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

In the Matter of the Accusation Against: NOLAN WONG 2830 – 34TH Avenue San Francisco, CA 94116 Pharmacist License No. RPH 31808 and PMC PHARMACY 901 Campus Drive Daly City, CA 94015 Pharmacy Permit No. PHY 36005 Respondents. AND In the Matter of the Statement of Issues Against: NURSING CARE PHARMACIES, INC dba PMC PHARMACY Barbara Jiang, CEO Jason Wong, V.P. 901 Campus Drive #108 Daly City, CA 94015 Applicant for Community Pharmacy Permit Respondent.	Case No. 3025 OAH No.

DECISION AND ORDER

The attached Stipulated Surrender of Licenses and Order and Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy of the Department of Consumer Affairs, as its Decision in the above-entitled matter.

This decision shall become effective on May 21, 2008.

It is so ORDERED on April 21, 2008.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By 

WILLIAM POWERS
Board President

EDMUND G. BROWN JR., Attorney General
of the State of California
FRANK H. PACOE
Supervising Deputy 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: NOLAN WONG 2830 - 34th Avenue San Francisco, CA 94116 Pharmacist License No. RPH 31808 and PMC PHARMACY 901 Campus Drive Daly City, CA 94015 Pharmacy Permit No. PHY 36005 Respondents.	Case No. 3025 OAH No. **STIPULATED SURRENDER OF LICENSES AND ORDER**

AND

In the Matter of the Statement of Issues Against: NURSING CARE PHARMACIES, INC dba PMC PHARMACY Barbara Jiang, CEO Jason Wong, V.P. 901 Campus Drive # 108 Daly City, CA 94015 Applicant for Community Pharmacy Permit Respondent.	Case No. 3025 OAH No. **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

In the interest of a prompt and speedy resolution of this matter, consistent with the public interest and the responsibility of the Board of Pharmacy, of the Department of Consumer Affairs, the parties to these related cases hereby agree to: (1) a Stipulated Surrender of License and Order in settlement of the Accusation and Supplemental Accusation filed against Respondent Nolan Wong, License No. RPH 31808 ("Respondent Wong"), and Respondent PMC Pharmacy, Permit No. PHY 36005 ("Respondent PMC"); and (2) a Stipulated Settlement and Disciplinary Order in settlement of the Statement of Issues denying the Application for Community Pharmacy Permit by Respondent Nursing Care Pharmacies, Inc. dba PMC Pharmacy ("Applicant PMC"). This global settlement shall hereafter be submitted to the Board for its approval and adoption as the final disposition of Accusation and Supplemental Accusation No. 3025 against Respondents Wong and PMC, and Statement of Issues No. 3025, against Applicant PMC.

PARTIES

1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy. She brought these actions solely in her official capacity and is represented in these matters by Edmund G. Brown Jr., Attorney General of the State of California, by Joshua A. Room, Deputy Attorney General.

2. Respondent Wong, Respondent PMC, and Applicant PMC (collectively, "Respondents and Applicant") are all jointly and severally represented in this proceeding by attorney Donald B. Brown, in the Law Offices of Brown & Brown, Torrance Executive Plaza, 3848 Carson Street, Suite 206, Torrance, CA 90503; (310) 792-1315.

3. On or about March 7, 1978, the Board of Pharmacy issued Pharmacist License No. RPH 31808 to Nolan Wong (Respondent Wong). The Pharmacist License was in full force and effect at all times relevant to the charges brought in Accusation No. 3025 and will expire on September 30, 2008, unless renewed.

4. On or about June 4, 1990, the Board of Pharmacy issued Pharmacy Permit No. PHY 36005 to PMC Pharmacy, Nolan Wong, V.P, Gordon Wong, President (Respondent PMC). The Pharmacy Permit was in full force and effect at all times relevant to the charges brought in Accusation No. 3025 and will expire on June 1, 2008, unless renewed.

5. On or about July 20, 2007, the Board of Pharmacy received an application for a Community Pharmacy Permit from Nursing Care Pharmacies, Inc. dba PMC Pharmacy, Barbara Jiang, CEO, Jason Wong, V.P. (Applicant PMC). The application lists Ms. Jiang as 35% owner, and Mr. Wong as 65% owner, and was signed by each on or about July 3, 2007.

JURISDICTION

6. Accusation No. 3025 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondents Wong and PMC. The Accusation and other statutorily required documents were properly served on Respondents Wong and PMC on or about February 26, 2007. Respondents Wong and PMC timely filed their Notice(s) of Defense contesting the Accusation. Subsequently, Supplemental Accusation No. 3025 and other statutorily required documents were properly served on Respondents Wong and PMC on or about July 20, 2007. Copies of Accusation and Supplemental Accusation No. 3025 are attached as exhibit A and incorporated herein by reference.

7. Statement of Issues No. 3025 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Applicant PMC. The Statement of Issues and other statutorily required documents were properly served on Applicant PMC on or about January 30, 2008. Applicant timely filed a Notice of Defense. A copy of Statement of Issues No. 3025 is attached as exhibit B and incorporated herein by reference.

ADVISEMENT AND WAIVERS

8. Respondents Wong and PMC have carefully read, fully discussed with counsel, and understand, the charges and allegations in Accusation and Supplemental Accusation No. 3025. Respondents have also carefully read, fully discussed with counsel, and understand, the effects of this Stipulated Surrender of Licenses and Order, as applicable to their licenses.

9. Applicant PMC has carefully read, fully discussed with counsel, and understands, the charges and allegations in Statement of Issues No. 3025. Applicant has also carefully read, fully discussed with counsel, and understands, the effects of this Stipulated Settlement and Disciplinary Order, as applicable to the license to be issued thereto.

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10. Respondents and Applicant are fully aware of his or its 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 his or its own expense; the right to confront and cross-examine witnesses against them; the right to present evidence and to testify on his or its 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.

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

CULPABILITY

12. Respondents Wong and PMC admit the truth of each and every charge and allegation in Accusation and Supplemental Accusation No. 3025, agree that cause exists for discipline, and hereby surrender Pharmacist License No. RPH 31808, issued to Nolan Wong, and Pharmacy Permit No. PHY 36005, issued to PMC Pharmacy, for the Board's formal acceptance.

