No. PHY 22300, and
25 Original Pharmacist License Nos. RPH 31137 and RPH 31746 are subject to discipline, and they
26

27 ¹The Accusation was originally filed as an Accusation/Petition to Revoke Probation; however,
28 Respondents were not on probation at the time of the filing, so the matter proceeds as an Accusation
only.

1 agree to be bound by the Board of Pharmacy's imposition of discipline as set forth in the
2 Disciplinary Order below.

3 **RESERVATION**

4 12. The admissions made by Respondents herein are only for the purposes of
5 this proceeding, or any other proceedings in which the Board of Pharmacy or other professional
6 licensing agency is involved, and shall not be admissible in any other criminal or civil
7 proceeding.

8 **CONTINGENCY**

9 13. This stipulation shall be subject to approval by the Board of Pharmacy.
10 Respondents understand and agree that counsel for Complainant and the staff of the Board of
11 Pharmacy may communicate directly with the Board regarding this stipulation and settlement,
12 without notice to or participation by Respondents. By signing this stipulation, Respondents
13 understand and agree that they may not withdraw their agreement or seek to rescind the
14 stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this
15 stipulation as its Decision and Order, the Stipulation and Order shall be of no force or effect,
16 except for this paragraph, it shall be inadmissible in any legal action between the parties, and the
17 Board shall not be disqualified from further action by having considered this matter.

18 **OTHER MATTERS**

19 14. The parties understand and agree that facsimile copies of this Stipulated
20 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
21 force and effect as the originals.

22 **DISCIPLINARY ORDER**

23 15. In consideration of the foregoing admissions and stipulations, the parties
24 agree that the Board of Pharmacy may, without further notice or formal proceeding, issue and
25 enter the following Disciplinary Order:

26 *IT IS HEREBY ORDERED* that Pharmacy Permit No. PHY 22300 issued to
27 Respondent San Gabriel Medical Center Pharmacy is revoked;

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1 *IT IS FURTHER ORDERED* that Original Pharmacist License No. RPH 31137
2 issued to Respondent Robert H. Ko is revoked; and

3 *IT IS FURTHER ORDERED* that Original Pharmacist License No. RPH 31746
4 issued to Nancy M. Ko, a.k.a. Nancy M. Wong is revoked;

5 However, each of the above revocations are stayed and each Respondent is placed on probation
6 for three (3) years on the following terms and conditions.

7 1. **Actual Suspension - Pharmacist.** As part of probation, Original
8 Pharmacist License No. RPH 31137, issued to Respondent Robert H. Ko, is suspended for a
9 period of thirty (30) days beginning the effective date of the Decision.

10 During suspension, Respondent Robert H. Ko shall not enter any pharmacy area
11 or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or
12 any other distributor of drugs which is licensed by the Board, or any manufacturer, or where
13 dangerous drugs and devices or controlled substances are maintained. Respondent Ko shall not
14 practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing,
15 compounding, dispensing or patient consultation; nor shall Respondent Ko manage, administer,
16 or be a consultant to any licensee of the Board, or have access to or control the ordering,
17 manufacturing or dispensing of dangerous drugs and devices or controlled substances.

18 Respondent Ko shall not engage in any activity that requires the professional
19 judgment of a pharmacist. Respondent Ko shall not direct or control any aspect of the practice of
20 pharmacy. Respondent Ko shall not perform the duties of a pharmacy technician or an exemptee
21 for any entity licensed by the Board. Subject to the above restrictions, Respondent Ko may
22 continue to own or hold an interest in any pharmacy in which he holds an interest at the time this
23 decision becomes effective unless otherwise specified in this order.

24 2. **Actual Suspension - Pharmacy.** As part of probation, Original Pharmacy
25 Permit No. RPH 22300, issued to Respondent Robert H. Ko and Nancy M. Ko, a.k.a. Nancy M.
26 Wong, is suspended for a period of three (3) days beginning the effective date of the Decision.

27 During suspension, Respondent San Gabriel Medical Center Pharmacy may not
28 order, maintain or dispose of any dangerous drugs and devices or controlled substances. The

1 pharmacy may not make demand or bill for any drugs or services during the period of suspension
2 and may not process any claims for pharmacy services during the period of suspension, except as
3 to services rendered prior to the effective date of the suspension period. The pharmacy shall not
4 receive or transmit any prescription, new or refill, during the period of suspension. Where the
5 pharmacy does not maintain dangerous drugs and devices or controlled substances in an area
6 which can be closed off from the rest of the pharmacy and locked, the entire pharmacy must be
7 closed during the period of suspension.

8 3. **Posted Notice of Suspension.** Respondent San Gabriel Medical Center
9 Pharmacy shall prominently post a suspension notice provided by the Board in a place
10 conspicuous and readable to the public. The suspension notice shall remain posted during the
11 entire period of actual suspension. Respondents shall not, directly or indirectly, engage in any
12 conduct or make any statement, orally, electronically or in writing, which is intended to mislead
13 or is likely to have the effect of misleading any patient, customer, member of the public or other
14 person as to the nature of and reason for the closure of the licensed entity.

15 4. **Obey All Laws.** Respondents shall obey all state and federal laws and
16 regulations substantially related to or governing the practice of pharmacy.

17 Respondents shall report any of the following occurrences to the Board, in
18 writing, within 72 hours of such occurrence:

- 19 • an arrest or issuance of a criminal complaint for violation of any provision of the
20 Pharmacy Law, state and federal food and drug laws, or state and federal
21 controlled substances laws
- 22 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to
23 any criminal complaint, information or indictment
- 24 • a conviction of any crime
- 25 • discipline, citation, or other administrative action filed by any state and federal
26 agency which involves Respondents' licenses or which is related to the practice
27 of pharmacy or the manufacturing, obtaining, handling or distribution or billing
28 or charging for any drug, device or controlled substance.

1 5. **Reporting to the Board.** Respondents shall report to the Board
2 quarterly. The report shall be made either in person or in writing, as directed. Respondents
3 shall state under penalty of perjury whether there has been compliance with all the terms and
4 conditions of probation. If the final probation report is **not** made as directed, probation shall
5 be extended automatically until such time as the final report is made and accepted by the
6 Board.

7 6. **Interview with the Board.** Upon receipt of reasonable notice,
8 Respondents shall appear in person for interviews with the Board upon request at various
9 intervals at a location to be determined by the Board. Failure to appear for a scheduled
10 interview without prior notification to Board staff shall be considered a violation of probation.

11 7. **Cooperation with Board Staff.** Respondents shall cooperate with the
12 Board's inspectional program and in the Board's monitoring and investigation of Respondents'
13 compliance with the terms and conditions of his probation. Failure to comply shall be
14 considered a violation of probation.

15 8. **Continuing Education.** Respondents shall provide evidence of efforts
16 to maintain skill and knowledge as a pharmacist as directed by the Board.

