

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

In the Matter of the Accusation Against:

Case No. 4600

**YUMON KWOCK
5158 Blackberry Lane
Eureka, CA 95503
Pharmacist License No. RPH 28573**

Respondent.

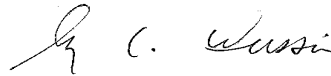
DECISION AND ORDER

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 May 6, 2015.

It is so ORDERED on April 29, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER, Board President

1 KAMALA D. HARRIS
Attorney General of California
2 JOSHUA A. ROOM
Supervising Deputy Attorney General
3 MARETTA WARD
Deputy Attorney General
4 State Bar No. 176470
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1384
6 Facsimile: (415) 703-5480
Attorneys for Complainant

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

10 In the Matter of the Accusation Against:
11 **YUMON KWOCK**
12 **5185 Blackberry Lane**
13 **Eureka, CA 95503**
Pharmacist License No. RPH 28573
14 Respondent.

Case No. 4600
**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15
16 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to the above-
17 entitled proceedings that the following matters are true:

18 **PARTIES**

- 19
20 1. Virginia Herold ("Complainant") is the Executive Officer of the Board of Pharmacy.
21 She brought this action solely in her official capacity and is represented in this matter by Kamala
22 D. Harris, Attorney General of the State of California, by Maretta Ward, Deputy Attorney
23 General.
24 2. Respondent Yumon Kwok ("Respondent") is represented in this proceeding by
25 attorney Jon-Paul Valcarenghi, Esq., whose address is: 2530 J Street, Suite 320
26 Sacramento, CA 95816
27 3. On or about October 24, 1973, the Board of Pharmacy issued Pharmacist License No.
28 RPH 28573 to Yumon Kwok (Respondent). The Pharmacist License was in full force and effect

1 at all times relevant to the charges brought in Accusation No. 4600 and will expire on May 31,
2 2016, unless renewed.

3 **JURISDICTION**

4 4. Accusation No. 4600 was filed before the Board of Pharmacy (Board), Department of
5 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other
6 statutorily required documents were properly served on Respondent on June 3, 2014. Respondent
7 timely filed his Notice of Defense contesting the Accusation.

8 5. A copy of Accusation No. 4600 is attached as exhibit A and incorporated herein by
9 reference.

10 **ADVISEMENT AND WAIVERS**

11 6. Respondent has carefully read, fully discussed with counsel, and understands the
12 charges and allegations in Accusation No. 4600. Respondent has also carefully read, fully
13 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
14 Order.

15 7. Respondent is fully aware of his legal rights in this matter, including the right to a
16 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
17 his own expense; the right to confront and cross-examine the witnesses against him; the right to
18 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
19 the attendance of witnesses and the production of documents; the right to reconsideration and
20 court review of an adverse decision; and all other rights accorded by the California
21 Administrative Procedure Act and other applicable laws.

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

24 **CULPABILITY**

25 9. Respondent admits the truth of each and every charge and allegation in Accusation
26 No. 4600.

27 10. Respondent agrees that his Pharmacist License is subject to discipline and he agrees
28 to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

1 CONTINGENCY

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

11 12. The parties understand and agree that Portable Document Format (PDF) and facsimile
12 copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format
13 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

14 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
15 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
16 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
17 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
18 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
19 writing executed by an authorized representative of each of the parties.

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

23 DISCIPLINARY ORDER

24 **IT IS HEREBY ORDERED** that Pharmacist License No. RPH 28573 issued to
25 Respondent Yumon Kwock (Respondent) is revoked. However, the revocation is stayed and
26 Respondent is placed on probation for five (5) years on the following terms and conditions.

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1. Suspension

As part of probation, respondent is suspended from the practice of pharmacy for sixty (60) days beginning the effective date of this decision.

Upon timely provision of documentation by Respondent showing to the satisfaction of the board or its designee that at any time since May 1, 2012, Respondent has not worked as a pharmacist because he was (a) resident in an in-patient treatment program for alcohol and/or drug abuse, or (b) suspended or otherwise prohibited from working as a pharmacist at the direction of the Pharmacists Recovery Program, Respondent may receive credit against this suspension period for such documented period(s) of non-work.

