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

In the Matter of the Accusation Against: DONNA K. CHENG, CHI L. CHENG, PETER C. CHENG AND HOWARD KING d.b.a., FAMILY PHARMACY 452 N. Los Robles Pasadena, CA 91101 DONNA K. CHENG, Pharmacist-in-Charge Pharmacy Permit No. PHY 36795 and DONNA K. CHENG 1724 Monterey St. Alhambra, CA 91801 Pharmacist License No. RPH 33071 Respondents.	Case No. 2963 OAH No. L-2007020376

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 June 27, 2008.

It is so ORDERED May 28, 2008.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By William Powers
WILLIAM POWERS
Board President

EDMUND G. BROWN JR., Attorney General
of the State of California
GLORIA A. BARRIOS
Supervising Deputy Attorney General
BARRY G. THORPE, State Bar No. 126422
Deputy Attorney General
California Department of Justice
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-5845
Facsimile: (213) 897-2804

Attorneys for Complainant

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

In the Matter of the Accusation Against: DONNA K. CHENG, CHI L. CHENG, PETER C. CHENG AND HOWARD KING d.b.a., FAMILY PHARMACY 452 N. Los Robles Pasadena, CA 91101 DONNA K. CHENG, Pharmacist-in-Charge Pharmacy Permit No. PHY 36795 and DONNA K. CHENG 1724 Monterey St. Alhambra, CA 91801 Pharmacist License No. RPH 33071 Respondents.	Case No. 2963 OAH No. L-2007020376 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

1. Virginia K. Herold (Complainant) is the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs. Complainant brought this action solely in

///

her official capacity and is represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California, by Barry G. Thorpe, Deputy Attorney General.

2. Respondents Family Pharmacy and Donna K. Cheng (Respondents) are represented in this proceeding by attorney Herbert Weinberg, Esq., whose address is McGuire Woods, LLP, 1800 Century Park East, 8th Floor, Los Angeles, CA 90067.

3. On or about May 22, 1991, the Board issued Pharmacy Permit No. PHY 36795 to Donna K. Cheng, Chi L. Cheng, Peter C. Cheng, and Howard King, to do business as, Family Pharmacy (Respondent Family Pharmacy). Donna K. Cheng has been the Pharmacist-in-Charge for Respondent Family Pharmacy since May 22, 1991. The Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein and will expire on May 1, 2008, unless renewed.

4. On or about August 14, 1979, the Board issued Pharmacist License No. RPH 33071 to Donna K. Cheng (Respondent Cheng). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2009, unless renewed.

JURISDICTION

5. Accusation No. 2963 was filed before the Board, and is currently pending against the Respondents. The Accusation and all other statutorily required documents were properly served on the Respondents on November 9, 2007. Respondents timely filed their Notice of Defense contesting the Accusation. A copy of Accusation No. 2963 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondents have carefully read, discussed with counsel, and fully understand the charges and allegations in Accusation No. 2963. Respondents have also carefully read, discussed with counsel, and fully understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondents are fully aware of their legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented

by counsel at their own expense; the right to confront and cross-examine the witnesses against them; the right to present evidence and to testify on their own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

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

CULPABILITY

9. Respondents admits the truth of each and every charge and allegation in Accusation No. 2963.

10. Respondent Family Pharmacy agrees that its Pharmacy Permit is subject to discipline and hereby surrenders its Pharmacy Permit No. PHY 36795 for the Board's formal acceptance.

11. Respondent Family Pharmacy understands that by signing this stipulation, it enables the Board to order the surrender of its Pharmacy Permit without further process.

12. Respondent Cheng agrees that her Pharmacist License No. RPH 33071 is subject to discipline and she agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

RESERVATION

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

CONTINGENCY

14. This stipulation shall be subject to approval by the Board or its designee. Respondents understand and agree that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondents or their counsel. By signing the stipulation, Respondents understand and agree that they may not withdraw their agreement or seek to rescind the

stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order in this matter, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, and except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

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

DISCIPLINARY ORDER

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

IT IS HEREBY ORDERED that Pharmacy Permit No. PHY 36795, issued to Respondent Family Pharmacy, is surrendered and accepted by the Board. Respondent Cheng understands and agrees that she will never again apply for, or be issued, a pharmacy permit by the Board.

1. The surrender of Respondent's Pharmacy Permit and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent Family Pharmacy. This stipulation constitutes a record of the discipline and shall become a part of Respondent Family Pharmacy's license history with the Board.

2. Respondent Family Pharmacy shall lose all rights and privileges as a Pharmacy Permit holder in California as of the effective date of the Board's Decision and Order.

3. Respondent Family Pharmacy shall cause to be delivered to the Board both her Pharmacy Permit wall and pocket license certificate on or before the effective date of the Decision and Order.

