

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

Note: The caption of this Decision page was amended on September 8, 2010 to correct an error in the identifying information for licensee College Pharmacy.

In the Matter of the Accusation Against:

Case No. 3086

**CATHAY MEDICAL INC.
d.b.a. COLLEGE PHARMACY**
HENRY FONG, Pharmacist-in-Charge
626 W. College Street
Los Angeles, CA 90012
Pharmacy Permit No. PHY 36574

and

**CATHAY MEDICAL INC.
d.b.a. CATHAY MEDICAL PHARMACY**
DAVID FONG, Pharmacist-in-Charge
711 W. College Street
Los Angeles, CA 90012
Pharmacy Permit No. PHY 22806

Respondents.


The attached Stipulated Settlement and Disciplinary Order re Cathay Medical Inc., d.b.a. College Pharmacy 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

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

In the Matter of the Accusation Against:

Case No. 3086

CATHAY MEDICAL INC.
d.b.a. COLLEGE PHARMACY
HENRY FONG, Pharmacist-in-Charge
626 W. College Street
Los Angeles, CA 90012
Pharmacy Permit No. PHY 37204

and

CATHAY MEDICAL INC.
d.b.a. CATHAY MEDICAL PHARMACY
DAVID FONG, Pharmacist-in-Charge
711 W. College Street
Los Angeles, CA 90012
Pharmacy Permit No. PHY 22806

Respondents.

DECISION AND ORDER

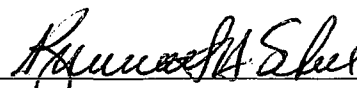
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BOARD OF PHARMACY
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By


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
4 300 So. Spring Street, Suite 1702
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5 Telephone: (213) 897-5794
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6

7 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

12 **CATHAY MEDICAL INC.**
13 **d.b.a. COLLEGE PHARMACY**
HENRY FONG, Pharmacist-in-Charge
626 W. College St.
14 Los Angeles, CA 90012

15 **Pharmacy Permit No. PHY 36574**

16 and

17 **CATHAY MEDICAL INC.**
18 **d.b.a. CATHAY MEDICAL PHARMACY**
DAVID FONG, Pharmacist-in-Charge
711 W. College St.
19 Los Angeles, CA 90012

20 **Pharmacy Permit No. PHY 22806**

21 Respondent.
22

Case No. 3086

OAH No. 2008090578

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER
RE CATHAY MEDICAL INC.
d.b.a. COLLEGE PHARMACY

23 In the interest of a prompt and speedy settlement of this matter, consistent with the
24 public interest and the responsibility of the Board of Pharmacy the parties hereby agree to the
25 following Stipulated Settlement and Disciplinary Order which will be submitted to the Board for
26 approval and adoption as the final disposition of the Accusation solely with respect to Cathay
27 Medical Inc., dba, College Pharmacy. It does not apply to Cathay Medical Inc., dba Cathay
28 Medical Pharmacy.

1 PARTIES

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

6 2. On or about June 25, 1990, the Board of Pharmacy issued Pharmacy
7 Permit No. PHY 36574 to Cathay Medical Inc. d.b.a. College Pharmacy (Respondent). The
8 Pharmacy Permit was in full force and effect at all times relevant to the charges brought in
9 Accusation No. 3086 and will expire on June 1, 2009, unless renewed.

10 3. Respondent is represented in this proceeding by attorney Gregory P.
11 Matzen, whose address is Lewis Brisbois Bisgaard & Smith LLP - Sacramento, 2500 Venture
12 Oaks Way, Suite 200, Sacramento, CA 95833.

13 JURISDICTION

14 4. Accusation No. 3086 was filed before the Board of Pharmacy, and is
15 currently pending against Respondent. The Accusation and all other statutorily required
16 documents were properly served on Respondent on August 5, 2008. Respondent timely filed its
17 Notice of Defense contesting the Accusation. A copy of Accusation No. 3086 is attached as
18 exhibit A and incorporated herein by reference.