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

Respondent shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a designated representative for any entity licensed by the board.

Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which he holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

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2. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the board, in writing, within seventy-two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacist license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report such occurrence shall be considered a violation of probation.

3. Report to the Board

Respondent shall report to the board quarterly, on a schedule as directed by the board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form 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. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the board.

4. Interview with the Board

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the board or its designee, at such intervals and locations as are determined by the board or its designee. Failure to appear for any scheduled interview without prior notification to board staff,

1 or failure to appear for two (2) or more scheduled interviews with the board or its designee during
2 the period of probation, shall be considered a violation of probation.

3 **5. Cooperate with Board Staff**

4 Respondent shall cooperate with the board's inspection program and with the board's
5 monitoring and investigation of respondent's compliance with the terms and conditions of his
6 probation. Failure to cooperate shall be considered a violation of probation.

7 **6. Continuing Education**

8 Respondent shall provide evidence of efforts to maintain skill and knowledge as a
9 pharmacist as directed by the board or its designee.

10 **7. Notice to Employers**

11 During the period of probation, respondent shall notify all present and prospective
12 employers of the decision in case number 4600 and the terms, conditions and restrictions imposed
13 on respondent by the decision, as follows:

14 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
15 respondent undertaking any new employment, respondent shall cause his direct supervisor,
16 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's
17 tenure of employment) and owner to report to the board in writing acknowledging that the listed
18 individual(s) has/have read the decision in case number 4600, and terms and conditions imposed
19 thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s)
20 submit timely acknowledgment(s) to the board.

21 If respondent works for or is employed by or through a pharmacy employment service,
22 respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity
23 licensed by the board of the terms and conditions of the decision in case number 4600 in advance
24 of the respondent commencing work at each licensed entity. A record of this notification must be
25 provided to the board upon request.

26 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
27 (15) days of respondent undertaking any new employment by or through a pharmacy employment
28 service, respondent shall cause his direct supervisor with the pharmacy employment service to

1 report to the board in writing acknowledging that he has read the decision in case number 4600
2 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure
3 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

4 Failure to timely notify present or prospective employer(s) or to cause that/those
5 employer(s) to submit timely acknowledgments to the board shall be considered a violation of
6 probation.

7 "Employment" within the meaning of this provision shall include any full-time,
8 part-time, temporary, relief or pharmacy management service as a pharmacist or any
9 position for which a pharmacist license is a requirement or criterion for employment,
10 whether the respondent is an employee, independent contractor or volunteer.

11 **8. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as**
12 **Designated Representative-in-Charge, or Serving as a Consultant**

13 During the period of probation, respondent shall not supervise any intern pharmacist, be the
14 pharmacist-in-charge or designated representative-in-charge of any entity licensed by the board
15 nor serve as a consultant unless otherwise specified in this order. Assumption of any such
16 unauthorized supervision responsibilities shall be considered a violation of probation.

17 **9. Reimbursement of Board Costs**

18 As a condition precedent to successful completion of probation, respondent shall pay to the
19 board its costs of investigation and prosecution in the amount of \$11,749.00. Respondent shall
20 make said payments on a payment plan approved by the Board or its designee.

21 There shall be no deviation from this schedule absent prior written approval by the board or
22 its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of
23 probation.

24 The filing of bankruptcy by respondent shall not relieve respondent of his responsibility to
25 reimburse the board its costs of investigation and prosecution.

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1 **10. Probation Monitoring Costs**

2 Respondent shall pay any costs associated with probation monitoring as determined by the
3 board each and every year of probation. Such costs shall be payable to the board on a schedule as
4 directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall
5 be considered a violation of probation.

6 **11. Status of License**

7 Respondent shall, at all times while on probation, maintain an active, current license with
8 the board, including any period during which suspension or probation is tolled. Failure to
9 maintain an active, current license shall be considered a violation of probation.