13. Applicant PMC admits the truth of each and every charge and allegation in Statement of Issues No. 3025, agrees that its Application for Community Pharmacy Permit is subject to denial, and hereby agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

14. Respondents and Applicant understand and agree that by their signing this stipulation, the Board is enabled to issue one or more orders accepting the surrender of licenses from Respondents Wong and PMC, and issuing a Pharmacy Permit to Applicant PMC subject to the Disciplinary Order below, without further process or opportunity to be heard.

RESERVATION

15. The stipulations, agreements and admissions made by Respondents and Applicant 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.

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CONTINGENCY

16. This stipulation shall be subject to approval by the Board of Pharmacy. Respondents and Applicant understand and agree that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondents, Applicant, or their counsel. By signing the stipulation, Respondents and Applicant 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 agreement as its Decision and Order, this Stipulated Surrender of Licenses and Order and Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action against any party to this global stipulation by having considered this matter.

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

18. 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:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Pharmacist License No. RPH 31808, issued to Respondent Wong, and Pharmacy Permit No. PHY 36005, issued to Respondent PMC, are now surrendered and accepted by the Board of Pharmacy. The terms and conditions of these license surrenders are further described in Paragraphs 19-26, below.

IT IS FURTHER HEREBY ORDERED that, upon satisfaction of all statutory and regulatory requirements for issuance of a license, a Pharmacy Permit shall issue to Applicant PMC and be immediately revoked. That order of revocation is stayed and the Pharmacy Permit issued to Applicant PMC is placed on probation for five (5) years on the terms and conditions of probation described in Paragraphs 27-42, below.

TERMS AND CONDITIONS OF SURRENDER(S)

19. The surrender of Respondent Wong's Pharmacist License and Respondent PMC's Pharmacy Permit, and the acceptance of these surrendered licenses by the Board, shall constitute the imposition of discipline against Respondents. This stipulation constitutes a record of the discipline and shall become a part of Respondents' license histories with the Board.

20. Respondent Wong shall lose all rights and privileges as a Pharmacist in California as of the effective date of the Board's Decision and Order.

21. Respondent PMC shall lose all rights and privileges as a Pharmacy in California as of the effective date of the Board's Decision and Order.

22. Respondents Wong and PMC shall cause to be delivered to the Board all documentation of his and its licenses issued by the Board, including any wall and pocket license certificates, on or before the effective date of the Decision and Order.

23. Respondents Wong and PMC may not apply, reapply, or petition for any licensure or registration of the Board for three (3) years from the effective date of the Decision and Order. Respondents Wong and PMC understand and agree that if either of them ever applies for licensure or petitions for reinstatement in the State of California, the Board shall treat it as a new application for licensure. Each or either Respondent must comply with all of the laws, regulations and procedures for licensure in effect at the time the application or petition is filed, and all of the charges and allegations contained in Accusation and Supplemental Accusation No. 3025 shall be deemed to be true, correct and admitted by each or either Respondent when the Board determines whether to grant or deny the application or petition.

24. Should either Respondent Wong or PMC ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation and Supplemental Accusation No. 3025 shall be deemed to be true, correct, and admitted by each or either Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

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25. Respondent Wong shall pay the Board its costs of investigation and enforcement in the amount of $9,521.50 prior to issuance of a new or reinstated license.

26. Respondent PMC shall pay the Board its costs of investigation and enforcement in the amount of $9,313.00 prior to issuance of a new or reinstated license.

TERMS AND CONDITIONS OF PROBATION

The terms and conditions of probation for Applicant PMC shall include:

27. **Obey All Laws.** Applicant PMC and its owners shall obey all state and federal laws and regulations substantially related to or governing the practice of pharmacy, and shall report any of the following to the Board, in writing, within seventy-two (72) hours:

- 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 Applicant'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.

Any violation of pertinent law or any failure to timely report to the Board in writing any of the foregoing occurrences shall be considered a violation of probation.

28. **Reporting to the Board.** Applicant PMC shall report to the Board on a quarterly basis, in person or in writing, as directed. In each such report, Applicant's owners shall state under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to make any report timely and complete as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation, and if the final probation report is not made as directed, the period of probation shall be extended automatically until such time as the final report is made and accepted by the Board.

29. **Interview with the Board.** Upon receipt of reasonable notice, one or more owners or officers of Applicant PMC, as directed, shall appear in person for interviews with the Board or its designee, at intervals and locations set by the Board or its designee.

Failure to appear for any scheduled interview without prior notification to Board staff, or failure to appear for two (2) or more scheduled interviews during the period of probation, even with prior notice, shall be considered a violation of probation.

30. **Cooperation with Board Staff.** Applicant PMC and its owners shall cooperate with the Board's inspection program and in the Board's monitoring and investigation of Applicant's compliance with the terms and conditions of probation. Failure to cooperate or comply with Board monitoring or investigation shall be considered a violation of probation.

31. **Barring of Prior PMC Pharmacy Managers, Officers, Etc.** No person who served as a manager, administrator, owner, member, officer, director, associate, or partner of Respondent PMC during the time of the matters charged in Accusation No. 3025 or Supplemental Accusation No. 3025, who had knowledge of or participated in any charged conduct, may serve as a manager, administrator, owner, member, officer, director, associate, or partner of Applicant PMC at any time during the period of probation.

Moreover, Gordon Wong and Nolan Wong, officers of Respondent PMC, may not participate in or have any involvement in the business dealings of Applicant PMC, nor be engaged thereby as employees, independent contractors, consultants, or in any other paid or volunteer position. Neither Gordon Wong nor Nolan Wong may enter any restricted area of the pharmacy or area(s) where dangerous drugs or devices or controlled substances are stored, nor shall either have any access to or control over ordering or dispensing of same or direct or control any aspect of the practice of pharmacy by or within the premises of Applicant PMC.

Any violation of this provision shall be considered a violation of probation. At the request of the Board or its designee, Applicant PMC and its owners shall provide copies of or make available for inspection any records, including but not limited to personnel files, that may be necessary to investigate the officers, employees, and other personnel of Applicant.