17 9. **Notice to Employers.** Respondents shall notify all present and
18 prospective employers of the decision in Case Number 2942 and the terms, conditions and
19 restrictions imposed on Respondents by the decision. Within 30 days of the effective date of
20 this decision, and within 15 days of Respondents' undertaking new employment, Respondents
21 shall cause their direct supervisor, pharmacist-in-charge and/or owner to report to the Board in
22 writing acknowledging the employer has read the decision in Case Number 2942.

23 If Respondents work for or are employed by or through a pharmacy
24 employment service, Respondents must notify the direct supervisor, pharmacist-in-charge,
25 and/or owner at every pharmacy of the and terms conditions of the decision in Case Number

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1 2942 in advance of Respondents commencing work at each pharmacy.

2 "Employment" within the meaning of this provision shall include any full-time, part-
3 time, temporary, relief or pharmacy management service as a pharmacist, whether the
4 Respondent is considered an employee or independent contractor.

5 10. **Notice to Employees.** Respondent shall, upon or before the effective
6 date of this decision, ensure that all employees involved in permit operations are made aware
7 of all the terms and conditions of probation, either by posting a notice of the terms and
8 conditions, circulating such notice, or both. If the notice required by this provision is posted, it
9 shall be posted in a prominent place and shall remain posted throughout the probation period.
10 Respondent shall ensure that any employees hired or used after the effective date of this
11 decision are made aware of the terms and conditions by posting a notice, circulating a notice,
12 or both.

13 "Employees" as used in this provision includes all full-time, part-time,
14 temporary and relief employees and independent contractors employed or hired at any time
15 during probation.

16 11. **Reimbursement of Board Costs.** Respondents shall pay to the Board
17 its costs of investigation and prosecution in the amount of four thousand five hundred dollars
18 (\$4500). Respondents shall make said payments as follows: The first payment of \$187.50 is
19 due within 30 days after the effective date of the Decision and Order, and a payment in the
20 amount of \$187.50 is due every month thereafter. The final payment of \$187.50 is due in the
21 24th month of probation..

22 The filing of bankruptcy by Respondents shall not relieve Respondents of their
23 responsibility to reimburse the Board its costs of investigation and prosecution.

24 12. **Probation Monitoring Costs.** Respondents shall pay the costs
25 associated with probation monitoring as determined by the Board each and every year of
26 probation. Such costs shall be payable to the Board at the end of each year of probation.
27 Failure to pay such costs shall be considered a violation of probation.

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1 13. **Status of License.** Respondents shall, at all times while on probation,
2 maintain active current licenses with the Board, including any period during which suspension
3 or probation is tolled.

4 If any of Respondent's licenses expire or is canceled by operation of law or
5 otherwise, upon renewal or reapplication, said Respondent(s)' license shall be subject to all
6 terms and conditions of this probation not previously satisfied.

7 14. **License Surrender while on Probation/Suspension.** Following the
8 effective date of this decision, should any of the named Respondents cease practice due to
9 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
10 said Respondent(s) may tender his/her license to the Board for surrender. The Board shall
11 have the discretion whether to grant the request for surrender or take any other action it deems
12 appropriate and reasonable. Upon formal acceptance of the surrender of the license, said
13 Respondent(s) will no longer be subject to the terms and conditions of probation.

14 Upon acceptance of the surrender, said Respondent(s) shall relinquish his/her
15 pocket license to the Board within 10 days of notification by the Board that the surrender is
16 accepted. Respondent(s) may not reapply for any license from the Board for three years from
17 the effective date of the surrender. Respondent(s) shall meet all requirements applicable to the
18 license sought as of the date the application for that license is submitted to the Board.

19 15. **Notification of Employment/Mailing Address Change.** Respondents
20 shall notify the Board in writing within 10 days of any change of employment. Said
21 notification shall include the reasons for leaving and/or the address of the new employer,
22 supervisor or owner and work schedule if known. Respondents shall notify the Board in
23 writing within 10 days of a change in name, mailing address or phone number.

24 16. **Tolling of Probation.** Should any Respondent, regardless of residency,
25 for any reason cease practicing pharmacy for a minimum of 40 hours per calendar month in
26 California, said Respondent must notify the Board in writing within 10 days of cessation of
27 the practice of pharmacy or the resumption of the practice of pharmacy. Such periods of time
28 shall not apply to the reduction of the probation period. It is a violation of probation for

1 Respondent's probation to remain tolled pursuant to the provisions of this condition for a
2 period exceeding three years.

3 "Cessation of practice" means any period of time exceeding 30 days in which
4 Respondent is not engaged in the practice of pharmacy as defined in Section 4052 of
5 the Business and Professions Code.

6 Respondent shall work at least 40 hours in each calendar month as a
7 pharmacist and at least an average of 80 hours per month in any six consecutive months.

8 Failure to do so will be a violation of probation. If Respondent has not complied with this
9 condition during the probationary term, and Respondent has presented sufficient
10 documentation of his good faith efforts to comply with this condition, and if no other
11 conditions have been violated, the Board, in its discretion, may grant an extension of
12 Respondent's probation period up to one year without further hearing in order to comply with
13 this condition.

14 **17. Violation of Probation.** If any of the named Respondents violates
15 probation in any respect, the Board, after giving Respondents notice and an opportunity to be
16 heard, may revoke probation and carry out the disciplinary order which was stayed. If a
17 petition to revoke probation or an accusation is filed against any of the named Respondents
18 during probation, the Board shall have continuing jurisdiction and the period of probation
19 shall be extended, until the petition to revoke probation or accusation is heard and decided.

20 If any of the named Respondents have not complied with any term or condition
21 of probation, the Board shall have continuing jurisdiction over Respondents, and probation
22 shall automatically be extended until all terms and conditions have been satisfied or the Board
23 has taken other action as deemed appropriate to treat the failure to comply as a violation of
24 probation, to terminate probation, and to impose the penalty which was stayed.

25 **18. Completion of Probation.** Upon successful completion of probation,
26 Respondent's license will be fully restored.

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1 19. **Community Services Program.** Within 60 days of the effective date
2 of this decision, Respondent Robert H. Ko shall submit to the Board, for its prior approval, a
3 community service program in which Respondent Robert H. Ko shall provide free health-care
4 related services on a regular basis to a community or charitable facility or agency for at least
5 35 hours per year for the three years of probation.

6 20. **No New Ownership of Premises.** Respondents shall not acquire any
7 new ownership, legal or beneficial interest nor serve as a manager, administrator, member,
8 officer, director, trustee, associate, or partner of any additional business, firm, partnership, or
9 corporation licensed by the Board. If Respondents currently own or have any legal or
10 beneficial interest in, or serve as a manager, administrator, member, officer, director,
11 associate, or partner of any business, firm, partnership, or corporation currently or hereinafter
12 licensed by the Board, Respondents may continue to serve in such capacity or hold that
13 interest, but only to the extent of that position or interest as of the effective of this Decision.