19 ADVISEMENT AND WAIVERS

20 5. Respondent has carefully read, fully discussed with counsel, and
21 understands the charges and allegations in Accusation No. 3086. Respondent has also carefully
22 read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and
23 Disciplinary Order.

24 6. Respondent is fully aware of its legal rights in this matter, including the
25 right to a hearing on the charges and allegations in the Accusation; the right to be represented by
26 counsel at its own expense; the right to confront and cross-examine the witnesses against them;
27 the right to present evidence and to testify on its own behalf; the right to the issuance of
28 subpoenas to compel the attendance of witnesses and the production of documents; the right to

1 reconsideration and court review of an adverse decision; and all other rights accorded by the
2 California Administrative Procedure Act and other applicable laws.

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

5 CULPABILITY

6 8. Respondent admits the truth of each and every charge and allegation in
7 Accusation No. 3086.

8 9. Respondent agrees that its Pharmacy Permit is subject to discipline and
9 they agree to be bound by the Board's imposition of discipline as set forth in the Disciplinary
10 Order below.

11 CONTINGENCY

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

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

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

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agency which involves Respondent's license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling or distribution or billing or charging for any drug, device or controlled substance.

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

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

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

10. **Reimbursement of Board Costs.** Respondent shall pay to the Board its costs of investigation and prosecution of Accusation Number 3086 against Respondent and Cathay Medical Pharmacy, Inc., dba Cathay Medical Pharmacy, PHY 22806 and Accusation Number 3082 against David Jue Fong, Pharmacist License No. RPH 37204, in the amount of \$23,450.50. Respondent, Cathay Medical Pharmacy, Inc., dba Cathay Medical Pharmacy, PHY 22806, and David Jue Fong, Pharmacist License No. RPH 37204, shall be jointly responsible for payment of said costs. Respondent shall be permitted to pay these costs in a payment plan approved by the Board of Pharmacy, with payments to be completed no later than six (6) months prior to the end of the probation term.

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

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

7 12. **Status of License.**¹ Respondent shall, at all times while on probation,
8 maintain an active current license with the Board, including any period during which
9 suspension or probation is tolled.

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

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

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

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¹As used in this stipulation, "license" includes pharmacy permit.

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

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

12 15. **Owners and Officers: Knowledge of the Law.** Respondent shall
13 provide, within 30 days after the effective date of this decision, signed and dated statements
14 from its owners, including any owner or holder of 10% or more of the interest in Respondent
15 or Respondent's stock, and any officer, stating said individuals have read and are familiar with
16 state and federal laws and regulations governing the practice of pharmacy.

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

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

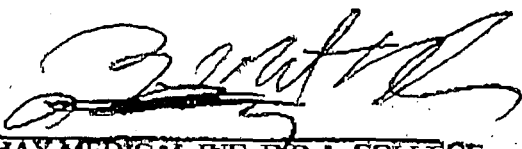
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1 17. **Completion of Probation.** Upon successful completion of probation,
2 Respondent's license will be fully restored.

3 **ACCEPTANCE**

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

9 DATED: 2/23/09

10
11 
12 CATHAY MEDICAL INC. D.B.A. COLLEGE
13 PHARMACY

14 Respondent GILBERT WU, SECRETARY
15 CATHAY MEDICAL INDUSTRIES

16 I have read and fully discussed with Respondent Cathay Medical Inc. d.b.a.
17 College Pharmacy the terms and conditions and other matters contained in the above Stipulated
18 Settlement and Disciplinary Order. I approve its form and content.