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32. **Owners and Officers: Knowledge of the Law.** Applicant PMC shall provide, within thirty (30) days after the effective date of this decision, signed and dated statements from its owners and officers, including any owner or holder of 10% or more of the interest in Applicant or Applicant's stock, and any officer, stating that said individuals have read and are familiar with all state and federal laws and regulations governing the practice of pharmacy, and that each has read and is familiar with this decision. Failure to timely submit signed statements from all owners and officers shall be considered a violation of probation.

33. **Policies and Procedures for Drug Handling.** Within thirty (30) days after the effective date of this decision, Applicant PMC and its owners shall develop written policies and procedures for drug handling, to include at least the following, in detail:

a. The person(s) with authority and responsibility for acquisition, security, storage, disposition, returns, and/or disposal of controlled substances and dangerous drugs;

b. Procedures for acquisition, security, storage, disposition, returns, and/or disposal of controlled substances and dangerous drugs, to conform to state and federal law;

c. Procedures for monitoring drug stocks to detect, segregate, and dispose of expired or otherwise questionable controlled substances and dangerous drugs; and

d. Procedures for proper use and reuse of patient med paks/packs.

If any of the information or procedures in these written policies and procedures becomes inaccurate or incomplate as a result of changes in personnel, changes in the law, or other causes, the written policies and procedures shall be updated within thirty (30) days.

These written policies and procedures shall be made immediately available for inspection by the Board or its designee upon request. Failure to timely generate or provide the written policies and procedures upon request shall be considered a violation of probation.

34. **Prompt Segregation & Disposal of Expired Drugs.** Applicant PMC shall, on an ongoing basis, promptly identify and segregate expired controlled substances and dangerous drugs, and promptly return or dispose of same by lawful means. Any failure(s) to identify, segregate, and dispose of expired drugs shall be considered a violation of probation.

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35. **Reporting on Drug Acquisition & Disposition.** As part of its reports to be made quarterly to the Board pursuant to Term & Condition 28, above, Applicant PMC shall for each such report include a specific statement or statements regarding its generation, maintenance, and compliance with written policies and procedures for drug handling and its segregation and disposal of expired drugs, pursuant to Terms & Conditions 33 and 34, above. Failure to include such information shall be considered a violation of probation.

36. **Notice to Employees.** Applicant PMC and its owners shall, upon or before the effective date of this decision, ensure that all employees involved in permit operations are made aware of all the terms and conditions of probation, either by posting a notice of the terms and conditions, circulating such notice, or both. If the notice required by this provision is posted, it shall be posted in a prominent place and shall remain posted throughout the probation period. Applicant PMC and its owners shall ensure that any employees hired or used after the effective date of this decision are made aware of the terms and conditions by posting a notice, circulating a notice, or both.

> "Employees" as used in this provision includes all full-time, part-time, voluntary, temporary and relief employees and independent contractors employed or hired at any time during the period of probation.

Failure to give timely and adequate notice to current or prospective employees shall be considered a violation of probation.

37. **Probation Monitoring Costs.** Applicant PMC shall pay to the Board any costs associated with probation monitoring as determined by the Board during each year of probation. Such costs shall be payable to the Board on a schedule as directed by the Board or its designee. Failure to timely pay such costs shall be considered a violation of probation.

38. **Reimbursement of Board Costs.** Applicant PMC and its owners shall pay to the Board its costs of investigation and prosecution in the amount of $2,809.00. This amount shall be paid on a quarterly basis, with the entire amount to be paid within three (3) years. Applicant may make full payment in a shorter time period. Failure to make timely payments of Board costs as directed shall be considered a violation of probation.

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The filing of bankruptcy by Applicant PMC or its owners shall not relieve them of their responsibility to reimburse the Board its costs of investigation and prosecution.

39. **Status of License.** Applicant PMC shall, at all times while on probation, maintain a current license with the Board. If Applicant submits an application to the Board, and the application is approved, for a change of location, change of permit or change of ownership, the Board shall retain continuing jurisdiction over the license, and the Applicant shall remain on probation as determined by the Board. Failure to maintain current licensure shall be considered a violation of probation.

If Applicant's license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof or otherwise, upon renewal or reapplication Applicant's license shall be subject to all terms and conditions of this probation not previously satisfied.

40. **License Surrender while on Probation/Suspension.** Following the effective date of this decision, should Applicant PMC discontinue business or be otherwise unable to satisfy the terms and conditions of probation, Applicant's owners may tender this license to the Board for surrender. The Board or its designee 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, Applicant PMC shall no longer be subject to the terms and conditions of probation.

Upon acceptance of the surrender, Applicant shall relinquish the premises wall and renewal license to the board within ten (10) days of notification by the Board that the surrender is accepted. Applicant's owners shall further submit a completed Discontinuance of Business form according to Board guidelines and shall notify the Board of the records and inventory transfer. Neither Applicant nor its owners may petition or reapply for any license from the Board for three (3) years from the effective date of the surrender. Applicant PMC and its owners shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

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Applicant PMC and its owners further stipulate that it and they will reimburse the Board for its costs of investigation and prosecution prior to acceptance of the surrender.

41. **Violation of Probation.** If Applicant PMC violates probation in any respect, the Board, after giving Applicant 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 Applicant during probation, 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 Applicant has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over Applicant, 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/or to impose the penalty which was stayed.

42. **Completion of Probation.** Upon successful completion of probation, Applicant PMC's Pharmacy Permit will be fully restored.

ACCEPTANCE

I have carefully read the above Stipulated Surrender of Licenses and Order and Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Adam B. Brown. I understand the stipulation and the effect it will have on my Pharmacist License No. RPH 31808. I enter into this Stipulated Surrender of Licenses and Order and Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 5/29/07

NOLAN WONG
Respondent
Pharmacist License No. RPH 31808

I have carefully read the above Stipulated Surrender of Licenses and Order and Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Adam B. Brown. I understand the stipulation and the effect it will have on my Pharmacy Permit No. PHY 36005 I enter into this Stipulated Surrender of Licenses and Order and Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 3-1-2008.