14 21. **Consultant for Owner or Pharmacist-in-Charge.** Respondent shall
15 not supervise any intern pharmacist, perform any of the duties of a preceptor or serve as a
16 consultant to any entity licensed by the Board. Respondent may be a pharmacist-in-charge.
17 However, Respondent shall retain an independent consultant at his own expense who shall be
18 responsible for reviewing pharmacy operations on a monthly basis for compliance by
19 Respondent with state and federal laws and regulations governing the practice of pharmacy
20 and for compliance by Respondent with the obligations of a pharmacist-in-charge. The
21 consultant shall be a pharmacist licensed by and not on probation with the Board and whose
22 name shall be submitted to the Board, for its prior approval, within 30 days of the effective
23 date of this decision. Respondent shall not be a pharmacist-in-charge at more than one
24 pharmacy or any pharmacy of which he is not the sole owner.

25 22. **Tolling of Suspension.** If Respondent Robert H. Ko leaves California
26 to reside or practice outside this state, for any period exceeding 10 days (including vacation),
27 Respondent Ko must notify the Board in writing of the dates of departure and return. Periods
28 of residency or practice outside the state - or any absence exceeding a period of 10 days shall

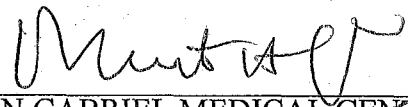
1 not apply to the reduction of the suspension period.

2 Respondent Ko shall not practice pharmacy upon returning to this state until
3 notified by the Board that the period of suspension has been completed.

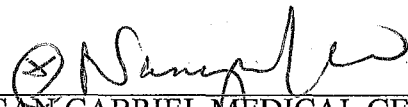
4 **ACCEPTANCE**

5 We have carefully read the above Stipulated Settlement and Disciplinary Order
6 and have fully discussed it with our attorney, Donald Brown, Esq. We understand the
7 stipulation and the effect it will have on our Original Pharmacy Permit No. 22300, Original
8 Pharmacist License No. 31137, and Original Pharmacist License No. 31746. We enter into
9 this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently,
10 and agree to be bound by the Decision and Order of the Board of Pharmacy.

11 DATED: 10-16-07

12 
13 SAN GABRIEL MEDICAL CENTER PHARMACY,
14 by ROBERT H. KO
15 Respondent

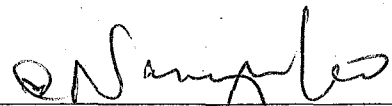
16 DATED: 10-16-07

17 
18 SAN GABRIEL MEDICAL CENTER PHARMACY, by
19 by NANCY M. KO
20 Respondent

21 DATED: 10-16-07

22 
23 ROBERT H. KO
24 Respondent

25 DATED: 10-16-07

26 
27 NANCY M. KO (Respondent)
28 Respondent

///


///

///

1 I have read and fully discussed with Respondent San Gabriel Medical Center
2 Pharmacy, Robert H. Ko and Nancy M. Ko the terms and conditions and other matters
3 contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and
4 content.

SEP 20 2007

5 DATED: _____

6
7 
DONALD BROWN, ESQ.
Attorney for Respondent

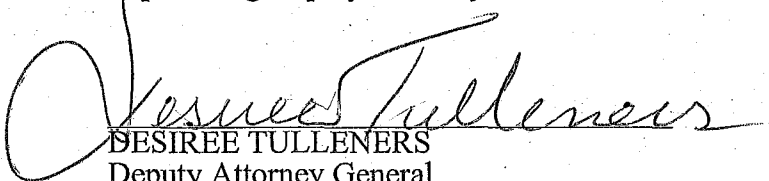
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9 **ENDORSEMENT**

10 The foregoing Stipulated Settlement and Disciplinary Order is hereby
11 respectfully submitted for consideration by the Board of Pharmacy.

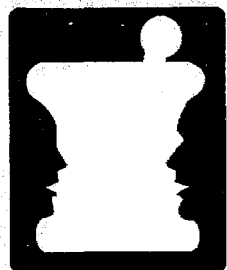
12 DATED: 10-31-07

13 EDMUND G. BROWN JR., Attorney General
14 of the State of California

15 JENNIFER S. CADY
16 Supervising Deputy Attorney General

17 
18 DESIREE TULNERS
19 Deputy Attorney General

20 Attorneys for Complainant
21
22
23
24
25
26
27



California State Board of Pharmacy
1625 N. Market Blvd, Suite N219
Sacramento, CA 95834
(916) 574-7900



**The Pharmacy License of:
San Gabriel Medical Center
Pharmacy has been
SUSPENDED**

From 2/13/08 to and including 2/15/08

As a result of proceedings conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code for violations of the California Pharmacy Law.

Exhibit A

Accusation/No. 2942

1 BILL LOCKYER, Attorney General
of the State of California
2 DESIREE PHILLIPS, State Bar No. 157464
Deputy Attorney General
3 California Department of Justice
300 So. Spring Street, Suite 1702
4 Los Angeles, CA 90013
Telephone: (213) 897-2578
5 Facsimile: (213) 897-2804

6 Attorneys for Complainant

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

10 In the Matter of the Accusation/Petition to
Revoke Probation Against:

Case No. 2942

11 **SAN GABRIEL MEDICAL CENTER**
12 **PHARMACY**

1250 S. Sunset Ave.
13 West Covina, CA 91790
ROBERT H. KO, Partner
14 NANCY M. KO, Partner

15 Pharmacy Permit No. No. PHY 22300

16 and

17 **ROBERT H. KO**
20107 Covina Hills Rd.
18 Covina, CA 91724

19 Original Pharmacist License No. RPH 31137

20 and

21 **NANCY M. WONG**
a.k.a. NANCY M. KO
22 20107 Covina Hills Rd.
Covina, CA 91724

23 Original Pharmacist License No. RPH 31746

24 Respondents.

25
26 Complainant alleges:

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1 **PARTIES**

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

5 2. On or about August 1, 1977, the Board of Pharmacy issued Original
6 Pharmacist License No. RPH 31137 to Robert H. Ko (Respondent Ko). The Pharmacist License
7 was in full force and effect at all times relevant to the charges brought herein, and will expire on
8 February 28, 2008, unless renewed.

9 3. On or about January 10, 1978, the Board of Pharmacy issued Original
10 Pharmacist License No. RPH 31746 to Nancy M. Wong, a.k.a. Nancy M. Ko (Respondent
11 Wong). The Pharmacist License was in full force and effect at all times relevant to the charges
12 brought herein, and will expire on August 31, 2006, unless renewed.

13 4. On or about February 19, 1982, the Board of Pharmacy issued Original
14 Pharmacy Permit No. No. PHY 22300 to San Gabriel Medical Center Pharmacy, Robert H. Ko,
15 Partner, and Nancy M. Ko, Partner, (Respondent Pharmacy). The Pharmacy Permit was in full
16 force and effect at all times relevant to the charges brought herein, and will expire on February 1,
17 2007, unless renewed. Robert H. Ko, RPH 31137, has been the Pharmacist-in-Charge since
18 February 19, 1982.

