

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

In the Matter of the Accusation Against:

Case No. 3082

DAVID JUE FONG
502 S. Almansor Street
Alhambra, CA 91801

Pharmacist License No. RPH 37204

Respondent.

DECISION AND ORDER


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

This decision shall become effective on July 24, 2009.

It is so ORDERED on June 24, 2009.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By


KENNETH H. SCHELL
Board President

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 NANCY A. KAISER, State Bar No. 192083
Deputy Attorney General
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7 Attorneys for Complainant
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10 **BEFORE THE**
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 **DAVID JUE FONG**
502 S. Almansor St.
14 Alhambra, CA 91801

15 **Pharmacist License No. RPH 37204**

16 Respondent.
17

Case No. 3082

OAH No. 2008090577

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

18 In the interest of a prompt and speedy settlement of this matter, consistent with the
19 public interest and the responsibility of the Board of Pharmacy the parties hereby agree to the
20 following Stipulated Settlement and Disciplinary Order which will be submitted to the Board of
21 Pharmacy for approval and adoption as the final disposition of the Accusation.

22 **PARTIES**

23 1. Virginia K. Herold (Complainant) is the Executive Officer of the Board of
24 Pharmacy. She brought this action solely in her official capacity and is represented in this matter
25 by Edmund G. Brown Jr., Attorney General of the State of California, by Nancy A. Kaiser,
26 Deputy Attorney General.

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2. Respondent David Jue Fong (Respondent) is represented in this proceeding by attorney Gregory P. Matzen, whose address is Lewis Brisbois Bisgaard & Smith LLP - Sacramento, 2500 Venture Oaks Way, Suite 200, Sacramento, CA 95833..

3. On or about August 26, 1982, the Board of Pharmacy issued Pharmacist License No. RPH 37204 to David Jue Fong (Respondent). The Pharmacist License was in full force and effect at all times relevant to the charges brought in Accusation No. 3082 and will expire on September 30, 2009, unless renewed.

JURISDICTION

4. Accusation No. 3082 was filed before the Board of Pharmacy (Board), and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on August 5, 2008. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 3082 is attached as **Exhibit A** and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 3082. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his 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 own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his 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.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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1 CULPABILITY

2 8. Respondent admits the truth of each and every charge and allegation in
3 Accusation No. 3082.

4 9. Respondent agrees that his Pharmacist License is subject to discipline and
5 he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order
6 below.

7 CONTINGENCY

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

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

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

23 DISCIPLINARY ORDER

24 IT IS HEREBY ORDERED that Pharmacist License No. RPH 37204 issued to
25 Respondent David Jue Fong (Respondent) is revoked. However, the revocation is stayed and
26 Respondent is placed on probation for **three (3) years** on the following terms and conditions.

27 1. **Actual Suspension - Pharmacist.** License number RPH 37204, issued to
28 Respondent David Jue Fong is suspended for a period of **thirty (30) days**.

1 During suspension, Respondent shall not enter any pharmacy area or any portion
2 of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other
3 distributor of drugs which is licensed by the Board, or any manufacturer, or where dangerous
4 drugs and devices or controlled substances are maintained. Respondent shall not practice
5 pharmacy nor do any act involving drug selection, selection of stock, manufacturing,
6 compounding, dispensing or patient consultation; nor shall Respondent manage, administer, or be
7 a consultant to any licensee of the Board, or have access to or control the ordering,
8 manufacturing or dispensing of dangerous drugs and devices or controlled substances.

9 Respondent shall not engage in any activity that requires the professional judgment
10 of a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy.
11 Respondent shall not perform the duties of a pharmacy technician or an exemptee for any entity
12 licensed by the Board.

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

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

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

27 7. **Reporting to the Board.** Respondent shall report to the Board
28 quarterly. The report shall be made either in person or in writing, as directed. Respondent shall

1 state under penalty of perjury whether there has been compliance with all the terms and
2 conditions of probation. If the final probation report is **not** made as directed, probation shall
3 be extended automatically until such time as the final report is made and accepted by the
4 Board.

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

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

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

15 **11. Notice to Employers.** Respondent shall notify all present and
16 prospective employers of the decision in case number 3082 and the terms, conditions and
17 restrictions imposed on Respondent by the decision. Within 30 days of the effective date of
18 this decision, and within 15 days of Respondent undertaking new employment, Respondent
19 shall cause his direct supervisor, pharmacist-in-charge and/or owner to report to the Board in
20 writing acknowledging the employer has read the decision in case number 3082.