GORDON WONG, President

DATED: 2/29/08.

NOLAN WONG, Vice President

on behalf of
PMC PHARMACY
Respondent
Pharmacy Permit No. 36005

I have carefully read the above Stipulated Surrender of Licenses and Order and Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Adam B. Brown. I understand the stipulation and the effect it will have on my Application for Community Pharmacy Permit, and Pharmacy Permit. I enter into this Stipulated Surrender of Licenses and Order and Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 2/29/08.

BARBARA JIANG, Chief Executive Officer

DATED: 2-29-08.

JASON WONG, Vice President

on behalf of
NURSING CARE PHARMACIES, INC
dba PMC PHARMACY
Respondent/Applicant for Pharmacy Permit

I have read and fully discussed with Respondents Nolan Wong and PMC Pharmacy, and Respondent/Applicant Nursing Care Pharmacies, Inc. dba PMC Pharmacy, the terms and conditions and other matters contained in this Stipulated Surrender of Licenses and Order and Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: FEB 20 2008.

DONALD B. BROWN
Attorney for Respondents and Applicant

ENDORSEMENT

The foregoing Stipulated Surrender of Licenses and Order and Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

DATED: 3/14/08

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

FRANK H. PACOE
Supervising Deputy Attorney General

JOSHUA A. ROOM
Deputy Attorney General

Attorneys for Complainant

DOJ Matter ID: SF2006402750
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Exhibit A

Accusation and Supplemental Accusation No. 3025

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of the State of California
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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: NOLAN WONG 2830 - 34th Avenue San Francisco, CA 94116 Pharmacist License No. RPH 31808 and PMC PHARMACY 901 Campus Drive Daly City, CA 94015 Pharmacy Permit No. PHY 36005 Respondents.	Case No. 3025 OAH No. **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about March 7, 1978, the Board of Pharmacy issued Pharmacist License No. RPH 31808 to Nolan Wong (Respondent Wong). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2008, unless renewed.

3. On or about June 4, 1990, the Board of Pharmacy issued Pharmacy Permit No. PHY 36005 to PMC Pharmacy (Respondent PMC), with Respondent Wong Vice President of the company, and his brother Gordon Wong President. Since its licensure and through to all times relevant to the charges brought herein, Respondent Wong served as Pharmacist in Charge (PIC) for Respondent PMC. The PMC Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein and will expire on June 1, 2007, unless renewed.

JURISDICTION

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

5. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].

6. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.

7. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration, surrender, or cancellation 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. Section 4402(a) of the Code provides that any license that is not renewed within three years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the three-year period.

STATUTORY PROVISIONS

8. Section 4301 of the Code provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of "unprofessional conduct," defined to include, but not be limited to, any of the following:

. . .

"(c) Gross negligence.

. . .

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

. . .

"(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

. . .

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

. . .

"(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. . . .

. . .

"(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.

. . .

9. California Code of Regulations, title 16, section 1770, states:

"For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare."

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

"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."

11. Section 4081 of the Code states, in pertinent part:

"(a) 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 . . . pharmacy . . . who maintains a stock of dangerous drugs or dangerous devices."

12. Section 4332 of the Code states:

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

13. Section 4105 of the Code provides, in pertinent part, that 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 for a period of three years from the date of making.

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

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

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

15. California Code of Regulations, title 16, section 1717, states in part:

"(a) No medication shall be dispensed on prescription except in a new container which conforms with standards established in the official compendia. Notwithstanding the above, a pharmacist may dispense and refill a prescription for non-liquid oral products in a clean multiple-drug patient medication package (patient med pak) provided: (1) a patient med pak is reused only for the same patient; (2) no more than a one-month supply is dispensed at one time; and (3) each patient med pak bears an auxiliary label which reads, 'store in a cool, dry place.'"

16. Section 4126.5 of the Code provides, in pertinent part, that a pharmacy may furnish dangerous drugs only to: (1) A wholesaler owned or under common control by the wholesaler from whom the dangerous drug was acquired; (2) The pharmaceutical manufacturer from whom the dangerous drug was acquired; (3) A licensed wholesaler acting as a reverse distributor; (4) Another pharmacy or wholesaler to alleviate a temporary shortage of a dangerous drug that could result in the denial of health care; (5) A patient or to another pharmacy pursuant to a prescription or as otherwise authorized by law; (6) A health care provider that is not a pharmacy but that is authorized to purchase dangerous drugs; or (7) Another pharmacy under common control. "Common control" means the power to direct or cause the direction of the management and policies of another, by ownership, voting rights, contract, or other means.

17. Title 21, Code of Federal Regulations, section 1307.11 (hereinafter "21 C.F.R. § 1307.11") provides in pertinent part that a practitioner who is registered to dispense a controlled substance may distribute (without being registered to distribute) a quantity of such substance to (1) another practitioner registered to dispense that substance for the purpose of general dispensing by the practitioner to patients, or to (2) a reverse distributor who is registered to receive such controlled substance(s).

18. Title 21, Code of Federal Regulations, section 1307.21 (hereinafter "21 C.F.R. § 1307.21") provides in pertinent part that any person in possession of any controlled substance and desiring or required to dispose of such substance may request assistance from the Special Agent in Charge of the Drug Enforcement Administration (DEA) in the area in which the person is located for authority and instructions to dispose of such substance. In the event of a properly-made request, the Special Agent in Charge shall authorize and instruct the applicant to dispose of the controlled substance by transfer to a person registered under the Drug Enforcement Act and authorized to possess the substance, by delivery to an agent of the DEA, by destruction in the present of an agent of the DEA or other authorized person, or by other appropriate means.

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

CONTROLLED SUBSTANCES / DANGEROUS DRUGS

20. Section 4021 of the Code states:

"'Controlled substance' means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."

21. Section 4022 of the Code states, in pertinent part:

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

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

. . .

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

22. **Triamterine/HCTZ** (brand name **Dyazide**) is a dangerous drug as designated by Business and Professions Code section 4022. It is a hypertension drug.