///

///

///

IT IS FURTHER ORDERED that Pharmacist License No. RPH 33071 issued to Respondent Cheng is revoked. However, the revocation is stayed and Respondent Cheung is placed on probation for five (5) years on the following terms and conditions.

4. **Actual Suspension** - Pharmacist License No. RPH 33071, issued to Respondent Cheng is actually suspended for a period of six months.

During suspension, Respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, medical device retailer or any other distributor of drugs which is licensed by the Board, or any manufacturer, or where dangerous drugs, controlled substances or legend drugs are maintained. Respondent shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall Respondent manage, administer, or be a consultant to any licensee of the Board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs or controlled substances of dangerous drugs or controlled substances. Respondent shall not direct or control any aspect of the practice of pharmacy.

1. **Obey All Laws.** Respondent shall obey all state and federal laws and regulations substantially related to or governing the practice of pharmacy.

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

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime

///

///

///

- discipline, citation, or other administrative action filed by any state and federal agency which involves Respondent's license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling or distribution or billing or charging for any drug, device or controlled substance.

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

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

4. **Cooperation with Board Staff.** Respondent shall cooperate with the Board's inspectional program and in the Board's monitoring and investigation of Respondent's compliance with the terms and conditions of her probation. Failure to comply shall be considered a violation of probation.

5. **Continuing Education.** Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the Board.

6. **Notice to Employers.** Respondent shall notify all present and prospective employers of the decision in Case No. 2963 and the terms, conditions and restrictions imposed on Respondent by the decision. Within 30 days of the effective date of this decision, and within 15 days of Respondent undertaking new employment, Respondent shall cause her direct supervisor, pharmacist-in-charge and/or owner to report to the Board in writing acknowledging the employer has read the decision in Case No. 2963.

If Respondent works for or is employed by or through a pharmacy employment service, Respondent must notify the direct supervisor, pharmacist-in-charge, and/or owner at

every pharmacy of the and terms conditions of the decision in Case No. 2963 in advance of the Respondent commencing work at each pharmacy.

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

7. **No Preceptorships, Supervision of Interns, Being Pharmacist-in-Charge (PIC), or Serving as a Consultant.** Respondent shall not supervise any intern pharmacist or perform any of the duties of a preceptor, nor shall Respondent be the pharmacist-in-charge of any entity licensed by the Board unless otherwise specified in this order.

8. **Reimbursement of Board Costs.** Respondent shall pay to the Board its costs of investigation and prosecution in the amount of $ 17,754.25. Respondent shall make said payments as follows: Equal quarterly payments. Costs shall be paid in full at least six months prior to the end of probation.

The filing of bankruptcy by Respondent shall not relieve Respondent of her responsibility to reimburse the Board its costs of investigation and prosecution.

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

10. **Status of License.** Respondent shall, at all times while on probation, maintain an active current license with the Board, including any period during which suspension or probation is tolled.

If Respondent's license expires or is canceled by operation of law or otherwise, upon renewal or reapplication, Respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

11. **License Surrender while on Probation/Suspension.** Following the effective date of this decision, should Respondent cease practice due to retirement or health,

or be otherwise unable to satisfy the terms and conditions of probation, Respondent may tender her license to the Board for surrender. The Board shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, Respondent will no longer be subject to the terms and conditions of probation.

Upon acceptance of the surrender, Respondent shall relinquish her pocket license to the Board within 10 days of notification by the Board that the surrender is accepted. Respondent may not reapply for any license from the Board for three years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

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

13. **Tolling of Probation.** Should Respondent, regardless of residency, for any reason cease practicing pharmacy for a minimum of forty (40) hours per calendar month in California, Respondent must notify the Board in writing within 10 days of cessation of the practice of pharmacy or the resumption of the practice of pharmacy. Such periods of time shall not apply to the reduction of the probation period. It is a violation of probation for Respondent's probation to remain tolled pursuant to the provisions of this condition for a period exceeding three years.

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

14. **Violation of Probation.** If Respondent violates probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke

probation or an accusation is filed against Respondent during probation, or if the Board has requested the Attorney General's Office to prepare a petition to revoke probation or an Accusation, the Board shall have continuing jurisdiction and the period of probation shall be extended, until the petition to revoke probation or accusation is heard and decided.

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

15. **No Ownership of Premises.** Respondent shall not own, have any legal or beneficial interest in, or serve as a manager, administrator, member, officer, director, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the Board. Respondent shall sell or transfer any legal or beneficial interest in any entity licensed by the Board within 90 days following the effective date of this decision and shall immediately thereafter provide written proof thereof to the Board.

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

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Herbert Weinberg, Esq.. I understand the stipulation and the effect it will have on my Pharmacy Permit and Pharmacist License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board.

DATED: 3/28/08.