19 **JURISDICTION**

20 5 This Accusation is brought before the Board of Pharmacy (Board),
21 Department of Consumer Affairs, under the authority of the following laws. All section
22 references are to the Business and Professions Code unless otherwise indicated.

23 6. Section 4300 of the Code provides, in pertinent part, that every license
24 issued by the Board is subject to discipline, including suspension or revocation.

25 7. Section 118, subdivision (b) states:

26 "The suspension, expiration, or forfeiture by operation of law of a license issued
27 by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or
28 by order of a court of law, or its surrender without the written consent of the board, shall not,

1 during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board
2 of its authority to institute or continue a disciplinary proceeding against the licensee upon any
3 ground provided by law or to enter an order suspending or revoking the license or otherwise
4 taking disciplinary action against the licensee on any such ground."

5 8. Section 4301 of the Code states:

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

10

11 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
12 deceit, or corruption, whether the act is committed in the course of relations as a licensee or
13 otherwise, and whether the act is a felony or misdemeanor or not.

14

15 (j) The violation of any of the statutes of this state or of the United States
16 regulating controlled substances and dangerous drugs.

17

18 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
19 abetting the violation of or conspiring to violate any provision or term of this chapter or of the
20 applicable federal and state laws and regulations governing pharmacy, including regulations
21 established by the board."

22 9. Section 4022 of the Code states:

23 "Dangerous drug" or "dangerous device" means any drug or device unsafe for
24 self-use, except veterinary drugs that are labeled as such, and includes the following:

25 "(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing
26 without prescription," "Rx only," or words of similar import.

27 "(b) Any device that bears the statement: "Caution: federal law restricts this
28 device to sale by or on the order of a _____," "Rx only," or words of similar import, the

1 blank to be filled in with the designation of the practitioner licensed to use or order use of the
2 device.

3 "(c) Any other drug or device that by federal or state law can be lawfully
4 dispensed only on prescription or furnished pursuant to Section 4006."

5 10. Section 4081 of the Code states:

6 "(a) All records of manufacture and of sale, acquisition, or disposition of
7 dangerous drugs or dangerous devices shall be at all times during business hours open to
8 inspection by authorized officers of the law, and shall be preserved for at least three years from
9 the date of making. A current inventory shall be kept by every manufacturer, wholesaler,
10 pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian,
11 laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked
12 certificate, license, permit, registration, or exemption under Division 2 (commencing with
13 Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000)
14 of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or
15 dangerous devices."

16 11. Section 4332 of the Code states

17 "Any person who fails, neglects, or refuses to maintain the records required by
18 Section 4081 or who, when called upon by an authorized officer or a member of the board, fails,
19 neglects, or refuses to produce or provide the records within a reasonable time, or who willfully
20 produces or furnishes records that are false, is guilty of a misdemeanor."

21 12. California Code of Regulations, title 16, section 1717, states:

22

23 "(b) In addition to the requirements of Section 4036, Business and Professions
24 Code, the following information shall be maintained for each prescription on file and shall be
25 readily retrievable:

26

27 (4) A new prescription must be created if there is a change in the drug, strength,
28 prescriber or directions for use, unless a complete record of all such changes is otherwise

1 maintained."

2 13. California Code of Regulations, title 16, section 1718, states:

3 "Current Inventory' as used in Sections 4081 and 4332 of the Business and
4 Professions Code shall be considered to include complete accountability for all dangerous drugs
5 handled by every licensee enumerated in Sections 4081 and 4332.

6 The controlled substances inventories required by Title 21, CFR, Section 1304
7 shall be available for inspection upon request for at least 3 years after the date of the inventory."

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

12 15. **DANGEROUS DRUGS**

13 a. Avalide, a brand name for irbesartan and hydrochlorothiazide, is
14 categorized as a dangerous drug pursuant to section 4022 of the Code.

15 b. Altacor, a brand name for lovastatin, is categorized as a dangerous drug
16 pursuant to section 4022 of the Code.

17 c. Benicar, a brand name for imesartan medroxyprogesterone, is categorized as a
18 dangerous drug pursuant to section 4022 of the Code.

19 d. Vytorin, a brand name for ezetimibe and simvastatin, is categorized as a
20 dangerous drug pursuant to section 4022 of the Code.

21 e. Zetia, a brand name for ezetimibe, is categorized as a dangerous drug
22 pursuant to section 4022 of the Code.

23 **FIRST CAUSE FOR DISCIPLINE**

24 *(Failure to Maintain Accurate Records of Acquisition)*

25 16. Respondents Pharmacy, Ko and Wong are subject to disciplinary action
26 under sections 4300 and 4301, subdivisions (f), (j) and (o) on the grounds of unprofessional
27 conduct for violating section 4081, subdivision (a), in conjunction with California Code of
28 Regulations, title 16, section 1718, in that, they failed to maintain a complete and accurate record

of each dangerous drug received, delivered, sold, or otherwise disposed of by them. The circumstances are as follows:

a. On or about February 10, 2005, an inspector for the Board conducted an inspection of Respondent Pharmacy's place of business. The inspector requested Respondent Pharmacy's acquisition and disposition records. An audit of those records revealed that for the period from February 10, 2004 to February 10, 2005, the quantities of dangerous drugs on hand were greater than the amount accounted for by prescriptions and purchases, as follows:

| Drugs | Amount Purchased by 2/10/05 | Amount Dispensed to Patients | Amt drug Accounted For | Amount on 2/10/05 in vials | Total Amt in Pharmacy 2/10/05 | Amount Unaccounted |
|------------------|-----------------------------|------------------------------|------------------------|----------------------------|-------------------------------|--------------------|
| Avalide 150/12.5 | 0 | 90 | -90 | 79 | 79 | -169 |
| Altacor 60mg. | 0 | 60 | -60 | 91 | 91 | -151 |
| Benicar 20/12.5 | 0 | 30 | -30 | 193 | 193 | -223 |
| Vytorin 10/20 | 100 | 60 | 40 | 28 | 93 | -53 |
| Zeta 10mg | 2,550 | 2,520 | 30 | 15 | 75 | -45 |

b. On February 23, 2005, Respondent Ko wrote a letter to the Board informing them that approximately a year before he loaned Dr. J. Tye six month prescriptions of Benicar 20/hctz and Avalide 150/12.5 because the doctor was leaving the next day due to a family medical emergency. When Dr. Tye returned the borrowed medications, Respondent Ko failed to record the quantity. Respondents failed to maintain records of acquisition of Avalide 150/12.5 and Benicar 20/12.5 from Dr. Tye.