23. **Chlordiazepoxide** (brand name **Librium**) is a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(5) and a dangerous drug as designated by Business and Professions Code section 4022. It is an anti-anxiety drug.

24. **Diazepam** (brand name **Valium**) is a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(9) and a dangerous drug as designated by Business and Professions Code section 4022. It is a depressant drug.

25. **Fentanyl** (brand names **Actiq**, **Duragesic**) is a Schedule II controlled substance as designated by Health and Safety Code section 11055(c)(8) and a dangerous drug as designated by Business and Professions Code section 4022. It is for treatment of severe pain.

26. **Tylenol # 3**, or **Tylenol with Codeine**, is a brand name for a compound of acetaminophen (or APAP) and **Codeine**, a narcotic and Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(2) and a dangerous drug as designated by Business and Professions Code section 4022. It is intended for pain relief.

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27. **Alprazolam** (brand name **Xanax**) is a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(1) and a dangerous drug as designated by Business and Professions Code section 4022. It is a depressant drug.

FACTUAL BACKGROUND

28. Respondent Wong attended pharmacy school in Idaho with an individual named George Chiu. Respondent Wong and Mr. Chiu remained in touch in succeeding years.

29. On numerous unknown dates, on approximately 20-33 occasions between an unknown commencement date sometime in the mid-1990s and an unknown ending date in the year 2000, Respondent Wong purchased from Mr. Chiu, on behalf of Respondent PMC using the funds thereof, numerous unknown dangerous drugs. On each occasion, Respondent Wong met Mr. Chiu on a street corner in San Francisco, paid cash, and received no invoices or paperwork documenting the origin of the drugs. He/PMC paid approximately $100,000.00 total, all in cash.

30. The drugs purchased in this manner were subsequently dispensed to the patients of Respondent PMC, under Respondent Wong's supervision as PIC thereof.

31. On May 19 and May 20, 2000, Mr. Chiu was videotaped while diverting dangerous drugs and controlled substances from a Kaiser Health Plan Main Pharmacy (PHY 32380) in Antioch, CA by which he was employed as a pharmacist. During a subsequent search of Mr. Chiu's home and car, 580 bottles of dangerous drugs and controlled substances belonging to Kaiser were found. Mr. Chiu pleaded no contest to 8 felony counts and was sent to prison.

32. In 2001, the Internal Revenue Service (IRS) began a criminal investigation regarding Mr. Chiu's sale of drugs he stole from Kaiser. On March 20, 2001, IRS investigators interviewed Mr. Chiu at San Quentin State Prison and he told them that Respondent Wong had purchased at least some of the drugs that were stolen from Kaiser during the preceding years.

33. When Mr. Chiu was released from prison in or about February 2002, he contacted Respondent Wong, told him about his theft of the drugs from Kaiser, about his arrest and imprisonment for that theft, and about his sale of at least some stolen drugs to Respondent.

34. On or about June 11, 2002, Respondent Wong was interviewed by IRS investigators, and falsely told the IRS investigators that he did not know Mr. Chiu.

35. On or about November 29, 2005, in U.S. District Court for the Northern District of California, Respondent Wong was convicted by plea of guilty of one (1) count of violating 18 U.S.C. § 1001(a)(2) [knowing or willing false/fraudulent statement], a felony. On or about April 4, 2006, Respondent Wong was given a sentence including criminal probation for a term of three (3) years, a fine of $5,000.00, and a special assessment of $100.00.

36. On or about January 12, 2006, Respondent PMC was inspected by one or more Board of Pharmacy inspectors. On that occasion, the inspector(s) observations included:

a. Respondent PMC was stocked with a significant quantity of expired drugs, including both dangerous drugs and controlled substances, intermingled with active inventory. Approximately 559 bottles of over 90 different drugs, not the full quantity of expired drugs in stock, were tabulated and isolated pursuant to Business and Professions Code section 4342.

b. Respondent PMC held in its inventory dangerous drugs and controlled substances for which it could not document its legitimate acquisition or possession, including: (i) in its active inventory area, four manufacturers' bottles of **Triamterine/HCTZ** with Kaiser patient-specific prescription labels on them; (ii) in its active inventory, one manufacturers' bottle containing **Chlordiazepoxide** with a Longs' Pharmacy patient-specific label attached, dispensing date June 8, 2004; (iii) in its active inventory, one prescription bottle with approximately 300 tablets of **Diazepam** with an Express Scripts patient-specific label attached, with the name of the patient obliterated by "white out"; (iv) in its active inventory, one box of 7 **Fentanyl** patches with a Safeway Pharmacy patient-specific label attached; and (v) up to 50 other drugs which staff said were returned by assisted living facilities but for which no documentation was maintained.

c. Respondent PMC had in its active inventory area about 100 used patient med packs, which Respondent Wong and other staff stated had been returned from assisted living facilities, and which Respondent PMC re-used by emptying, cleaning with rubbing alcohol, and re-using for new distributions. The re-use was not limited to the same/returning patient(s).

d. Respondent PMC's protocol for disposal of returned or expired drugs was to place them into sharps containers (intended for disposal of needles and hazardous waste) that were picked up by or delivered to a company called Stericycle, Inc. for subsequent destruction.

37. On or about February 6, 2006, Respondent Wong provided the inspector(s) with a statement under penalty of perjury on behalf of Respondent PMC stating, *inter alia*, that all expired drugs at PMC had been properly returned or destroyed. Respondents included copies of Regulated Shipping Waste Documents generated by Stericycle, Inc. of Lake Forest, Illinois showing materials picked up or delivered for destruction on January 18, 2006 and February 1, 2006, and also included copies of shipping labels for drugs returned to a wholesaler.

38. On or about March 1, 2006, Respondent PMC was re-inspected by one or more Board of Pharmacy inspectors. On that occasion, the inspector(s) observations included:

a. Some expired drugs had been removed, but significant numbers were still in the active inventory area of Respondent PMC;

b. Included among the expired drugs were approximately 30 that had expired in the 1990s and approximately a dozen others that expired in 2000 or 2001, including controlled substances. It appeared particularly that there had been no return or destruction of Schedule II controlled substances by Respondent PMC for approximately ten years;

c. Another 33 bottles of expired dangerous drugs were isolated from active inventory at Respondent PMC, only a sampling of the over 200 additional expired bottles.