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

14 **12. License Surrender While on Probation/Suspension**

15 Following the effective date of this decision, should respondent cease practice due to
16 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
17 respondent may tender his license to the board for surrender. The board or its designee shall have
18 the discretion whether to grant the request for surrender or take any other action it deems
19 appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent
20 will no longer be subject to the terms and conditions of probation. This surrender constitutes a
21 record of discipline and shall become a part of the respondent's license history with the board.

22 Upon acceptance of the surrender, respondent shall relinquish his pocket and wall license to
23 the board within ten (10) days of notification by the board that the surrender is accepted.
24 Respondent may not reapply for any license from the board for three (3) years from the effective
25 date of the surrender. Respondent shall meet all requirements applicable to the license sought as
26 of the date the application for that license is submitted to the board, including any outstanding
27 costs.

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1 **13. Notification of a Change in Name, Residence Address, Mailing Address or**
2 **Employment**

3 Respondent shall notify the board in writing within ten (10) days of any change of
4 employment. Said notification shall include the reasons for leaving, the address of the new
5 employer, the name of the supervisor and owner, and the work schedule if known. Respondent
6 shall further notify the board in writing within ten (10) days of a change in name, residence
7 address, mailing address, or phone number.

8 Failure to timely notify the board of any change in employer(s), name(s), address(es), or
9 phone number(s) shall be considered a violation of probation.

10 **14. Tolling of Probation**

11 Except during periods of suspension, respondent shall, at all times while on probation, be
12 employed as a pharmacist in California for a minimum of 40 hours per calendar month. Any
13 month during which this minimum is not met shall toll the period of probation, i.e., the period of
14 probation shall be extended by one month for each month during which this minimum is not met.
15 During any such period of tolling of probation, respondent must nonetheless comply with all
16 terms and conditions of probation.

17 Should respondent, regardless of residency, for any reason (including vacation) cease
18 practicing as a pharmacist for a minimum of 40 hours per calendar month in California,
19 respondent must notify the board in writing within ten (10) days of the cessation of practice, and
20 must further notify the board in writing within ten (10) days of the resumption of practice. Any
21 failure to provide such notification(s) shall be considered a violation of probation.

22 It is a violation of probation for respondent's probation to remain tolled pursuant to the
23 provisions of this condition for a total period, counting consecutive and non-consecutive months,
24 exceeding thirty-six (36) months.

25 "Cessation of practice" means any calendar month during which respondent is
26 not practicing as a pharmacist for at least 40 hours, as defined by Business and
27 Professions Code section 4000 et seq . "Resumption of practice" means any calendar
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1 month during which respondent is practicing as a pharmacist for at least 40 hours as a
2 pharmacist as defined by Business and Professions Code section 4000 et seq.

3 **15. Violation of Probation**

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

9 If respondent violates probation in any respect, the board, after giving respondent notice
10 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
11 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a
12 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If
13 a petition to revoke probation or an accusation is filed against respondent during probation, the
14 board shall have continuing jurisdiction and the period of probation shall be automatically
15 extended until the petition to revoke probation or accusation is heard and decided.

16 **16. Completion of Probation**

17 Upon written notice by the board or its designee indicating successful completion of
18 probation, respondent's license will be fully restored.

19 **17. Pharmacists Recovery Program (PRP)**

20 Within thirty (30) days of the effective date of this decision, respondent shall contact the
21 Pharmacists Recovery Program (PRP) for evaluation, and shall immediately thereafter enroll,
22 successfully participate in, and complete the treatment contract and any subsequent addendums as
23 recommended and provided by the PRP and as approved by the board or its designee. The costs
24 for PRP participation shall be borne by the respondent.

25 If respondent is currently enrolled in the PRP, said participation is now mandatory and as of
26 the effective date of this decision is no longer considered a self-referral under Business and
27 Professions Code section 4362(c)(2). Respondent shall successfully participate in and complete
28 his current contract and any subsequent addendums with the PRP.