SECOND CAUSE FOR DISCIPLINE

(Failure to Provide Records Upon Request)

17. Respondents Pharmacy, Ko and Wong are subject to disciplinary action under sections 4300 and 4301, subdivisions (f), (j) and (o), of the Code, on the grounds of unprofessional conduct, as defined in section 4332 of the Code, as follows:

1 a. On or about February 10, 2005, the inspector for the Board requested that
2 respondents provide all records of acquisition and disposition for the drugs, Altacor, Avalide,
3 Vytarin, Zetia and Benicar. Respondents failed to provide to the Board original prescriptions as
4 proof of disposition of dangerous drugs, invoices, copies as proof of acquisition of dangerous
5 drugs, and drugs received from a prescriber.

6 **THIRD CAUSE FOR DISCIPLINE**

7 *(Deviation from Prescriptions)*

8 18. Respondents Pharmacy, Ko and Wong are subject to disciplinary action
9 under sections 4300 and 4301, subdivisions (f), (j) and (o) of the Code, in conjunction with
10 California Code of Regulations, title 16, section 1717, subdivision (b)(4), in that, Respondents
11 deviated from the requirements of the prescription, as follows:

12 a. On or about October 16, 2003, Respondents filled prescription #625333
13 with Benicar 20mg. #180 and Hydrochlorothiazide 25mg. #100. The prescription was written
14 for Benicar 20/12.5 #90. There was no notation made that the prescriber authorized the separate
15 drugs to be filled in a larger quantity.

16 b. On or about October 7, 2003, prescription #624142 was filled with Avapro
17 150mg. #180 and Hydrochlorothiazide 25mg. #100. The prescription was written for Avalide
18 150/12.5 #90. There was no notation made that the prescriber authorized the separate drugs to be
19 filled in a larger quantity.

20 **OTHER MATTERS**

21 19. Business and Professions Code section 4307(a) provides, in pertinent part,
22 that any person whose license has been revoked or is under suspension, or who has failed to
23 renew his or her license while it was under suspension, or who has been a manager,
24 administrator, owner, member, officer, director, associate, or partner and while acting as the
25 manager, administrator, owner, member, officer, director, associate, or partner had knowledge of
26 or knowingly participated in any conduct for which the license was denied, revoked, suspended,
27 or placed on probation, shall be prohibited from serving as a manager, administrator, owner,
28 member, officer, director, associate, or partner of a license.

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5 Attorneys for Complainant
6

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

10 In the Matter of the Accusation Against:

NO. 2038

11 SAN GABRIEL MEDICAL PHARMACY
12 1250 S. Sunset Avenue
West Covina, CA 91790

STIPULATION IN
SETTLEMENT AND DECISION

13 Pharmacy License No. PHY 22300

14 and

15 ROBERT H. KO
16 15353 Metropol Drive
Hacienda Heights, CA 91745

17 Original Licentiate No. RPH 31137

18 Respondent.
19

20 In the interest of a prompt and speedy settlement of this matter, consistent with the
21 public interest and the responsibility of the Department of Consumer Affairs, Board of
22 Pharmacy ("the Board") the parties submit this Stipulation and Decision to the Board for its
23 approval and adoption as the final disposition of the Accusation currently pending.

24 The parties stipulate the following is true:

25 1. An Accusation, No. 2038, is currently pending against San Gabriel Medical
26 Pharmacy and Robert H. Ko ("respondent"), before the Board. The Accusation, together
27 with all other statutorily required documents, was duly served on the respondent on or about
28 September 16, 1998, and respondent filed his Notice of Defense contesting the Accusation on

1 or about October 1, 1998. A copy of Accusation No. 2038 is attached as Attachment "A" and
2 incorporated by reference as if fully set forth.

3 2. At all times relevant herein, respondent has been licensed by the Board under
4 Pharmacy License Number PHY 22300 and Original Licentiate No. RPH 31137. Respondent
5 is represented by counsel Robert C. Risbrough, Esq. in this matter. Respondent has fully and
6 completely discussed with his counsel the effects of this stipulation.

7 3. Respondent understands the nature of the charges alleged in the Accusation and
8 that the charges and allegations constitute cause for imposing discipline upon his license to
9 practice pharmacy. Respondent is fully aware of his right to a hearing on the charges and
10 allegations contained in said Accusation, right to reconsideration, appeal and all other rights
11 accorded pursuant to the California Business and Professions Code and Government Code.
12 Respondent freely and voluntarily waives such rights.

13 4. Respondent admits the truth of violations of Business Professions Code Section
14 4301, as set forth in paragraphs 11-16 of Accusation No. 2038. Respondent agrees that his
15 acts and conduct subject his license to discipline. Respondent agrees to the Board's imposition
16 of penalty as set out in the Order below.

17 5. Admissions made by respondent herein are for purposes of this proceeding, for any
18 other disciplinary proceedings by the Board, and for any petition for reinstatement, reduction
19 of penalty, or application for relicensure, and shall have no force or effect in any other case or
20 proceeding.

21 6. It is understood by respondent that, in deciding whether to adopt this stipulation,
22 the Board may receive oral and written communications from its staff and the Attorney
23 General's office. Communications pursuant to this paragraph shall not disqualify the Board,
24 or other persons from future participation in this or any other matter affecting respondent. In
25 the event this settlement is not adopted by the Board, the stipulation will not become effective
26 and may not be used for any purpose, except for this paragraph, which shall remain in effect.

27 7. In consideration of the foregoing admissions and findings, the parties agree that the
28

1 Board may, without further notice of formal proceeding, issue and enter an Order as follows:

2 **ORDER**

3 a. IT IS HEREBY ORDERED that Pharmacy License PHY No. 22300
4 issued to San Gabriel Medical Pharmacy is revoked. IT IS FURTHER
5 ORDERED that Original Licentiate RPH 31137 issued to Robert H. Ko is
6 revoked. However, the revocations are stayed and respondent is placed on
7 probation for three (3) years on the following terms and conditions:

8 **1. Examination**

9 Respondent shall take and pass the law section of the pharmacist licensure
10 examination as scheduled by the Board within six (6) months of the effective date of this
11 decision. If respondent fails to pass the examination within six months or fails to take the
12 examination within said six months, respondent shall be suspended, upon written notice.
13 Respondent shall not resume the practice of pharmacy until he takes and passes the same
14 section at a subsequent examination and is notified, in writing, he has passed the examination.

15 **2. No New Ownership of Premises**

16 If respondent currently owns or has any legal or beneficial interest in, or
17 serve as a manager, administrator, member, officer, director, associate, or partner of any
18 business, firm, partnership, or corporation currently or hereinafter licensed by the Board,
19 respondent shall not acquire any new ownership, legal or beneficial interest nor serve as a
20 manager, administrator, member, officer, director, associate, or partner of any additional
21 business, firm, partnership, or corporation.

22 **3. Obey All Laws (For Pharmacist and Premises)**

23 Respondent shall obey all federal and state laws and regulations substantially
24 related or governing the practice of pharmacy.

25 **4. Reporting to the Board (For Pharmacist and Premises)**

26 Respondent shall report to the Board or its designee quarterly. The report shall
27 be made either in person or in writing, as directed. If the final probation report is not made as
28 directed, probation shall be extended automatically until such time as the final report is made.

