

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
Board President

2007 JUN 11 15:55:16
1 EDMUND G. BROWN JR., Attorney General
of the State of California

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Supervising Deputy Attorney General

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

11 In the Matter of the Accusation Against:

Case No. 2963

12 DONNA K. CHENG, CHI L. CHENG, PETER

OAH No. L-2007020376

13 C. CHENG AND HOWARD KING

d.b.a., FAMILY PHARMACY

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

14 452 N. Los Robles

Pasadena, CA 91101

15 DONNA K. CHENG, Pharmacist-in-Charge

16 Pharmacy Permit No. PHY 36795

17 and

18 DONNA K. CHENG

1724 Monterey St.

19 Alhambra, CA 91801

20 Pharmacist License No. RPH 33071

21 Respondents.

22
23 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
24 above-entitled proceedings that the following matters are true:

25 **PARTIES**

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

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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

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

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

8 CULPABILITY

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

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

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

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

19 RESERVATION

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

23 CONTINGENCY

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

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

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

9 **DISCIPLINARY ORDER**

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

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

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

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

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

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

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

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

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

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

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

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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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 "Cessation of practice" means any period of time exceeding 30 days in which

24 Respondent is not engaged in the practice of pharmacy as defined in Section 4052 of
25 the Business and Professions Code.

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

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

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

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

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

18 ACCEPTANCE

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

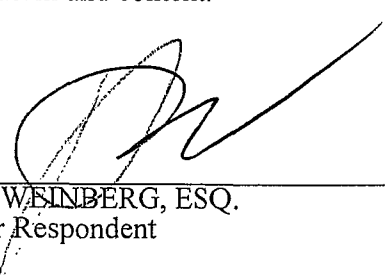
24 DATED: 3/28/08.

25
26 *Donna K Cheng*
27 FAMILY PHARMACY AND DONNA K. CHENG
28 Respondents

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

4 DATED: 3/31/08

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6 
7 HERBERT WEINBERG, ESQ.
8 Attorney for Respondent


9 ENDORSEMENT

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

12
13 DATED: 4/2/08

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

16 GLORIA A. BARRIOS
17 Supervising Deputy Attorney General

18  ^{DAG}
19 BARRY G. THORPE
20 Deputy Attorney General

21 Attorneys for Complainant

22 DOJ Matter ID: LA2006600022
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Exhibit A
Accusation No. 2963

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

7 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 2963

13 DONNA K. CHENG, CHI L. CHENG, PETER
14 C. CHENG AND HOWARD KING
15 d.b.a., FAMILY PHARMACY
452 N. Los Robles
16 Pasadena, CA 91101
DONNA K. CHENG, Pharmacist-in-Charge

ACCUSATION

17 Pharmacy Permit No. PHY 36795

18 and

19 DONNA K. CHENG
1724 Monterey St.
Alhambra, CA 91801

20 Pharmacist License No. RPH 33071

21 Respondents.

22 Complainant alleges:

23 **PARTIES**

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

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

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

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

9 JURISDICTION

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

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

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

19 7. Section 4301 of the Code states:

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

24

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

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1 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
2 abetting the violation of or conspiring to violate any provision or term of this chapter or of the
3 applicable federal and state laws and regulations governing pharmacy, including regulations
4 established by the board.”

5 8. Section 4063 of the Code states:

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

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

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

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

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

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

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

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

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

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

5 "....

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

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

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

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

20 "Pharmacists shall not deviate from the requirements of a prescription except
21 upon the prior consent of the prescriber or to select the drug product in accordance with Section
22 4073 of the Business and Professions Code.

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

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

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

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

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

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

10 17. **CONTROLLED SUBSTANCES**

11 A. "Tylenol with Codeine #4," is the brand name for Acetaminophen with
12 60 mg. of Codeine. It is a Schedule III controlled substance, as defined by Health and Safety
13 Code section 11056, subdivision (e)(2), and is categorized as a "dangerous drug" pursuant to
14 Business and Professions Code section 4022.

15 B. "Tylenol with Codeine #3," is the brand name for Acetaminophen with
16 30 mg. of Codeine. It is a Schedule III controlled substance, as defined by Health and Safety
17 Code section 11056, subdivision (e)(2), and is categorized as a "dangerous drug" pursuant to
18 Business and Professions Code section 4022.

19 C. "Tylenol with Codeine #2" is the brand name for Acetaminophen with
20 15 mg. of Codeine. It is a Schedule III controlled substance, as defined by Health and Safety
21 Code section 11056, subdivision (e)(2), and is categorized as a "dangerous drug" pursuant to
22 Business and Professions Code section 4022.

23 **FIRST CAUSE FOR DISCIPLINE**

24 (Failure to Properly Maintain Pharmacy)

25 18. Respondents are subject to disciplinary action under sections 4300 and
26 4301, subdivisions (j), (o), and 4113, subdivision (b) of the Code, on the grounds of
27 unprofessional conduct, as defined in California Code of Regulations, title 16, section 1714,
28 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.

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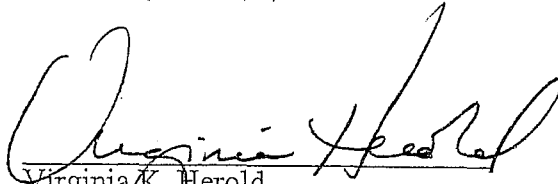
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3. Ordering Donna K. Cheng and Family Pharmacy to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

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