21 If Respondent works for or is employed by or through a pharmacy employment
22 service, Respondent must notify the direct supervisor, pharmacist-in-charge, and/or owner at
23 every pharmacy of the and terms conditions of the decision in case number 3082 in advance of
24 the Respondent commencing work at each pharmacy.

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

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

6 13. **Reimbursement of Board Costs.** Respondent shall pay to the Board
7 its costs of investigation and prosecution of Accusation Number 3082 against Respondent and
8 Accusation Number 3086 against Cathay Medical Pharmacy, Inc., dba Cathay Medical
9 Pharmacy, PHY 22806 and Cathay Medical Pharmacy, Inc. d.b.a. College Pharmacy, PHY
10 36574 in the amount of \$23,450.50. Respondent, Cathay Medical Pharmacy, Inc., dba Cathay
11 Medical Pharmacy, PHY 22806, and Cathay Medical Pharmacy, Inc. d.b.a. College Pharmacy,
12 PHY 36574 shall be jointly responsible for payment of said costs. Respondent shall be
13 permitted to pay these costs in a payment plan approved by the Board of Pharmacy, with
14 payments to be completed no later than eighteen (18) months prior to the end of the probation
15 term.

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

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

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

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

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1 16. **License Surrender while on Probation/Suspension.** Following the
2 effective date of this decision, should Respondent cease practice due to retirement or health, or
3 be otherwise unable to satisfy the terms and conditions of probation, Respondent may tender
4 his license to the Board for surrender. The Board shall have the discretion whether to grant
5 the request for surrender or take any other action it deems appropriate and reasonable. Upon
6 formal acceptance of the surrender of the license, Respondent will no longer be subject to the
7 terms and conditions of probation.

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

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

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

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

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

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

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

14 21. **Community Services Program.** Within 60 days of the effective date of
15 this decision, Respondent shall submit to the Board, for its prior approval, a community service
16 program in which Respondent shall provide free health-care related services on a regular basis
17 to a community or charitable facility or agency for at least **three hundred (300)** hours during
18 the period of probation.

19 Within thirty (30) days of Board approval thereof, Respondent shall submit
20 documentation to the Board demonstrating commencement of the community service program.
21 A record of this notification must be provided to the Board upon request. Respondent shall
22 report on progress with the community service program in the quarterly reports. Failure to
23 timely submit, commence, or comply with the program shall be considered a violation of
24 probation.

25 22. **Ethics Course.** Within sixty (60) calendar days of the effective date of
26 this decision, Respondent shall enroll in a course in ethics, at Respondent's expense, approved
27 in advance by the Board or its designee. Failure to initiate the course during the first year of
28 probation, and complete it within the second year of probation, is a violation of probation.

Respondent shall submit a certificate of completion to the Board or its designee within five (5) days after completing the course.

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

24. **Tolling of Suspension.** If Respondent leaves California to reside or practice outside this state, for any period exceeding 10 days (including vacation), Respondent must notify the Board in writing of the dates of departure and return. Periods of residency or practice outside the state - or any absence exceeding a period of 10 days shall not apply to the reduction of the suspension period.

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

ACCEPTANCE

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

DATED: 2/23/09

Faxed signature attached
DAVID JUE FONG
Respondent

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///

///

Respondent shall submit a certificate of completion to the Board or its designee within five (5) days after completing the course.

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


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

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DATED: 2/23/09


DAVID JUE FONG
Respondent

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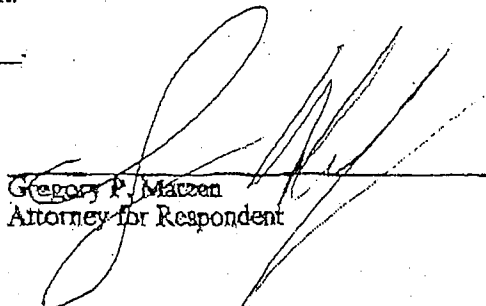
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fong stip.wpd

1 I have read and fully discussed with Respondent David Jue Fong the terms and
2 conditions and other matters contained in the above Stipulated Settlement and Disciplinary
3 Order. I approve its form and content.