1 **5. Interview with the Board (For Pharmacist and Premises)**

2 Upon receipt of reasonable notice, respondent shall appear in person for
3 interviews with the Board or its designee upon request at various intervals at a location to be
4 determined by the Board or its designee. Failure to appear for a scheduled interview without
5 prior notification to Board staff shall be considered a violation of probation.

6 **6. Cooperation with Board Staff (For Pharmacist and Premises)**

7 Respondent shall cooperate with the Board's inspection program and in the
8 Board's monitoring and investigation of the respondent's compliance with the terms and
9 conditions of his probation. Failure to cooperate shall be considered a violation of probation.

10 **7. Peer Review**

11 Respondent shall submit to peer review as deemed necessary by the Board.

12 **8. Continuing Education**

13 Respondent shall provide evidence of efforts to maintain skill and knowledge
14 as a pharmacist as directed by the Board.

15 **9. Notice to Employers**

16 Respondent shall notify all present and prospective employers of the decision
17 in case Accusation No. 2038 and the terms, conditions and restrictions imposed on respondent
18 by the decision. Within thirty (30) days of the effective date of this decision, and within
19 fifteen (15) days of respondent undertaking new employment, respondent shall cause his
20 employer to report to the Board in writing acknowledging the employer has read the decision
21 in case No. 2038. If respondent works for or is employed by or through a pharmacy
22 employment service, respondent must notify the pharmacist-in-charge and/or owner at every
23 pharmacy at which he is to employed or used of the fact and terms of the decision in case
24 number 2038 in advance of the respondent commencing work at the pharmacy.
25 "Employment" within the meaning of this provision shall include any full-time, part-time,
26 temporary or relief service or pharmacy management service as a pharmacist, whether the
27 respondent is considered an employee or independent contractor.

28 **10. Being Pharmacist-in-Charge with Consultant, No Preceptorship**

1 **or Supervision of Interns**

2 Respondent shall not supervise any intern pharmacist or perform any of the
3 duties of a preceptor. Respondent may be a pharmacist-in-charge; however, respondent shall
4 retain an independent consultant at his or her own expense who shall be responsible for
5 reviewing pharmacy operations on a quarterly basis for compliance by respondent with state
6 and federal laws and regulations governing pharmacy and for compliance by respondent with
7 the obligations of a pharmacist-in-charge. The consultant shall be a pharmacist licensed by
8 and not on probation to the Board and whose name shall be submitted to the Board for its
9 approval within thirty (30) days of the effective date of this decision. Respondent shall not be
10 a pharmacist-in-charge at more than one pharmacy or any pharmacy of which he/she is not the
11 sole owner.

12 **11. Reimbursement of Board Costs (For Pharmacist and Premises)**

13 Respondent shall pay to the Board its costs of investigation and prosecution in
14 the amount of five thousand dollars (\$5000.00). Respondent shall make said payments as
15 follows: \$500.00 within 30 days of the effective date assigned by the Decision adopting this
16 stipulation. Thereafter, consecutive payments of \$250.00 per month shall be due and payable
17 to the Board of Pharmacy on the same date each consecutive month for eighteen (18) months
18 until the entire costs have been paid in full. The check shall be mailed to the Board of
19 Pharmacy, 400 "R" Street, Suite 4070, Sacramento, California 95814, and shall identify the
20 Accusation Number 2038 Settlement thereon.

21 If respondent fails to pay the costs as specified by the Board and on or before
22 the date(s) determined by the Board, the Board shall, without affording the respondent notice
23 and the opportunity to be heard, revoke probation and carry out the disciplinary order that was
24 stayed.

25 **12. Probation Monitoring Costs**

26 Respondent shall pay the costs associated with probation monitoring as
27 determined by the Board each and every year of probation. Such costs shall be payable to the
28 Board at the end of each year of probation. Failure to pay such costs shall be considered a

1 violation of probation.

2 **13. Status of License**

3 For pharmacist:

4 Respondent shall, at all times while on probation, maintain an active current
5 license with the Board, including any period during which suspension or probation is tolled.

6 If respondent's license expires by operation of law or otherwise, upon renewal
7 or reapplication, respondent's license shall be subject to all terms of this probation not
8 previously satisfied.

9 For premises:

10 Respondent San Gabriel Medical Pharmacy shall, at all times while on
11 probation, maintain an current license with the Board. If respondent San Gabriel Medical
12 Pharmacy submits an application to the Board, and the application is approved, for a change of
13 location, change or permit or change of ownership, the Board shall retain continuing
14 jurisdiction over the license, and the respondent shall remain on probation as determined by
15 the Board or its designee.

16 **14. Notification of Employment/Mailing Address Change**

17 Within ten (10) days of a change in employment -- either leaving or commencing
18 employment -- respondent shall so notify the Board in writing, including the address of the
19 new employer; within ten (10) days of a change of mailing address, respondent shall notify the
20 Board in writing. If respondent works for or is employed through a pharmacy employment
21 service, respondent shall, as requested, provide to the Board or its designee with a work
22 schedule, indicating dates and location of employment.

23 **15. Tolling of Probation**

24 If respondent leaves California to reside or practice outside this state, respondent
25 must notify the Board in writing of the dates of departure and return within ten (10) days of
26 departure or return. Periods of residency, except such periods where the respondent is
27 actively practicing pharmacy within California, or practice outside California shall not apply to
28 reduction of the probationary period.

1 Should respondent, regardless of residency, for any reason cease practicing
2 pharmacy in California, respondent must notify the Board in writing within ten (10) days of
3 cessation of the practice of pharmacy or resuming the practice of pharmacy. "Cessation of
4 practice" means any period of time exceeding thirty (30) days in which respondent is not
5 engaged in the practice of pharmacy as defined in section 4052 of the Business and Professions
6 Code.

7 It is a violation of probation for respondent's probation to remain tolled
8 pursuant to the provisions of this condition for a period exceeding a consecutive period of
9 three years.

10 **16. Notice to Employees (For premises only)**

11 Respondent shall, upon or before the effective date of this decision, ensure that
12 all employees involved in permit operations are made aware of all the terms and conditions of
13 probation, either by posting a notice of the conditions of the terms and conditions, circulating
14 such notice, or both. If the notice required by this provision is posted, it shall be posted in a
15 prominent place and shall remain posted throughout probation. Respondent shall ensure that
16 any employees hired or used after the effective date of this decision are made aware of all the
17 terms and conditions by posting a notice, circulating a notice, or both.

18 "Employees" as used in this provision includes all full-time, part-time,
19 temporary and relief employees and independent contractors employed or hired at any time
20 during probation.

21 **17. Owners and Officers: Knowledge of the Law (For Premises)**

22 Respondent shall provide, within thirty (30) days after the effective date of this
23 decision, signed and dated statements from its owners, including any owner or holder of 10%
24 or more of the interest in respondent or respondent's stock, and any officer, stating said
25 individuals have read and are familiar with federal and state laws and regulations governing
26 the practice of pharmacy.

