

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

In the Matter of the Accusation Against:

**NICHOLS HILL  
PRESCRIPTION PHARMACY  
2844 Summit Street  
Oakland, CA 94609**

**Pharmacy License No. PHY 46970**

and

**BYUNG SIK YUH  
1140 Vancouver Avenue  
Burlingame, CA 94010**

**Pharmacist License No. RPH 36896**

Respondents.

Case No. 5139

**STIPULATED SURRENDER OF  
LICENSE AND DISCIPLINARY ORDER  
AS TO RESPONDENT NICHOLS HILL  
PRESCRIPTION PHARMACY ONLY**

**DECISION AND ORDER**

The attached Stipulated Surrender of License 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 October 2, 2015.

It is so ORDERED September 2, 2015.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
Amy Gutierrez, Pharm.D.  
Board President

1 KAMALA D. HARRIS  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
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*Attorneys for Complainant*

7  
8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation and Petition to  
11 Revoke Probation Against:

Case No. 5139

12 **NICHOLS HILL**  
**PRESCRIPTION PHARMACY**  
13 **2844 Summit Street**  
**Oakland, California 94609**

**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER**

14 **Pharmacy License No. PHY 46970**

15 and

16 **BYUNG SIK YUH**  
17 **1140 Vancouver Avenue**  
**Burlingame, CA 94010**

18 **Pharmacist License No. RPH 36896**

19 Respondents.  
20

21 In the interest of a prompt and speedy settlement of this matter, consistent with the public  
22 interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs,  
23 the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will  
24 be submitted to the Board for approval and adoption as the final disposition of the Accusation and  
25 Petition to Revoke Probation filed against both of the above-named Respondents.

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PARTIES

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2       1.     Virginia Herold ("Complainant") is the Executive Officer of the Board of Pharmacy.  
3 She brought this action solely in her official capacity and is represented in this matter by Kamala  
4 D. Harris, Attorney General of the State of California, by Joshua A. Room, Supervising Deputy  
5 Attorney General.

6       2.     Respondents Byung S. Yuh dba Nichols Hill Prescription Pharmacy ("Respondent  
7 Nichols Hill") and Byung Sik Yuh ("Respondent Yuh"; collectively, "Respondents") are  
8 represented in this proceeding by attorney Paul Wolf, whose address is: Wolf, Pennella &  
9 Stevens, LLP, 717 Washington Street, Second Floor, Oakland, CA 94607.

10       3.     On or about February 22, 2005, the Board issued Pharmacy License No. PHY 46970  
11 to Respondent Nichols Hill. The Pharmacy License was in full force and effect at all times  
12 relevant to the charges brought in Accusation and Petition to Revoke Probation No. 5139 and will  
13 expire on February 1, 2016, unless renewed.

14       4.     On or about February 22, 1982, the Board issued Pharmacist License No. RPH 36896  
15 to Byung Sik Yuh (Respondent Yuh). The Pharmacist License was in full force and effect at all  
16 times relevant to the charges brought in Accusation and Petition to Revoke Probation No. 5139  
17 and will expire on October 31, 2015, unless renewed. Since on or about July 10, 2011,  
18 Respondent Yuh has served and/or was reflected in Board records as the Pharmacist in Charge for  
19 Respondent Nichols Hill.

20       5.     In a disciplinary action titled "In the Matter of the Accusation Against Nichols Hill  
21 Prescription Pharmacy and Byung Sik Yuh," Case No. 3737, the Board of Pharmacy issued a  
22 Decision and Order, effective January 7, 2011, in which Respondent Nichols Hill's Pharmacy  
23 License and Respondent Yuh's Pharmacist License were each revoked, with both revocations  
24 stayed and each License placed on probation for five (5) years with certain terms and conditions.  
25 A copy of that Decision and Order is included in exhibit A attached hereto.

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2 JURISDICTION

3 6. Accusation and Petition to Revoke Probation No. 5139 was filed before the Board of  
4 Pharmacy (Board), Department of Consumer Affairs, and is currently pending against  
5 Respondents. The Accusation and Petition to Revoke Probation and all other statutorily required  
6 documents were properly served on Respondents on June 30, 2014. Respondents timely filed  
7 Notice(s) of Defense. A copy of Accusation and Petition to Revoke Probation No. 5139 is  
8 attached as exhibit A and incorporated herein by reference.