4 DATED: 2/23/09


Gregory P. Maczen
Attorney for Respondent


ENDORSEMENT

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

12
13 DATED: 2/23/09

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

16 GREGORY J. SALUTE
17 Supervising Deputy Attorney General

18 
19 NANCY A. KAISER
20 Deputy Attorney General

21 Attorneys for Complainant
22
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Exhibit A

Accusation No. 3082

1 EDMUND G. BROWN JR. Attorney General
of the State of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 NANCY A. KAISER, State Bar No. 192083
Deputy Attorney General
4 California Department of Justice
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
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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. 3082

13 **DAVID JUE FONG**
502 S. Almansor St.
Alhambra, CA 91801

A C C U S A T I O N

14 **Pharmacist License No. RPH 37204**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about August 26, 1982, the Board of Pharmacy issued Pharmacist
22 License Number RPH 37204 to David Jue Fong (Respondent). The Pharmacist License was in
23 full force and effect at all times relevant to the charges brought herein and will expire on
24 September 30, 2009, unless renewed. Respondent is the Pharmacist-in-Charge of Cathay
25 Medical Pharmacy, Inc. dba Cathay Medical Pharmacy, Pharmacy Permit No. PHY 36574,
26 located at 626 W. College Street, Los Angeles, California.

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JURISDICTION

3. 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.

4. Section 118, subdivision (b), of the Code provides 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.

5. Section 4300, subdivision (a) of the Code states: "Every license issued may be suspended or revoked."

6. Code section 477, subdivision (b), states that "'License' includes certificate, registration or other means to engage in a business or profession regulated by this code."

7. Section 480, subdivision (a)(2), provides that a board may deny a license if the applicant has committed dishonest, fraudulent, or deceitful acts with the intent to substantially benefit himself.

8. Section 810 of the Code states:

(a) It shall constitute unprofessional conduct and grounds for disciplinary action, including suspension or revocation of a license or certificate, for a health care professional to do any of the following in connection with his or her professional activities:

....

(2) Knowingly prepare, make, or subscribe any writing, with intent to present or use the same, or to allow it to be presented or used in support of any false or fraudulent claim.

9. Section 4301 of the Code states:

The board shall take action against any holder of a license who is guilty of unprofessional conduct. . . . Unprofessional conduct shall include, but is not limited to, any of the following:

....

///

1 (f) The commission of any act involving moral turpitude, dishonesty,
2 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.

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

5
6 (p) Actions or conduct that would have warranted denial of a license.

7 COST RECOVERY

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

12 BACKGROUND

13 11. Cathay Medical Industries, Inc., owns Cathay Medical Pharmacy,
14 Pharmacy Permit No. PHY 22806, and College Pharmacy, Pharmacy Permit No. PHY 36574.
15 Cathay Medical Industries, Inc., is owned by Henry Fong (75%) and Gerald Wu (25%). Henry
16 Fong is the Pharmacist-In-Charge of College Pharmacy, and Henry Fong's son, David Fong, is
17 the Pharmacist-In-Charge of Cathay Medical Pharmacy.

18 12. Easy Returns Worldwide, Inc. (ERW) was a reverse distributor of
19 pharmaceuticals. ERW returned expired drugs to the appropriate manufacturers for credit to its
20 client pharmacies who purchased the drugs. ERW usually charged the pharmacies a 5-10% fee
21 for said returns, which was based on the expected credits that the manufacturer would give to the
22 pharmacies. Most manufacturers required the return of the actual products from ERW's retail
23 pharmacies in order to give them credit.

24 13. In a criminal proceeding entitled *United States of America v. Richard J.*
25 *Drury*, United States District Court, Eastern District of Missouri, Case No. S1-4:05 CR 33 ERW,
26 Richard Drury, a corporate officer of ERW (Drury), was indicted, found guilty, and convicted of
27 four counts of mail fraud for defrauding drug manufacturers by making false claims with
28 pharmacies in connection with returned drugs. Pursuant to Drury's Indictment, between August

1 2000 and January 2002, Drury devised and participated in a scheme to create fraudulent returns
2 of expired drugs to pharmaceutical manufacturers on behalf of pharmacies that had not purchased
3 them with the false assertion that the pharmacies had purchased the drugs. This scheme caused
4 the manufacturers to credit various pharmacies for returns that did not belong to them. The
5 pharmacies paid approximately a 33% fee to Drury and ERW for the false returns credited to
6 them.

7 14. David Fong agreed with ERW to participate in its fraudulent scheme in
8 order to obtain easy profits for his family business. ERW returned dangerous drugs in November
9 and December of 2000 under both Cathay Medical Pharmacy's and College Pharmacy's
10 pharmacy permits and federal Drug Enforcement Administration (DEA) numbers, even though
11 the returned drugs did not belong to either pharmacy. Based on the amount of the false returns
12 on behalf of the two pharmacies, the Board investigator estimated that Respondent gained
13 approximately \$14,000 for College Pharmacy and approximately \$19,000 for Cathay Medical
14 Pharmacy by participating in ERW's fraudulent scheme.