1 Failure to timely contact or enroll in the PRP, or successfully participate in and complete
2 the treatment contract and/or any addendums, shall be considered a violation of probation.

3 Probation shall be automatically extended until respondent successfully completes the PRP.
4 Any person terminated from the PRP program shall be automatically suspended by the board.
5 Respondent may not resume the practice of pharmacy until notified by the board in writing.

6 Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a
7 licensed practitioner as part of a documented medical treatment shall result in the automatic
8 suspension of practice by respondent and shall be considered a violation of probation.
9 Respondent may not resume the practice of pharmacy until notified by the board in writing.

10 During suspension, respondent shall not enter any pharmacy area or any portion of the
11 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
12 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices
13 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
14 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
15 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the
16 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
17 and controlled substances. Respondent shall not resume practice until notified by the board.

18 During suspension, respondent shall not engage in any activity that requires the
19 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
20 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
21 designated representative for any entity licensed by the board.

22 Subject to the above restrictions, respondent may continue to own or hold an interest in any
23 licensed premises in which he holds an interest at the time this decision becomes effective unless
24 otherwise specified in this order.

25 Failure to comply with this suspension shall be considered a violation of probation.

26 Respondent shall pay administrative fees as invoiced by the PRP or its designee. Fees not
27 timely paid to the PRP shall constitute a violation for probation. The board will collect unpaid
28 administrative fees as part of the annual probation monitoring costs if not submitted to the PRP.

1 Respondent shall work in a pharmacy setting with access to controlled substances for six
2 (6) consecutive months before successfully completing probation. If respondent fails to do so,
3 probation shall be automatically extended until this condition has been met. Failure to satisfy this
4 condition within six (6) months beyond the original date of expiration of the term of probation
5 shall be considered a violation of probation.

6 **18. Random Drug Screening**

7 Respondent, at his own expense, shall participate in random testing, including but not
8 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug
9 screening program as directed by the board or its designee. Respondent may be required to
10 participate in testing for the entire probation period and the frequency of testing will be
11 determined by the board or its designee. At all times, respondent shall fully cooperate with the
12 board or its designee, and shall, when directed, submit to such tests and samples for the detection
13 of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its
14 designee may direct. Failure to timely submit to testing as directed shall be considered a violation
15 of probation. Upon request of the board or its designee, respondent shall provide documentation
16 from a licensed practitioner that the prescription for a detected drug was legitimately issued and is
17 a necessary part of the treatment of the respondent. Failure to timely provide such documentation
18 shall be considered a violation of probation. Any confirmed positive test for alcohol or for any
19 drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment
20 shall be considered a violation of probation and shall result in the automatic suspension of
21 practice of pharmacy by respondent. Respondent may not resume the practice of pharmacy until
22 notified by the board in writing.

23 During suspension, respondent shall not enter any pharmacy area or any portion of the
24 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
25 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices
26 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
27 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
28 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the

1 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
2 and controlled substances. Respondent shall not resume practice until notified by the board.

3 During suspension, respondent shall not engage in any activity that requires the
4 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
5 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
6 designated representative for any entity licensed by the board.

7 Subject to the above restrictions, respondent may continue to own or hold an interest in any
8 licensed premises in which he holds an interest at the time this decision becomes effective unless
9 otherwise specified in this order.

10 Failure to comply with this suspension shall be considered a violation of probation.

11 **19. Abstain from Drugs and Alcohol Use**

12 Respondent shall completely abstain from the possession or use of alcohol, controlled
13 substances, dangerous drugs and their associated paraphernalia except when the drugs are
14 lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon
15 request of the board or its designee, respondent shall provide documentation from the licensed
16 practitioner that the prescription for the drug was legitimately issued and is a necessary part of the
17 treatment of the respondent. Failure to timely provide such documentation shall be considered a
18 violation of probation. Respondent shall ensure that he is not in the same physical location as
19 individuals who are using illicit substances even if respondent is not personally ingesting the
20 drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia
21 not supported by the documentation timely provided, and/or any physical proximity to persons
22 using illicit substances, shall be considered a violation of probation.