39. On or about March 21, 2006, Respondent PMC provided documentation to the Board's inspector(s) of an additional delivery to/pick-up by Stericycle, Inc. of controlled substances or dangerous drugs for destruction on or about March 15, 2006.

40. Subsequent investigation revealed the following:

a. In January 2006 (corresponding to the January 18, 2006 documentation), Respondent PMC sent one 25-gallon sharps container to Stericycle for destruction;

b. In February 2006 (corresponding to the February 1, 2006 documentation), Respondent PMC sent four 25-gallon sharps containers to Stericycle for destruction;

c. In March 2006 (corresponding to the March 15, 2006 documentation), Respondent PMC sent three 12-gallon sharps containers to Stericycle for destruction;

d. In May 2006, Respondent PMC sent two 12-gallon sharps containers to Stericycle for destruction;

e. Stericycle, Inc. is not licensed as a reverse distributor;

f. Stericycle, Inc. does not have a federal Drug Enforcement Administration license to handle or possess controlled substances;

g. Stericycle, Inc. would not knowingly accept dangerous drugs or controlled substances because they were not licensed to do so;

h. The drugs that were sent to Stericycle were inside sharps containers intended for contaminated medical waste, which were not opened prior to destruction;

i. The drugs sent to Stericycle included at least 6000 tablets of **Tylenol #3** (generic), and 2000 tablets of **Alprazolam**, both controlled substances.

FIRST CAUSE FOR DISCIPLINE

As to Respondent Wong

(Conviction of Substantially Related Crime)

41. Respondent Wong is subject to discipline under section 4301(l) of the Code by reference to California Code of Regulations, title 16, section 1770, in that on or about November 29, 2005, in a criminal case titled *United States of America v. Nolan Wong*, Case No. CR05-0546-01 WHA in U.S. District Court for the Northern District of California, Respondent Wong was convicted by his plea of guilty of one (1) count of violating 18 U.S.C. § 1001(a)(2) [knowing or willing false/fraudulent statement], a felony. The circumstances were as follows:

a. On or about June 11, 2002, Respondent Wong was interviewed by IRS investigators regarding his purchases of dangerous drugs from a long-time acquaintance named George Chiu, and Respondent falsely told the IRS investigators that he did not know Mr. Chiu.

b. On or about August 30, 2005, Respondent was criminally charged by an Information with one (1) count of violating 18 U.S.C. § 1001(a)(2) [knowing or willing making of false/fraudulent statement], a felony, based on the falsity in the June 11, 2002 interview.

c. On or about November 29, 2005, Respondent entered a plea of guilty.

d. On or about April 4, 2006, Respondent was given a sentence including criminal probation of three (3) years, a fine of $5,000.00, and a special assessment of $100.00.

SECOND CAUSE FOR DISCIPLINE

As to Respondent Wong

(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

42. Respondent Wong is subject to discipline under Code section 4301(f) in that, as described in Paragraphs 28-35 and 41 above, Respondent Wong committed one or more acts involving moral turpitude, dishonesty, fraud, deceit, or corruption.

THIRD CAUSE FOR DISCIPLINE

As to Respondents Wong and PMC

(Gross Negligence)

43. Respondents Wong and PMC are subject to discipline under Code section 4301(c) in that, as described in Paragraphs 28-33 above, Respondents purchased large quantities of dangerous drugs on a street corner for cash and without reliable documentation, absent proper information about the origins or provenance of such drugs, for purposes of dispensing to patients, acts constituting gross negligence in the professional practice of pharmacy.

FOURTH CAUSE FOR DISCIPLINE

As to Respondents Wong and PMC

(Unprofessional Conduct)

44. Respondents Wong and PMC are subject to discipline under Code section 4301 in that, as described in Paragraphs 28-33 above, Respondents purchased large quantities of dangerous drugs on a street corner for cash and without reliable documentation, absent proper information about the origins or provenance of such drugs, for purposes of dispensing to patients, acts constituting unprofessional conduct not becoming the professional practice of pharmacy.

FIFTH CAUSE FOR DISCIPLINE

As to Respondents Wong and PMC

(False Written Statement)

45. Respondents Wong and PMC are subject to discipline under Code section 4301(g) in that Respondents, as described in Paragraphs 37-38 above, made a written statement on or about February 6, 2006 falsely stating that all expired drugs had been returned or destroyed.

SIXTH CAUSE FOR DISCIPLINE

As to Respondents Wong and PMC

(Failure to Maintain/Provide Adequate Documentation)

46. Respondents Wong and PMC are subject to discipline under Code section 4301(j) and/or 4301(o) in that Respondents, as described in Paragraph 36 above, were unable to produce and/or failed to maintain adequate records of acquisition or disposition as required by Code sections 4081, 4105, and 4332, and California Code of Regulations, title 16, section 1718, with regard to dangerous drugs and/or controlled substances in their possession or control.

SEVENTH CAUSE FOR DISCIPLINE

As to Respondents Wong and PMC

(Furnishing Dangerous Drugs to Unauthorized Person)

47. Respondents Wong and PMC are subject to discipline under Code section 4301(j) and/or 4301(o) in that Respondents, as described in Paragraphs 37-40 above, on at least 4 occasions delivered to, or arranged for pick-up by, Stericycle, Inc., large quantities of dangerous drugs and/or controlled substances. Stericycle, Inc. is not a licensed reverse distributor nor is it otherwise an entity to which Respondents are/were authorized to furnish dangerous drugs and/or controlled substances pursuant to Code section 4126.5 and/or 21 C.F.R. § 1307.11.

EIGHTH CAUSE FOR DISCIPLINE

As to Respondents Wong and PMC

(Improper Disposal of Controlled Substances)

48. Respondents Wong and PMC are subject to discipline under Code section 4301(j) and/or 4301(o) in that Respondents, as described in Paragraphs 37-40 and 47 above, sent to or arranged for pick-up by Stericycle, Inc., controlled substances including at least 6000 tablets of **Tylenol #3** (generic) and 2000 tablets of **Alprazolam**, without Stericycle, Inc. being licensed or registered to receive same and without following the procedure to request assistance with the disposal of controlled substances outlined by 21 C.F.R. § 1307.21.