19 DATED: 2/23/09

20 
21 GREGORY P. MATZEN
22 Attorney for Respondent

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1 ENDORSEMENT

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

4
5 DATED: 2/23/09

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

8 GREGORY J. SALUTE
9 Supervising Deputy Attorney General

10 
11 NANCY A. KAISER
12 Deputy Attorney General
13 Attorneys for Complainant

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DOJ Matter ID: LA2007600852

Exhibit A
Accusation No. 3086

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
Telephone: (213) 897-5794
6 Facsimile: (213) 897-2804
7 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 3086

13 **CATHAY MEDICAL INC.**
d.b.a. COLLEGE PHARMACY
HENRY FONG, Pharmacist-in-Charge
626 W. College St.
14 Los Angeles, CA 90012

A C C U S A T I O N

15 **Pharmacy Permit No. PHY 36574**

16 and

17 **CATHAY MEDICAL INC.**
d.b.a. CATHAY MEDICAL PHARMACY
DAVID FONG, Pharmacist-in-Charge
711 W. College St.
18 Los Angeles, CA 90012

19 **Pharmacy Permit No. PHY 22806**

20 Respondent.

21
22
23 Complainant alleges:

24 **PARTIES**

- 25 1. Virginia Herold (Complainant) brings this Accusation solely in her official
26 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
27 2. On or about March 1, 1983, the Board of Pharmacy (Board) issued
28 Pharmacy Permit No. PHY 22806 to Cathay Medical Inc. d.b.a. Cathay Medical Pharmacy

1 Pharmacy Permit No. PHY 22806 to Cathay Medical Inc. d.b.a. Cathay Medical Pharmacy
2 (Respondent). The Pharmacy Permit was in full force and effect at all times relevant to the
3 charges brought herein and will expire on March 1, 2009, unless renewed.

4 3. On or about June 25, 1990, the Board issued Pharmacy Permit No. PHY
5 36574 to Cathay Medical Inc. d.b.a. College Pharmacy (Respondent). The Pharmacy Permit was
6 in full force and effect at all times relevant to the charges brought herein and will expire on June
7 1, 2009, unless renewed.

8 JURISDICTION

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

12 5. Code section 4300, subdivision (a), states that "[e]very license issued may
13 be suspended or revoked."

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

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

20 8. Section 810 of the Code states:

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

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

28 9. Code section 4301 states:

The board shall take action against any holder of a license who is guilty of

1 is not limited to, any of the following:

2
3 (f) The commission of any act involving moral turpitude, dishonesty,
4 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.

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

7
8 (p) Actions or conduct that would have warranted denial of a license.

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

13 COST RECOVERY

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

18 BACKGROUND

19 12. Cathay Medical Industries, Inc., owns Cathay Medical Pharmacy,
20 Pharmacy Permit No. PHY 22806, and College Pharmacy, Pharmacy Permit No. PHY 36574.
21 Cathay Medical Industries, Inc., is owned by Henry Fong (75%) and *Gerald* Wu (25%). Henry
22 Fong is the Pharmacist-In-Charge of College Pharmacy, and Henry Fong's son, David Fong, is
23 the Pharmacist-In-Charge of Cathay Medical Pharmacy.

24 13. Easy Returns Worldwide, Inc. (ERW) was a reverse distributor of
25 pharmaceuticals. ERW returned expired drugs to the appropriate manufacturers for credit to its
26 client pharmacies who purchased the drugs. ERW usually charged the pharmacies a 5-10% fee
27 for said returns, which was based on the expected credits that the manufacturer would give to the
28 pharmacies. Most manufacturers required the return of the actual products from ERW's retail

1 pharmacies in order to give them credit.

2 14. In a criminal proceeding entitled *United States of America v. Richard J.*
3 *Drury*, United States District Court, Eastern District of Missouri, Case No. S1-4:05 CR 33 ERW,
4 Richard Drury, a corporate officer of ERW (Drury), was indicted, found guilty, and convicted of
5 four counts of mail fraud for defrauding drug manufacturers by making false claims with
6 pharmacies in connection with returned drugs. Pursuant to Drury's Indictment, between August
7 2000 and January 2002, Drury devised and participated in a scheme to create fraudulent returns
8 of expired drugs to pharmaceutical manufacturers on behalf of pharmacies that had not purchased
9 them with the false assertion that the pharmacies had purchased the drugs. This scheme caused
10 the manufacturers to credit various pharmacies for returns that did not belong to them. The
11 pharmacies paid approximately a 33% fee to Drury and ERW for the false returns credited to
12 them.