23 **20. Prescription Coordination and Monitoring of Prescription Use**

24 Within thirty (30) days of the effective date of this decision, respondent shall submit to the
25 board, for its prior approval, the name and qualifications of a single physician, nurse practitioner,
26 physician assistant, or psychiatrist of respondent's choice, who shall be aware of the respondent's
27 history [with the use of alcohol, controlled substances, and/or dangerous drugs, and/or of mental
28 illness, and/or of gambling addiction] and who will coordinate and monitor any prescriptions for

1 respondent for dangerous drugs, controlled substances or mood-altering drugs. The approved
2 practitioner shall be provided with a copy of the board's Accusation and decision. A record of
3 this notification must be provided to the board upon request. Respondent shall sign a release
4 authorizing the practitioner to communicate with the board about respondent's treatment(s). The
5 coordinating physician, nurse practitioner, physician assistant, or psychiatrist shall report to the
6 board on a quarterly basis for the duration of probation regarding respondent's compliance with
7 this condition. If any substances considered addictive have been prescribed, the report shall
8 identify a program for the time limited use of any such substances. The board may require that
9 the single coordinating physician, nurse practitioner, physician assistant or psychiatrist be a
10 specialist in addictive medicine, or consult a specialist in addictive medicine. Should respondent,
11 for any reason, cease supervision by the approved practitioner, respondent shall notify the board
12 immediately and, within thirty (30) days of ceasing treatment, submit the name of a replacement
13 physician, nurse practitioner, physician assistant, or psychiatrist of respondent's choice to the
14 board or its designee for its prior approval. Failure to timely submit the selected practitioner or
15 replacement practitioner to the board for approval, or to ensure the required reporting thereby on
16 the quarterly reports, shall be considered a violation of probation.

17 If at any time an approved practitioner determines that respondent is unable to practice
18 safely or independently as a pharmacist, the practitioner shall notify the board immediately by
19 telephone and follow up by written letter within three (3) working days. Upon notification from
20 the board or its designee of this determination, respondent shall be automatically suspended and
21 shall not resume practice until notified by the board that practice may be resumed.

22 During suspension, respondent shall not enter any pharmacy area or any portion of the
23 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
24 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices
25 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
26 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
27 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the
28 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs

1 and controlled substances. Respondent shall not resume practice until notified by the board.

2 During suspension, respondent shall not engage in any activity that requires the
3 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
4 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
5 designated representative for any entity licensed by the board.

6 Subject to the above restrictions, respondent may continue to own or hold an interest in any
7 licensed premises in which he holds an interest at the time this decision becomes effective unless
8 otherwise specified in this order.

9 Failure to comply with this suspension shall be considered a violation of probation.

10 **21. Community Services Program**

11 Within sixty (60) days of the effective date of this decision, respondent shall submit to the
12 board or its designee, for prior approval, a community service program in which respondent shall
13 provide free health-care related services on a regular basis to a community or charitable facility or
14 agency for at least 48 hours per year for the first three years of probation. Within thirty (30) days
15 of board approval thereof, respondent shall submit documentation to the board demonstrating
16 commencement of the community service program. A record of this notification must be
17 provided to the board upon request. Respondent shall report on progress with the community
18 service program in the quarterly reports. Failure to timely submit, commence, or comply with the
19 program shall be considered a violation of probation.

20 **22. Tolling of Suspension**

21 During the period of suspension, respondent shall not leave California for any period
22 exceeding ten (10) days, regardless of purpose (including vacation). Any such absence in excess
23 of the (10) days during suspension shall be considered a violation of probation. Moreover, any
24 absence from California during the period of suspension exceeding ten (10) days shall toll the
25 suspension, i.e., the suspension shall be extended by one day for each day over ten (10) days
26 respondent is absent from California. During any such period of tolling of suspension,
27 respondent must nonetheless comply with all terms and conditions of probation.