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NINTH CAUSE FOR DISCIPLINE

As to Respondents Wong and PMC

(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

49. Respondents Wong and PMC are subject to discipline under Code section 4301(f) in that, as described in Paragraphs 37-40 and 47-48 above, Respondents committed one or more acts involving moral turpitude, dishonesty, fraud, deceit, or corruption when they falsely represented to Stericycle, Inc. that materials for destruction were sharps/hazardous medical waste rather than the dangerous drugs and controlled substances that were actually in the containers.

TENTH CAUSE FOR DISCIPLINE

As to Respondents Wong and PMC

(Improper Re-Use of Patient Med Packs/Paks)

50. Respondents Wong and PMC are subject to discipline under Code section 4301(j) and/or 4301(o) in that Respondents, as described in Paragraph 36 above, improperly set forth a protocol for re-use of patient med packs/paks which did not limit re-use to the patient by which the med pack/pak had been previously used, but which instead allowed re-use by another or several other patients, in violation of California Code of Regulations, title 16, section 1717.

ELEVENTH CAUSE FOR DISCIPLINE

As to Respondents Wong and PMC

(Unprofessional Conduct)

51. Respondents Wong and PMC are subject to discipline under Code section 4301 in that, by way of the conduct described in Paragraphs 45-50 above, Respondents engaged in acts constituting unprofessional conduct not becoming the professional practice of pharmacy.

PRAYER

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

A. Revoking or suspending Pharmacist License Number RPH 31808, issued to Respondent Nolan Wong (Respondent Wong);

B. Revoking or suspending Pharmacy permit Number PHY 36005, issued to Respondent PMC Pharmacy (Respondent PMC);

C. Forbidding Respondent Wong from serving as a manager, administrator, owner, member, officer, director, associate, or partner of Respondent PMC or of any other Board licensee, pursuant to Business and Professions Code section 4307;

D. Ordering Respondent Wong and Respondent PMC (Respondents) jointly and severally to pay to the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

E. Taking such other and further action as is deemed necessary and proper.

DATED: 2/23/07

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

SF2006402750

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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: NOLAN WONG 2830 - 34th Avenue San Francisco, CA 94116 Pharmacist License No. RPH 31808 and PMC PHARMACY 901 Campus Drive Daly City, CA 94015 Pharmacy Permit No. PHY 36005 Respondents.	Case No. 3025 OAH No. **SUPPLEMENTAL ACCUSATION**

Complainant alleges:

PARTIES

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

2. The allegations of paragraphs 2 through 51 of the Accusation on file with this administrative body are realleged and incorporated by reference as if fully set forth herein.

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TWELFTH CAUSE FOR DISCIPLINE

As to Respondent Wong

(Conviction of Substantially Related Crime)

3. Respondent Wong is subject to discipline under section 4301(l) of the Code by reference to California Code of Regulations, title 16, section 1770, in that on or about December 27, 1989, in a criminal case titled *United States of America v. Nolan K. Wong*, Case No. CR88-0609 CAL in U.S. District Court for the Northern District of California, Respondent Wong was convicted by his plea of guilty of one (1) count of violating 18 U.S.C. §§ 1341 and 1342 [Mail Fraud with Aiding and Abetting], a felony.

THIRTEENTH CAUSE FOR DISCIPLINE

As to Respondent Wong

(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

4. Respondent Wong is subject to discipline under Code section 4301(f) in that, as described in Paragraph 3 above, Respondent Wong committed one or more acts involving moral turpitude, dishonesty, fraud, deceit, or corruption.

FOURTEENTH CAUSE FOR DISCIPLINE

As to Respondent Wong

(Unprofessional Conduct)

5. Respondents Wong and PMC are subject to discipline under Code section 4301 in that, by way of the conduct described in Paragraph 3 above, Respondent engaged in acts constituting unprofessional conduct not becoming the professional practice of pharmacy.

PRAYER

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

A. Revoking or suspending Pharmacist License Number RPH 31808, issued to Respondent Nolan Wong (Respondent Wong);

B. Revoking or suspending Pharmacy permit Number PHY 36005, issued to Respondent PMC Pharmacy (Respondent PMC);

C. Forbidding Respondent Wong from serving as a manager, administrator, owner, member, officer, director, associate, or partner of Respondent PMC or of any other Board licensee, pursuant to Business and Professions Code section 4307;

D. Ordering Respondent Wong and Respondent PMC (Respondents) jointly and severally to pay to the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

E. Taking such other and further action as is deemed necessary and proper.

DATED: 7/12/07

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

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Exhibit B

Statement of Issues No. 3025

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Attorneys for Complainant

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

In the Matter of the Statement of Issues Against: NURSING CARE PHARMACIES, INC dba PMC PHARMACY Barbara Jiang, CEO Jason Wong, V.P. 901 Campus Drive # 108 Daly City, CA 94015 Applicant for Community Pharmacy Permit Respondent.	Case No. 3025 **STATEMENT OF ISSUES**

Complainant alleges:

PARTIES

1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Board of Pharmacy within the Department of Consumer Affairs.

2. On or about July 20, 2007, the Board of Pharmacy, Department of Consumer Affairs received an application for a Community Pharmacy Permit from Nursing Care Pharmacies, Inc. dba PMC Pharmacy, Barbara Jiang, CEO, Jason Wong, V.P. (Respondent). The application documents list Ms. Jiang as 35% owner, and Mr. Wong as 65% owner. On or about July 3, 2007, Ms. Jiang and Mr. Wong signed one or more certifications under penalty of perjury as to the truthfulness of all statements, answers, and representations in the application.

JURISDICTION

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

STATUTORY PROVISIONS

4. Section 480 of the Code states, in pertinent part:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

. . .

"(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

"(3) Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

"The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the [license]."

5. Section 4300, subdivision (c), of the Code states in pertinent part:

"(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. . . . subject to any terms or conditions not contrary to public policy . . ."