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

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(False Claim for Pharmaceutical Refund)**

23 16. Respondent is subject to disciplinary action under Code section 4301,
24 subdivision (f), for committing fraudulent and deceitful acts constituting unprofessional conduct.
25 In or about the year 2000, Respondent presented false claims for rebates to pharmaceutical
26 manufacturers through ERW in order to obtain unearned financial benefit. The false claims
27 provided that Respondent returned specified drugs, which were expired or otherwise unusable,
28 to ERW, when, in fact, Respondent had never owned nor possessed these drugs. Respondent's

1 involvement in the fraudulent scheme is more fully described in paragraphs 11 through 15,
2 above.

3 **SECOND CAUSE FOR DISCIPLINE**

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

5 17. Respondent is subject to disciplinary action under Code section 4301,
6 subdivision (g), for knowingly creating documents containing factual misrepresentations through
7 ERW, thus constituting unprofessional conduct. Specifically, in or about the year 2000,
8 Respondent through ERW created documents that falsely represented to drug manufacturers that
9 Respondent returned specified drugs to ERW, which in fact, Respondent had not. Respondent's
10 involvement in the fraudulent scheme is more fully described in paragraphs 11 through 16,
11 above.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct)**

14 18. Respondent is subject to disciplinary action under Code sections 480 and
15 4301, subdivision (p), for engaging in unprofessional conduct, specifically, for committing acts
16 that would have warranted the denial of a license. Section 480, subdivision (a)(2) provides that a
17 board may deny a license if the applicant has committed dishonest acts in order to benefit himself
18 financially. In or about the year 2000, Respondent presented false claims through ERW
19 regarding allegedly returned drugs in order to obtain unearned financial benefit, thus constituting
20 a valid ground for license denial under section 480 and constituting unprofessional conduct and a
21 cause for discipline under section 4301, subdivision (p). Respondent's involvement in the
22 fraudulent scheme is more fully described in paragraphs 11 through 17, above.

23 **FOURTH CAUSE FOR DISCIPLINE**

24 **(Preparing and Presenting False Claims for Payment)**

25 19. Respondent is subject to disciplinary action under Code section 810,
26 subdivision (a)(2), for preparing and presenting false claims for payment, which constitutes a
27 specifically identified form of unprofessional conduct. In or about the year 2000, Respondent
28 fraudulently presented false claims through ERW regarding allegedly returned drugs in order to

1 obtain unearned financial benefit. Respondent's involvement in the fraudulent scheme is more
2 fully described in paragraphs 11 through 18, above.

3 **PRAYER**

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

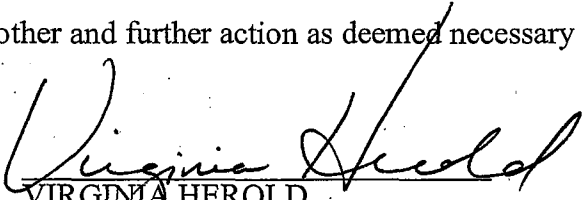
6 A. Revoking or suspending Pharmacy Permit No. PHY 36574, issued to
7 Cathay Medical Inc. d.b.a. College Pharmacy;

8 B. Revoking or suspending Pharmacy Permit No. PHY 22806, issued to
9 Cathay Medical Inc. d.b.a. Cathay Medical Pharmacy;

10 C. Ordering Cathay Medical Inc. to pay the Board of Pharmacy the
11 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
12 Professions Code section 125.3; and,

13 D. Taking such other and further action as deemed necessary and proper.

14 DATED: 7/22/08

15 
16 VIRGINIA HEROLD
17 Executive Officer
18 Board of Pharmacy
19 Department of Consumer Affairs
20 State of California
21 Complainant
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