9 ADVISEMENT AND WAIVERS

10 7. Respondents have carefully read, fully discussed with counsel, and understand the  
11 charges and allegations in Accusation and Petition to Revoke Probation No. 5139. Respondents  
12 have also carefully read, fully discussed with counsel, and understand the effects of this  
13 Stipulated Settlement and Disciplinary Order.

14 8. Respondents are fully aware of their legal rights in this matter, including the right to a  
15 hearing on the charges and allegations in the Accusation and Petition to Revoke Probation; the  
16 right to be represented by counsel at their own expense; the right to confront and cross-examine  
17 the witnesses against them; the right to present evidence and to testify on their own behalfs; the  
18 right to the issuance of subpoenas to compel the attendance of witnesses and the production of  
19 documents; the right to reconsideration and court review of an adverse decision; and all other  
20 rights accorded by the California Administrative Procedure Act and other applicable laws.

21 9. Respondents voluntarily, knowingly, and intelligently waive and gives up each and  
22 every right set forth above.

23 CULPABILITY

24 10. Respondents admit the truth of each and every charge and allegation in Accusation  
25 and Petition to Revoke Probation No. 5139. Respondent Nichols Hill hereby surrenders its  
26 Pharmacy Permit No. PHY 46970 for the Board's formal acceptance, and understands that the  
27 Board may issue an order accepting this surrender without further process. Respondent Yuh  
28 agrees that his Pharmacist License No. RPH 36896 is subject to discipline and agrees to be bound  
by the Board's probationary terms as set forth in the Disciplinary Order(s) below.

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RESERVATION

11. Admissions made by Respondents herein are only for the purposes of this proceeding, or any other proceedings in which the Board of Pharmacy or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

12. This stipulation shall be subject to approval by the Board of Pharmacy. Respondents understand and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondents or their counsel. By their signatures, Respondents understand and agree that they may not withdraw their agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

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

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

15. In consideration of the foregoing, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order(s):

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1 DISCIPLINARY ORDER(S)

2 AS TO RESPONDENT NICHOLS HILL

3 IT IS HEREBY ORDERED that Pharmacy License No. PHY 46970, issued to Byung S.  
4 Yuh dba Nichols Hill Prescription Pharmacy (Respondent Nichols Hill) is surrendered and  
5 accepted by the Board of Pharmacy. Acceptance and effectiveness of the surrender shall be  
6 stayed until one hundred eighty (180) days after the effective date of the Decision and Order, by  
7 which time the pharmacy shall be sold or its ownership transferred, or it shall be closed.

8 1. If the pharmacy is not sold or its ownership transferred prior to that date, Respondent  
9 Nichols Hill shall, no later than one hundred seventy (170) days after the effective date of the  
10 Decision and Order, arrange for: destruction of; or transfer to, sale of, or storage in a facility  
11 licensed by the Board of, all controlled substances and dangerous drugs and devices, and all  
12 records of acquisition or disposition of same. Respondent Nichols Hill shall further provide  
13 written proof of such disposition and submit a completed Discontinuance of Business form  
14 according to Board guidelines. If the pharmacy is not sold or its ownership transferred prior to  
15 that date, Respondent Nichols Hill shall also, by no later than one hundred seventy (170) days  
16 after the effective date of the Decision and Order, arrange for the continuation of care for ongoing  
17 patients of the pharmacy by, at minimum, providing a written notice to ongoing patients that  
18 specifies the anticipated closing date of the pharmacy and that identifies one or more area  
19 pharmacies capable of taking up the patients' care, and by cooperating as may be necessary in the  
20 transfer of records or prescriptions for ongoing patients. Within five days of its provision to the  
21 pharmacy's ongoing patients, Respondent shall provide a copy of the written notice to the Board.  
22 For the purposes of this provision, "ongoing patients" means those patients for whom the  
23 pharmacy has on file a prescription with one or more refills outstanding, or for whom the  
24 pharmacy has filled a prescription within the preceding sixty (60) days.

25 2. The surrender of Respondent Nichols Hill's Pharmacy License and the acceptance of  
26 the surrendered license by the Board shall constitute the imposition of discipline against  
27 Respondent Nichols Hill. This stipulation constitutes a record of the discipline and shall become  
28 a part of Respondent's license history with the Board of Pharmacy.