Donna K Cheng
FAMILY PHARMACY AND DONNA K. CHENG
Respondents

///

I have read and fully discussed with Respondents Family Pharmacy and Donna K. Cheng the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 3/31/08.

HERBERT WEINBERG, ESQ.
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board title.

DATED: 4/2/08

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

GLORIA A. BARRIOS
Supervising Deputy Attorney General

DAG

BARRY G. THORPE
Deputy Attorney General

Attorneys for Complainant

DOJ Matter ID: LA2006600022
60243417.wpd

Exhibit A

Accusation No. 2963

BILL LOCKYER, Attorney General
of the State of California
SHARON F. COHEN, R.N.
Supervising Deputy Attorney General
BARRY G. THORPE, State Bar No. 126422
Deputy Attorney General
California Department of Justice
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-5845
Facsimile: (213) 897-2804

Attorneys for Complainant

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

In the Matter of the Accusation Against: DONNA K. CHENG, CHI L. CHENG, PETER C. CHENG AND HOWARD KING d.b.a., FAMILY PHARMACY 452 N. Los Robles Pasadena, CA 91101 DONNA K. CHENG, Pharmacist-in-Charge Pharmacy Permit No. PHY 36795 and DONNA K. CHENG 1724 Monterey St. Alhambra, CA 91801 Pharmacist License No. RPH 33071 Respondents.	Case No. 2963 **A C C U S A T I O N**

Complainant alleges:

PARTIES

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

2. On or about May 22, 1991, the Board issued Pharmacy Permit No. PHY 36795 to Donna K. Cheng, Chi L. Cheng, Peter C. Cheng, and Howard King, to do

business as, Family Pharmacy (Respondent Family Pharmacy). Donna K. Cheng has been the Pharmacist-in-Charge for Respondent Family Pharmacy since May 22, 1991. The Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein and will expire on May 1, 2007, unless renewed.

3. On or about August 14, 1979, the Board issued Pharmacist License No. RPH 33071 to Donna K. Cheng (Respondent Cheng). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2007, unless renewed.

JURISDICTION

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

5. Section 118, subdivision (b), of the Code provides that the suspension or expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

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

7. Section 4301 of the Code states:

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

. . . .

(j) The violation of any of the statutes of this 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."

8. Section 4063 of the Code states:

"No prescription for any dangerous drug or dangerous device may be refilled except upon authorization of the prescriber. The authorization may be given orally or at the time of giving the original prescription. No prescription for any dangerous drug that is a controlled substance may be designated refillable as needed."

9. Section 4081of the Code, subdivision (a) states:

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

10. Section 4105 of the Code, subdivision (a) states:

"All records or other documentation of the acquisition and disposition of dangerous drugs and dangerous devices by any entity licensed by the board shall be retained on the licensed premises in a readily retrievable form."

11. Section 4113 of the Code, subdivision (b) states:

"(b) The pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy."

12. Section 4333 of the Code states, in pertinent part, that all prescriptions filled by a pharmacy and all other records required by Section 4081 shall be maintained on the

premises and available for inspection by authorized officers of the law for a period of at least three years. In cases where the pharmacy discontinues business, these records shall be maintained in a board-licensed facility for at least three years.

13. California Code of Regulations, title 16, section 1714, states:

". . . .

(b) Each pharmacy licensed by the board shall maintain its facilities, space, fixtures, and equipment so that drugs are safely and properly prepared, maintained, secured and distributed. The pharmacy shall be of sufficient size and unobstructed area to accommodate the safe practice of pharmacy.

(c) The pharmacy and fixtures and equipment shall be maintained in a clean and orderly condition. The pharmacy shall be dry, well-ventilated, free from rodents and insects, and properly lighted. The pharmacy shall be equipped with a sink with hot and cold running water for pharmaceutical purposes.

(d) Each pharmacist while on duty shall be responsible for the security of the prescription department, including provisions for effective control against theft or diversion of dangerous drugs and devices, and records for such drugs and devices. Possession of a key to the pharmacy where dangerous drugs and controlled substances are stored shall be restricted to a pharmacist."

14. California Code of Regulations, title 16, section 1716, states:

"Pharmacists shall not deviate from the requirements of a prescription except upon the prior consent of the prescriber or to select the drug product in accordance with Section 4073 of the Business and Professions Code.

Nothing in this regulation is intended to prohibit a pharmacist from exercising commonly-accepted pharmaceutical practice in the compounding or dispensing of a prescription."

15. California Code of Regulations, title 16, section 1761, states:

"(a) No pharmacist shall compound or dispense any prescription which contains any significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon receipt of

any such prescription, the pharmacist shall contact the prescriber to obtain the information needed to validate the prescription.

(b) Even after conferring with the prescriber, a pharmacist shall not compound or dispense a controlled substance prescription where the pharmacist knows or has objective reason to know that said prescription was not issued for a legitimate medical purpose."