28 Respondent must notify the board in writing within ten (10) days of departure, and must

1 further notify the board in writing within ten (10) days of return. The failure to provide such
2 notification(s) shall constitute a violation of probation. Upon such departure and return,
3 respondent shall not resume the practice of pharmacy until notified by the board that the period of
4 suspension has been satisfactorily completed.

5 **23. Ethics Course**

6 Within sixty (60) calendar days of the effective date of this decision, respondent shall enroll
7 in a course in ethics, at respondent's expense, approved in advance by the board or its designee.
8 Failure to initiate the course during the first year of probation, and complete it within the second
9 year of probation, is a violation of probation.

10 Respondent shall submit a certificate of completion to the board or its designee within five
11 days after completing the course.

12 **24. Supervised Practice**

13 During the period of probation, respondent shall practice only under the supervision of a
14 licensed pharmacist not on probation with the board. Upon and after the effective date of this
15 decision, respondent shall not practice pharmacy and his license shall be automatically suspended
16 until a supervisor is approved by the board or its designee. The supervision shall be, as required
17 by the board or its designee, either:

18 Continuous – At least 75% of a work week

19 Substantial - At least 50% of a work week

20 Partial - At least 25% of a work week

21 Daily Review - Supervisor's review of probationer's daily activities within 24 hours

22 Within thirty (30) days of the effective date of this decision, respondent shall have his
23 supervisor submit notification to the board in writing stating that the supervisor has read the
24 decision in case number 4600 and is familiar with the required level of supervision as determined
25 by the board or its designee. It shall be the respondent's responsibility to ensure that his
26 employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the
27 board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
28 acknowledgements to the board shall be considered a violation of probation.

1 If respondent changes employment, it shall be the respondent's responsibility to ensure that
2 his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to
3 the board. Respondent shall have his new supervisor, within fifteen (15) days after employment
4 commences, submit notification to the board in writing stating the direct supervisor and
5 pharmacist-in-charge have read the decision in case number 4600 and is familiar with the level of
6 supervision as determined by the board. Respondent shall not practice pharmacy and his license
7 shall be automatically suspended until the board or its designee approves a new supervisor.
8 Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
9 acknowledgements to the board shall be considered a violation of probation.

10 Within ten (10) days of leaving employment, respondent shall notify the board in writing.

11 During suspension, respondent shall not enter any pharmacy area or any portion of the
12 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
13 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices
14 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
15 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
16 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the
17 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
18 and controlled substances. Respondent shall not resume practice until notified by the board.

19 During suspension, respondent shall not engage in any activity that requires the
20 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
21 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
22 designated representative for any entity licensed by the board.

23 Subject to the above restrictions, respondent may continue to own or hold an interest in any
24 licensed premises in which he holds an interest at the time this decision becomes effective unless
25 otherwise specified in this order.

26 Failure to comply with this suspension shall be considered a violation of probation.
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25. No Ownership of Licensed Premises

Respondent shall not own, have any legal or beneficial interest in, or serve as a manager, administrator, member, officer, director, trustee, 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 ninety (90) days following the effective date of this decision and shall immediately thereafter provide written proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide documentation thereof shall be considered a violation of probation.

Respondent shall not acquire any new ownership, legal or beneficial interest nor serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any additional business, firm, partnership, or corporation licensed by the board. If respondent currently owns or has any legal or beneficial interest in, or serves as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the board, respondent may continue to serve in such capacity or hold that interest, but only to the extent of that position or interest as of the effective date of this decision. Violation of this restriction shall be considered a violation of probation.

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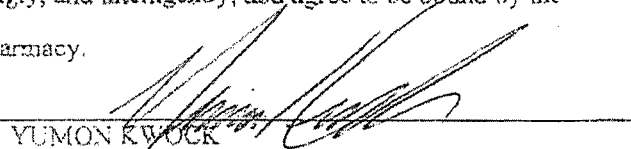
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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Jon-Paul Valcarenghi, Esq.. 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 of Pharmacy.

DATED:


2/23/15


YUMON KWOK
Respondent

I have read and fully discussed with Respondent Yumon Kwok the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its ^{form} and content.