6. Section 4301 of the Code provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of "unprofessional conduct," defined to include, but not be limited to, any of the following:

. . .

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

. . .

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

7. Section 4110 of the Code, subdivision (a), states in pertinent part:

"(a) No person shall conduct a pharmacy in the State of California unless he or she has obtained a license from the board. . . . The license shall be renewed annually. The board may, by regulation, determine the circumstances under which a license may be transferred."

8. California Code of Regulations, title 16, section 1709, states in part:

"(b) Any transfer, in a single transaction or in a series of transactions, of 10 percent or more of the beneficial interest in a business entity licensed by the board to a person or entity who did not hold a beneficial interest at the time the original permit was issued, shall require written notification to the board within 30 days.

"(c) The following shall constitute a transfer of permit and require application for a change of ownership: any transfer of a beneficial interest in a business entity licensed by the board, in a single transaction or in a series of transactions, to any person or entity, which transfer results in the transferee's holding 50% or more of the beneficial interest in that license."

9. California Code of Regulations, title 16, section 1770, states:

"For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare."

PROCEDURAL/FACTUAL BACKGROUND

10. On or about June 4, 1990, the Board of Pharmacy issued Pharmacy Permit No. PHY 36005 to PMC Pharmacy, located at 901 Campus Drive, Daly City, CA 94015, with Gordon Wong listed as 100% owner and President, and Nolan Wong listed as Vice President.

11. Nolan Wong, licensed as a Pharmacist (License No. RPH 31808) by the Board of Pharmacy since March 7, 1978, served as Pharmacist in Charge at PMC Pharmacy from its licensure through to May 1, 2006. The PMC Pharmacy Permit was in full force and effect at all times relevant to the facts herein and will expire on June 1, 2008, unless renewed.

12. Between in or about January 2006 and in or about June 2006, Nolan Wong and PMC Pharmacy were the subjects of an investigation conducted by the Board of Pharmacy.

13. That investigation revealed, among other things: that Gordon Wong and Nolan Wong are brothers; that Pharmacy Technician Barbara Jiang (License No. TCH 52663, issued 11/17/03) worked/works at PMC Pharmacy and is a sister-in-law to Gordon Wong; that Pharmacist Angela Po-Chu Yeung (License No. RPH 31278, issued 08/03/77) worked/works as a Pharmacist at PMC Pharmacy, has served as Pharmacist in Charge at PMC Pharmacy since May 1, 2006, and was/is married to Nolan Wong; and that Pharmacy Technician Jason Wong (TCH 53082, issued 11/26/03) worked/works at PMC Pharmacy and is a son of Nolan Wong.

14. On or about April 21, 2006 and April 28, 2006, Nolan Wong participated in interviews with one or more Board of Pharmacy Inspectors. Mr. Wong represented during the interview(s) that he and his brother Gordon Wong were then the only owners of PMC Pharmacy. Barbara Jiang also participated in interview(s) with Board Inspectors, and did not represent that she had any ownership or beneficial interest in the licensure of PMC Pharmacy.

15. The Board investigation revealed alleged violations of pharmacy law. On or about February 23, 2007, in a case titled *In the Matter of the Accusation against Nolan Wong and PMC Pharmacy*, Case No. 3025 before the Board of Pharmacy, an Accusation was filed that charged Nolan Wong and PMC Pharmacy with eleven causes for discipline (the first two alleged only against Nolan Wong, the remaining nine alleged against both respondents). On or about July 12, 2007, a Supplemental Accusation filed before the Board alleged three additional causes for discipline (causes 12 through 14) solely against respondent Nolan Wong.

16. The present application for new/changed ownership of PMC Pharmacy was received by the Board on or about July 20, 2007, from Nursing Care Pharmacies, Inc. dba PMC Pharmacy, Barbara Jiang, CEO, Jason Wong, V.P. (Respondent).

17. That application, signed under penalty of perjury by Ms. Jiang and Mr. Wong on or about July 3, 2007, indicates that ownership of the pharmacy was transferred to Ms. Jiang (35%) and Mr. Wong (65%) on or about January 1, 2006, more than 18 months prior to the submission of the present application notifying the Board of the change.

FIRST CAUSE FOR DENIAL OF APPLICATION

(Conducting Pharmacy Without License)

18. Respondent's application is subject to denial pursuant to sections 480(a)(3) and/or 4300(c) of the Code, and/or sections 4301(o) and 4110 of the Code, in that following the transfer of ownership of PMC Pharmacy on or about January 1, 2006 and through to the present, Respondent has directly or indirectly violated, attempted to violate, assisted in or abetted the violation of, or conspired to violate, the laws and/or regulations governing pharmacy, by conducting a pharmacy in California without a valid license therefor.

SECOND CAUSE FOR DENIAL OF APPLICATION

(Failing to Timely Notify Board of Ownership Change)

19. Respondent's application is subject to denial pursuant to sections 480(a)(3) and/or 4300(c) of the Code, and/or section 4301(o) and California Code of Regulations, title 16, section 1709, in that following the transfer of ownership of PMC Pharmacy on or about January 1, 2006 and through to July 20, 2007, Respondent has directly or indirectly violated, attempted to violate, assisted in or abetted the violation of, or conspired to violate, the laws and/or regulations governing pharmacy, by failing to timely notify the Board of the change in ownership.

THIRD CAUSE FOR DENIAL OF APPLICATION

(Dishonesty, Fraud, or Deceit)

20. Respondent's application is subject to denial pursuant to sections 480(a)(2) and/or 4300(c) of the Code, and/or sections 4301(f) and/or 4301(o) of the Code, in that following the transfer of ownership of PMC Pharmacy on or about January 1, 2006 and through to July 20, 2007, Respondent has directly or indirectly violated, attempted to violate, assisted in or abetted the violation of, or conspired to violate, the laws and/or regulations governing pharmacy, by dishonestly failing to notify the Board of the change in ownership, and/or concealing same.

PRAYER

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

A. Denying the application of PMC Pharmacy for a Pharmacy License;

B. Taking such other and further action as is deemed necessary and proper.

DATED: 1/16/08

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

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