27 ///

28 ///

1 **18. Violation of Probation**

2 If respondent violates probation in any respect, the Board, after giving respondent
3 notice and an opportunity to be heard, may revoke probation and carry out the disciplinary
4 order which was stayed. If a petition to revoke probation or an accusation is filed against
5 respondent during probation, the Board shall have continuing jurisdiction, and the period of
6 probation shall be extended, until the petition to revoke probation is heard and decided.

7 If a respondent has not complied with any term or condition of probation, the
8 Board shall have continuing jurisdiction over respondent, and probation shall automatically be
9 extended until all terms and conditions have been met or the Board has taken other action as
10 deemed appropriate to treat the failure to comply as a violation of probation, to terminate
11 probation, and to impose the penalty which was stayed.

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1 19. Completion of Probation

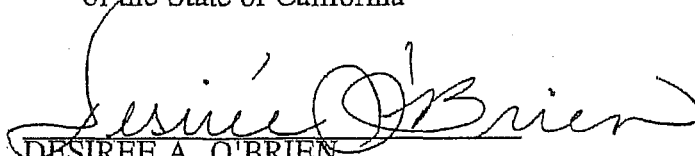
2 Upon successful completion of probation, respondent's license will be fully
3 restored.

4 The within stipulation shall be subject to the approval of the Board. If the Board
5 fails to adopt this stipulation as its Order, the stipulation shall be of no force or effect for
6 either party.

7 I concur in the stipulation and order.

8 DATED: 6-16-00

9
10 BILL LOCKYER, Attorney General
11 of the State of California

12 
13 DESIREE A. O'BRIEN
14 Deputy Attorney General

15 Attorneys for Complainant

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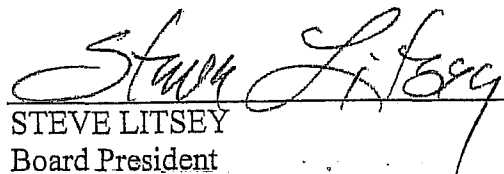
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4 **DECISION AND ORDER**
5 **OF THE DEPARTMENT OF CONSUMER AFFAIRS**
6 **BOARD OF PHARMACY**

7 The foregoing Stipulation and Order, in Accusation No. 2038, is hereby adopted as the
8 Order of the California Department of Consumer Affairs, Board of Pharmacy. An effective
9 date of September 22, 2001, has been assigned to this Decision and Order.

10 Made this 23rd day of August, 2001.

11
12 BOARD OF PHARMACY
13 DEPARTMENT OF CONSUMER AFFAIRS
14 STATE OF CALIFORNIA

15 By

16 
17 STEVE LITSEY
18 Board President
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1 DANIEL E. LUNGREN, Attorney General
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6
7

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

11 In the Matter of the Accusation)
Against:)

NO. 2038

12 SAN GABRIEL MEDICAL PHARMACY)
13 1250 S. Sunset Avenue)
West Covina, CA 91790)
14 Pharmacy License No.)
PHY 22300)

ACCUSATION

15 and)
16)

17 ROBERT H. KO)
15353 Metropol Drive)
Hacienda Heights, CA 91745)

18)
19 Original Licentiate No.)
RPH 31137)

20 Respondents.)
21

22 The complainant, Patricia Florian Harris, for a
23 Accusation, alleges:

24 / / /

25 / / /

26 / / /

27 / / /

1 PARTIES

2 1. Complainant is the Executive Officer of the
3 California State Board of Pharmacy ("Board") and makes and files
4 this accusation solely in her official capacity.
5

6 2. On or about February 19, 1982, the Board issued
7 Original Permit No. PHY 22300 to Robert H. Ko and Nancy M. Ko, as
8 partners, to do business as San Gabriel Medical Pharmacy
9 (hereinafter, referred to as "Respondent Pharmacy"). The license
10 is in full force and effect until February 1, 1999, unless
11 renewed.
12

13 3. On or about August 1, 1977, the Board issued
14 Original Licentiate No. RPH 31137 to Robert H. Ko (hereinafter,
15 "Respondent Ko") to practice pharmacy in California. At all
16 times relevant to the charges brought herein said license was in
17 full force and effect and will expire on February 29, 2000,
18 unless renewed.
19

20 4. Respondent Ko has been the Pharmacist-in-Charge
21 for Respondent Pharmacy since December 21, 1981.
22

23 JURISDICTION

24 5. This accusation is brought under the authority of
25 the following sections of the California Business and Professions
26 Code (hereinafter, "Code").
27 / / /

1 6. Section 4300 of the Business and Professions Code
2 (all statutory references hereinafter are to that code unless
3 otherwise indicated) provides that every certificate, license,
4 permit, registration or exemption issued by the Board may be
5 suspended or revoked.

6
7 7. Section 4301 provides that the board shall take
8 action against any holder of a license who is guilty of
9 unprofessional conduct. Section 4301(j) provides that
10 unprofessional conduct includes the violation of any of the
11 statutes of California or of the United States regulating
12 controlled substances and dangerous drugs. Section 4301 (n)
13 provides that unprofessional conduct shall include, but is not
14 limited to, violating or attempting to violate, directly or
15 indirectly, or assisting in or abetting the violation of or
16 conspiring to violate any provision or term of the California
17 Pharmacy Law (sections 4000 et seq.) or other of the applicable
18 federal and state laws and regulations governing pharmacy,
19 including regulations established by the Board.

20
21 8. Business and Professions Code section 118 (b)
22 provides that the suspension, expiration, or forfeiture, by order
23 of the Board or by order of a court of law, of a license does not
24 deprive the Board of authority or jurisdiction to institute or
25 continue with disciplinary action against the license or to order
26 suspension or revocation of the license, during the period within
27 which the license may be renewed, restored, reissued or

1 reinstated.

2

3 9. Section 125.3 of the Code provides, in part, that
4 the Board may request the administrative law judge to direct any
5 licensee found to have committed a violation or violations of
6 the licensing act, to pay the Board a sum not to exceed the
7 reasonable costs of the investigation and enforcement of the
8 case.

9

10 DRUG CLASSIFICATIONS

11 10. Ativan (brand of lorazepam) is a sedative/hypnotic
12 used in the management of anxiety. It is a Schedule IV
13 controlled substance as listed in the Health and Safety Code
14 Section 11057(d) (12) and is categorized as a dangerous drug
15 pursuant to Business and Professions Code section 4022.

16 Restoril (brand of temazepam) is a schedule IV
17 controlled substance as listed in the Health and Safety Code
18 Section 11057 (d) (23) and is a dangerous drug pursuant to
19 Business and Professions Code section 4022. Restoril is a
20 hypnotic used in the short term treatment of insomnia.