DATED:

2/23/15


Jon-Paul Valcarenghi, Esq.
Attorney for Respondent

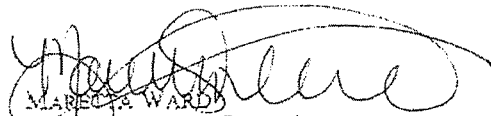
ENDORSEMENT

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

Dated: 3.04.15

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JOSHUA A. ROOM
Supervising Deputy Attorney General


MARELISA WARDS
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 4600

1 KAMALA D. HARRIS
Attorney General of California
2 JOSHUA A. ROOM
Supervising Deputy Attorney General
3 MARETTA WARD
Deputy Attorney General
4 State Bar No. 176470
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1384
6 Facsimile: (415) 703-5480
Attorneys for Complainant
7

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

10
11 In the Matter of the Accusation Against:
12 **YUMON KWOCK**
P.O. Box 351
13 Arcata, CA 95518
14 **Pharmacist License No. RPH 28573**
15 Respondent.

Case No. 4600
ACCUSATION

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19 Complainant alleges:

20 **PARTIES**

- 21 1. Virginia K. Herold (Complainant) brings this Accusation solely in her official
22 capacity as the Executive Officer of the California State Board of Pharmacy.
23 2. On or about October 24, 1973, the Board of Pharmacy (Board) issued Pharmacist
24 License Number RPH 28573 to Yumon Kwock (Respondent). The Pharmacist License was in
25 full force and effect at all times relevant to the charges brought herein and will expire on May 31,
26 2014, unless renewed.

27 / /
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1 **JURISDICTION**

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

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

7 5. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or
8 suspension of a board-issued license by operation of law or by order or decision of the board or a
9 court of law, the placement of a license on a retired status, or the voluntary surrender of a license
10 by a licensee shall not deprive the board of jurisdiction to commence or proceed with any
11 investigation of, or action or disciplinary proceeding against, the licensee or to render a decision
12 suspending or revoking the license.

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

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

19 (h) The administering to oneself, of any controlled substance, or the use of any dangerous
20 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
21 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
22 to the extent that the use impairs the ability of the person to conduct with safety to the public the
23 practice authorized by the license.

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

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

28

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

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

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

12 8. Section 490 of the Code provides, in pertinent part, that a board may suspend or
13 revoke a license on the ground that the licensee has been convicted of a crime substantially
14 related to the qualifications, functions, or duties of the business or profession for which the
15 license was issued.

16 9. Section 4059 of the Code prohibits furnishing of any dangerous drug or dangerous
17 device except upon the prescription of an authorized prescriber.

18 10. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
19 controlled substances, except that furnished upon a valid prescription/drug order.

20 11. Health and Safety Code section 11170 provides that no person shall prescribe,
21 administer, or furnish a controlled substance for himself.

22 12. Health and Safety Code section 11173, subdivision (a), provides that no person shall
23 obtain or attempt to obtain controlled substances, or procure or attempt to procure the
24 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,
25 or subterfuge; or (2) by the concealment of a material fact.

26 13. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
27 any controlled substance listed in Schedule II (Health and Safety Code section 11055),
28 subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

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

5 **CONTROLLED SUBSTANCES/DANGEROUS DRUGS**

6 15. Section 4021 of the Code provides that "Controlled Substance" means any substance
7 listed in Chapter 2 (commencing with Section 11053 of Division 10 of the Health and Safety
8 Code.

9 16. Section 4022 of the Code provides that "dangerous drug" or "dangerous device"
10 means any drug or device for unsafe for self use, except veterinary drugs that are labeled as such,
11 and included the following:

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

14 (b) Any device that bears the legend "Caution federal law restricts this device to sale by
15 or on prescriptions of a _____,' 'Rx only' or words of similar import, the blank to be filled in
16 with the designation of the practitioner licensed to use or order use of the device.