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(Unprofessional Conduct / Commission of Fraudulent, Deceitful Acts)**

17 15. Respondent is subject to disciplinary action under Code section 4301,
18 subdivision (f), for committing fraudulent and deceitful acts constituting unprofessional conduct.
19 In or about the year 2000, through ERW, a reverse distributor, Respondent presented false claims
20 to drug manufacturers regarding returned drugs in order to obtain unearned financial benefit.
21 Respondent's involvement in the fraudulent scheme is more fully described in paragraphs 11
22 through 14, above.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(Knowingly Creating a Document Containing Factual Misrepresentations)**

25 16. Respondent is subject to disciplinary action under Code section 4301,
26 subdivision (g), for knowingly creating documents containing factual misrepresentations, thus
27 constituting unprofessional conduct. In or about the year 2000, Respondent presented claims
28 through ERW to drug manufacturers that contained factual misrepresentations regarding

1 allegedly returned drugs in order to obtain unearned financial benefit. Respondent's involvement
2 in the fraudulent scheme is more fully described in paragraphs 11 through 15, above.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct / Commission of Acts That**
5 **Would Have Warranted the Denial of a License)**

6 17. Respondent is subject to disciplinary action under Code sections 480 and
7 4301, subdivision (p), for engaging in unprofessional conduct, specifically, for committing acts
8 that would have warranted the denial of a license. Section 480, subdivision (a)(2) provides that a
9 board may deny a license if the applicant has committed dishonest acts in order to benefit himself
10 financially. In or about the year 2000, Respondent presented false claims through ERW
11 regarding allegedly returned drugs in order to obtain unearned financial benefit, thus constituting
12 a valid ground for license denial under section 480 and constituting unprofessional conduct and a
13 cause for discipline under section 4301, subdivision (p). Respondent's involvement in the
14 fraudulent scheme is more fully described in paragraphs 11 through 16, above.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 **(Unprofessional Acts and Omissions Involving the Exercise of**
17 **Pharmaceutical Education, Training, and Experience)**

18 18. Respondent is subject to disciplinary action under Code section 4306.5 for
19 committing unprofessional acts involving the exercise of professional pharmaceutical education,
20 training, and experience. In or about the year 2000, Respondent fraudulently committed
21 unprofessional acts when he presented false claims through ERW regarding allegedly returned
22 drugs in order to obtain unearned financial benefit. The process of preparing false claims
23 through ERW, and the utilization of a pharmaceutical specialty company, namely ERW, to
24 process these claims, utilized specialized knowledge, which Respondent had gained through his
25 pharmaceutical education, training, and experience, constituting unprofessional conduct and a
26 cause for discipline under section 4306.5. Respondent's involvement in the fraudulent scheme is
27 more fully described in paragraphs 11 through 17, above.

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1 FIFTH CAUSE FOR DISCIPLINE

2 (Preparing and Presenting False Claims for Payment)

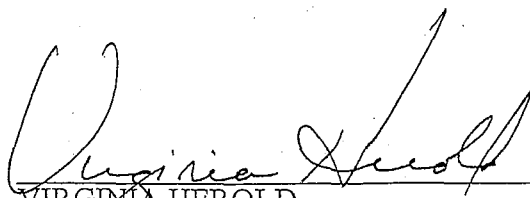
3 19. Respondent is subject to disciplinary action under section 810, subdivision
4 (a)(2) for preparing and presenting false claims for payment, which constitutes a specifically
5 identified form of unprofessional conduct. In or about the year 2000, Respondent fraudulently
6 presented false claims through ERW regarding allegedly returned drugs in order to obtain
7 unearned financial benefit. Respondent's involvement in the fraudulent scheme is more fully
8 described in paragraphs 11 through 19, above.

9 PRAYER

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

- 12 1. Revoking or suspending Pharmacist License Number RPH 37204, issued
13 to Respondent;
- 14 2. Ordering Respondent to pay the Board of Pharmacy the reasonable costs of
15 the investigation and enforcement of this case, pursuant to Business and Professions Code
16 section 125.3; and
- 17 3. Taking such other and further action as deemed necessary and proper.

18
19 DATED: 7/22/08

20
21 
22 VIRGINIA HEROLD
23 Executive Officer
24 Board of Pharmacy
25 Department of Consumer Affairs
26 State of California
27 Complainant
28