21 Naprosyn 500 mg (brand of naproxen) is a non-steroidal
22 anti-inflammatory agent used as an analgesic in the treatment of
23 mild to moderate pain. It is categorized as a dangerous drug
24 pursuant to Business and Professions Code section 4022.

25 Motrin 600 mg is a non-steroidal anti-inflammatory
26 agent used as an analgesic in the treatment of mild to moderate
27 pain and is categorized as a dangerous drug pursuant to Business

1 and Professions Code section 4022.

2
3 CAUSES FOR DISCIPLINARY ACTION

4 FIRST CAUSE OF ACCUSATION

5 UNAUTHORIZED REFILLING OF PRESCRIPTION

6
7 11. Complainant incorporates herein by this reference
8 the Preamble and each of the allegations set forth in Paragraphs
9 1 through hereinabove.

10
11 12. Section 4059 of the code provides that no person
12 shall furnish any dangerous drugs, except upon a prescription of
13 a physician, dentist, podiatrist, or veterinarian.

14
15 13. Section 4063 of the code provides that no
16 prescription for any dangerous drugs or device may be refilled
17 except upon authorization of the prescriber.

18
19 14. Title 21 of the Code of Federal Regulation Section
20 1306.22 provides that no prescription for a Schedule III or IV
21 controlled substance shall be refilled more than six months after
22 the date on which such prescription was issued and no such
23 prescription authorized to be refilled may be refilled more than
24 five times.

25
26 15. California Health and Safety Code Section 11200
27 provides that no person shall dispense or refill a controlled

1 substance prescription more than six months after the date
2 thereof and further provides that the prescription may not be
3 refilled more than five times and in an amount, for all refills
4 of that prescription taken together, exceeding a 120-day supply.

5
6 16. Respondents are subject to the revocation of their
7 license by the Board pursuant to 4300, for unprofessional conduct
8 within the meaning of Code section 4059, 4063, 4301 (j) and
9 4301(n), in that on and between July 2, 1993 and March 8, 1995,
10 respondents dispensed four refills of Naprosyn, 26 refills of
11 Ativan, 26 refills of Restoril and nine refills of Motrin 600 mg.
12 without prescription, knowledge, or authorization of the
13 prescriber. The last refill prescribed or authorized by the
14 prescriber was on April 2, 1991. The refills of Retoril and
15 Ativan were dispensed at nearly one-month intervals during the
16 course of 26 months.

17
18 **SECOND CAUSE OF ACTION**

19 17. Complainant incorporates herein by this reference
20 the Preamble and each of the allegations set forth in Paragraphs
21 1 through 2 hereinabove.

22
23 18. Section 4301 provides that unprofessional conduct
24 includes:

25 (b) Incompetence.

26 (c) Gross negligence.

27 (d) The clearly excessive furnishing of controlled

1 substances in violation of subdivision (a) of section 11153 of
2 the Health and Safety Code.

3
4 19. Health and Safety Code section 11153, subdivision
5 (a), provides that a prescription for a controlled substance
6 shall only be issued for a legitimate medical purpose by an
7 individual practitioner acting in the usual course of his or her
8 professional practice. The responsibility of the proper
9 prescribing and dispenses of controlled substances is upon the
10 prescribing practitioner, but a corresponding responsibility
11 rests with the pharmacist who fills the prescription. Except as
12 authorized by this division, the following are not legal
13 prescriptions: (1) an order purporting to be a prescription
14 which is issued not in the usual course of professional treatment
15 or in legitimate and authorized research; or (2) an order for an
16 addict or habitual user of controlled substances, which is issued
17 not in the course of professional treatment or as part of an
18 authorized methadone maintenance program, for the purpose of
19 providing the user with controlled substances, sufficient to keep
20 him or her comfortable by maintaining customary use.

21
22 20. Section 4040 of the Code provides that a valid
23 prescription includes the directions for use.

24
25 21. California Code of Regulations section 1761(b)
26 provides that a pharmacist shall not compound or dispense a
27 controlled substance prescription where the pharmacist knows or

1 has objective reason to know that said prescription was not
2 issued for a legitimate medical purpose.

3
4 22. Respondents are subject to the revocation of their
5 licenses by the Board pursuant to Code Section 4300, for
6 unprofessional conduct within the meaning of Code sections 4301
7 (b), (c), (d), (j), and (n), by reason of violation of California
8 Code of Regulations, section 1761, and Health and Safety Code
9 section 11153, in that respondents dispensed 26 refills of Ativan
10 and Restoril at approximately monthly intervals from July 2, 1993
11 to March 8, 1995 using the same prescription number for each drug
12 respectfully. Restoril is indicated for the short-term treatment
13 of insomnia. The manufacturer of Restoril recommends that
14 treatment only last between seven to ten days. Federal and State
15 law requires controlled substances such as Ativan and Restoril to
16 be renewed by authorization of the prescriber at least every 5
17 times or every 6 months and State law requires that all refills
18 of that prescription taken together, must not exceed a supply of
19 more than 120 days. Respondent knew or had objective reason to
20 know that the aforementioned prescriptions in the total amount
21 and for the entire length of time was not for a legitimate
22 medical purpose, or part of a course of professional treatment.

23
24 23. Respondents are further subject to the revocation
25 of their licenses by the Board pursuant to Code section 4300, for
26 unprofessional conduct within the meaning of Code sections
27 4301(n), by reason of violation of Code section 4040 in that

1 respondents issued the aforementioned controlled substances on
2 prescription numbers Rx#210150, 210151, 210152 which did not
3 contain directions for use.

4
5 **OTHER MATTERS**

6 24. Section 4307 of the Code provides in part that any
7 person whose license or permit has been revoked or placed under
8 suspension shall be prohibited from serving as an officer,
9 director, associate or partner of a license, permittee or
10 director, associate or partner of a licensee, permittee or
11 registrant.

12
13 **PRAYER**

14 WHEREFORE, complainant requests that the Board hold a
15 hearing on the matters alleged herein, and that following said
16 hearing, the Board issue a decision:

17 1. Revoking or suspending Original Licentiate Number
18 RPH 31137 issued to Robert H. Ko;

19 2. Revoking or suspending Permit No. 22300 to San
20 Gabriel Medical Pharmacy;

21 3. Prohibiting Robert H. Ko from serving as an
22 officer, director, associate or partner of any licensee,
23 permittee or registrant for a period of five years or until the
24 license or permit is re-issued or reinstated;

25 4. Directing Robert H. Ko and San Gabriel Medical
26 Pharmacy to pay to the Board a reasonable sum for its
27 investigative and enforcement costs of this action; and

1 enforcement costs of this action; and

2 5. Taking such other and further action as the Board
3 deems appropriate to protect the public health, safety and
4 welfare.

5 DATED: 9/10/98

6
7 P. J. Harris
8 PATRICIA FLORIAN HARRIS
9 Executive Officer
10 Board of Pharmacy
11 Department of Consumer Affairs
12 State of California

13
14
15
16 Complainant

17 DOB:cv

18 Docket No. 03583110-LA1997AD1743

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