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

19 17. Hydrocodone is a Schedule III controlled substance as designated by Health and
20 Safety Code section 11056(e)(4) and a dangerous drug as designated by Business and Professions
21 Code section 4022.

22 18. Codeine/acetaminophen is a Schedule III controlled substance as designated by
23 Health and Safety Code section 11056(e)(2) and a dangerous drug as designated by Business and
24 Professions Code section 4022.

25 19. "Vicodin" is a brand name for Hydrocodone/acetaminophen. "Tylenol/Codeine" is
26 the brand name for acetaminophen/codeine.

27 20. "Norco" is a brand name for Hydrocodone/acetaminophen. "Tylenol/Codeine" is the
28 brand name for acetaminophen/codeine.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct – Conviction of Substantially Related Crime)**

3 21. Respondent is subject to disciplinary action under section 4301(l) and section 490 of
4 the Code, by reference to California Code or Regulations, title 16, section 1770, for the
5 conviction of a substantially related crime, in that on or about November 13, 2012, in the
6 Humboldt County Superior Court criminal case entitled *People v. Kwock*, Case No. CR1201784
7 Respondent was convicted of violating Penal Code section 488 (theft)(a misdemeanor). The
8 circumstances are as follows:

9 a. Beginning in or about September 2011, for approximately eight (8) months and
10 ceasing in or about April 2012, Respondent, an employee of a Rite Aid Pharmacy in Fortuna,
11 California, and who worked as a pharmacist-in-charge, took without prescription and for his own
12 personal use and ingestion, various drugs from his place of employment.

13 b. The drugs taken by Respondent include controlled substances Norco, Vicodin and
14 Hydrocodone and Tylenol/Codeine.

15 c. Respondent was sentenced as follows: Two (2) years probation, a court fine of \$480,
16 and one (1) day jail time.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Unprofessional Conduct – Acts of Dishonesty)**

19 22. Respondent is subject to disciplinary action under section 4301(f) in that, as described
20 above in paragraph 21, Respondent committed acts involving moral turpitude, dishonesty, fraud,
21 deceit, or corruption.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct – Dangerous or Injurious Use of Controlled Substance)**

24 23. Respondent is subject to disciplinary action under section 4301(h) in that, as
25 described above in paragraph 21, Respondent used controlled substances in a manner dangerous
26 or injurious to himself, or any other person or the public, or to the extent that the use impaired the
27 ability of the person to conduct with safety to the public the practice authorized by the license.

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FOURTH CAUSE FOR DISCIPLINE

(Self-Administration of Controlled Substance and/or Alcohol)

24. Respondent is subject to discipline under section 4301(h) of the Code, and/or 4301(j) and/or (o) of the Code and Health and Safety Code section 11170, in that Respondent, as described in paragraph 21, administered a controlled substance to himself.

FIFTH CAUSE FOR DISCIPLINE

(Furnishing of Controlled Substance)

25. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section 4059 of the Code, and/or Health and Safety Code section 11170 in that Respondent, as described in paragraph 21 above, furnished to himself or another without a valid prescription, and/or conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.

SIXTH CAUSE FOR DISCIPLINE

(Possession of Controlled Substance)

26. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described in paragraph 21 above, possessed, conspired to possess, and/or assisted in or abetted possession of, a controlled substance, without a prescription.

SEVENTH CAUSE FOR DISCIPLINE

(Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

27. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs 21 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

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EIGHTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Furnishing Without Prescription)

28. Respondent is subject to disciplinary action under section 4301(j) in that Respondent, as described above in paragraph 21, furnished to himself or another without a valid prescription, and/or conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.

NINTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

29. Respondent is subject to disciplinary action under section 4301, in that Respondent, as described above in paragraph 21, engaged in unprofessional conduct.

PRAYER

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

1. Revoking or suspending Pharmacist License Number RPH 28573, issued to Yumon Kwock
2. Ordering Yumon Kwock to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: _____

5/8/14

Virginia K. Herold

VIRGINIA K. HEROLD
Executive Officer
California State Board of Pharmacy
State of California
Complainant

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