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

17. **CONTROLLED SUBSTANCES**

A. "Tylenol with Codeine #4," is the brand name for Acetaminophen with 60 mg. of Codeine. It is a Schedule III controlled substance, as defined by Health and Safety Code section 11056, subdivision (e)(2), and is categorized as a "dangerous drug" pursuant to Business and Professions Code section 4022.

B. "Tylenol with Codeine #3," is the brand name for Acetaminophen with 30 mg. of Codeine. It is a Schedule III controlled substance, as defined by Health and Safety Code section 11056, subdivision (e)(2), and is categorized as a "dangerous drug" pursuant to Business and Professions Code section 4022.

C. "Tylenol with Codeine #2" is the brand name for Acetaminophen with 15 mg. of Codeine. It is a Schedule III controlled substance, as defined by Health and Safety Code section 11056, subdivision (e)(2), and is categorized as a "dangerous drug" pursuant to Business and Professions Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(Failure to Properly Maintain Pharmacy)

18. Respondents are subject to disciplinary action under sections 4300 and 4301, subdivisions (j), (o), and 4113, subdivision (b) of the Code, on the grounds of unprofessional conduct, as defined in California Code of Regulations, title 16, section 1714, subdivision (b) and (c), in that on or about April 4, 2005, during a Board inspection, the Board

investigator observed that the Pharmacy's aisles and shelves were cluttered with papers, empty bottles, medications, clothes, toilet paper, trash, and other debris.

SECOND CAUSE FOR DISCIPLINE

(Failure to Maintain All Required Records on Premises)

19. Respondents are subject to disciplinary action under sections 4300 and 4301, subdivision (o) and 4113, subdivision (b) of the Code, on the grounds of unprofessional conduct, for violating sections 4105, subdivision (a) and 4333 of the Code, as follows:

a. On or about April 4, 2005, during a Board inspection, the investigator requested all pharmacy records of acquisition and disposition for Tylenol #2, #3, and #4. Respondents informed the investigator that all the records were kept at home, and not at the licensed premises.

b. On or about April 18, 2005, the Board inspector received wholesale purchase information, daily reports, printouts, and prescriptions from Respondent, regarding Tylenol #2, #3, and #4. These records were incomplete and Respondents were unable to provide the Board inspector with all original prescriptions and invoices from the wholesalers.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Current Inventory for Dangerous Drugs)

20. Respondents are subject to disciplinary action under sections 4300 and 4301, subdivisions (j), (o), and 4113, subdivision (b) of the Code, on the grounds of unprofessional conduct, for violating section 4081, and California Code of Regulations, title 16, sections 1714, subdivision (d), in that on or about April 4, 2005, Respondents failed to maintain current inventory for dangerous drugs by failing to produce original prescriptions and invoices from the wholesalers. Specifically, an audit showed that Respondents failed to maintain adequate documentation of dangerous drugs in that the pharmacy stock on hand was at a variance with the drugs that were dispensed as follows:

a. 17 extra tablets of Tylenol #2 were in stock.

b. 6949 extra tablets of Tylenol #3 were in stock.

c. 7834 tablets of Tylenol #4 were missing or unaccounted for.

FOURTH CAUSE FOR DISCIPLINE

(Filling of Erroneous or Uncertain Prescriptions)

21. Respondents are subject to disciplinary action under sections 4300 and 4301, subdivisions (j) and (o), and 4113, subdivision (b) of the Code, on the grounds of unprofessional conduct, for violating section 4063 of the Code, California Code of Regulations, title 16, sections 1716, and 1761, subdivisions (a) and (b), in that on and between May 1, 2003 and April 4, 2005, Respondents dispensed and refilled erroneous or uncertain prescriptions for Tylenol #3 and #4 without authorization, as follows:

a. Refilled prescriptions beyond the number of times authorized by the patients' physicians.

b. Refilled prescriptions in an amount that would exceed a patients' properly prescribed dosage.

c. Refilled patient's controlled substance prescriptions more than five (5) times and in amounts greater than a 120-day supply.

d. Filled prescriptions with the incorrect amount in excess of medication written on the prescription.

e. Filled prescriptions with the incorrect physician's name written on the prescription.

f. Filled excessive prescriptions for a patient on the same day, for the same medication, from two different physicians.

PRAYER

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

1. Revoking or suspending Pharmacy Permit No. PHY 36795, issued to Donna K. Cheng, Chi L. Cheng, Peter C. Cheng, and Howard King, to do business as Family Pharmacy;

2. Revoking or suspending Pharmacist License No. RPH 33071, issued to Donna K. Cheng;

3. Ordering Donna K. Cheng and Family Pharmacy to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

4. Taking such other and further action as deemed necessary and proper.

DATED: 11/6/06

Virginia K. Herold
Interim Executive Officer
Board of Pharmacy
State of California
Complainant

LA2006600022

60169039.wpd