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- Term and Condition 1 (Payment of Civil Penalties) is deemed satisfied;
- Term and Condition 2 (Community Services Program) is deemed satisfied;
- In Term and Condition 20, delete the existing language and substitute the following;

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

During the period of probation, Respondent Yuh shall not supervise any intern pharmacist, be the pharmacist-in-charge or designated representative-in-charge of any entity licensed by the Board, nor serve as a consultant to any entity licensed by the Board. Assumption of any such unauthorized supervision responsibilities shall be considered a violation of probation.

- Add Term and Condition 21 to read as follows:

**21. Divestment and No New Ownership of Licensed Premises**

As soon as practicable following the effective date of the Decision and Order, Respondent Yuh shall not own, have any legal or beneficial interest in, nor 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 Yuh shall immediately take steps to sell or transfer any existing legal or beneficial interest in any entity licensed by the Board, including but not necessarily limited to his interest(s) in Respondent Nichols Hill, Parnassus Heights Pharmacy (License No. PHY 46641), and Medimart Pharmacy Partners LP (License No. PHY 46626); shall immediately take steps to resign from or otherwise dissociate from any position as manager, administrator, member, officer, director, trustee, associate, or partner of any entity licensed by the Board, including but not necessarily limited to those listed above; and shall immediately provide written proof to the Board of any such completed sale(s), transfer(s), resignation(s), or dissociation(s). Respondent Yuh shall not acquire any new legal or beneficial interest in, nor accept any new position as manager, administrator, member, officer, director, trustee, associate, or partner of, any entity licensed by the Board. Respondent Yuh shall endeavor in good faith to complete any such sale(s) or transfer(s), and any such resignation(s) or dissociation(s), within one hundred eighty (180) days of the effective date.

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1 If Respondent Yuh has not completed all sale(s) or transfer(s), and all resignation(s) or  
2 dissociation(s), within one hundred eighty (180) days, and is able to demonstrate reasonable  
3 diligence in attempting to do so, Respondent Yuh may apply in writing to the Board or its  
4 designee for an extension of time within which to complete the necessary transaction(s). The  
5 Board or its designee may exercise absolute discretion to grant or deny Respondent Yuh up to one  
6 hundred eighty (180) additional days within which to complete the necessary transaction(s).

7 Regardless of any extension granted by the Board or its designee, after one hundred eighty  
8 (180) days following the effective date of the Decision and Order, Respondent Yuh shall be  
9 subject to the following limitations. Respondent Yuh shall not:

- 10 • enter any secure portion of the licensed premises of any pharmacy licensed by the  
11 Board, except any pharmacy by which he is then employed as a pharmacist;
- 12 • enter any portion of the licensed premises of any wholesaler, veterinary food-animal  
13 drug retailer, nor any other distributor of drugs which is licensed by the board, nor  
14 any manufacturer, nor any other entity where dangerous drugs and devices or  
15 controlled substances are maintained; nor
- 16 • participate in oversight, direction, or management of any facility licensed by the  
17 Board, nor serve as a consultant to any such facility.

18 Failure to timely divest any legal or beneficial interest(s) or timely complete any  
19 resignation(s) or dissociation(s), failure to timely provide documentation thereof, failure to apply  
20 reasonable diligence to these tasks, and/or failure to comply with the prohibition(s) on entry into  
21 licensed premises, shall be considered a violation of probation.

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ENDORSEMENT

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

Dated: 8/6/2015

Respectfully submitted,  
KAMALA D. HARRIS  
Attorney General of California  
FRANK H. PACOE  
Supervising Deputy Attorney General

  
JOSHUA A. ROOM  
Supervising Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**Accusation and Petition to Revoke Probation No. 5139**

1 KAMALA D. HARRIS  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 JOSHUA A. ROOM  
Supervising Deputy Attorney General  
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*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 and Petition to  
11 Revoke Probation Against:

Case No. 5139

12 **NICHOLS HILL**  
**PRESCRIPTION PHARMACY**  
13 **2844 Summit Street**  
**Oakland, California 94609**

**ACCUSATION AND PETITION TO**  
**REVOKE PROBATION**

14 **Pharmacy License No. PHY 46970**

15 **and**

16 **BYUNG SIK YUH**  
17 **1140 Vancouver Avenue**  
**Burlingame, CA 94010**

18 **Pharmacist License No. RPH 36896**

19 Respondents.  
20

21 Complainant alleges:  
22

23 PARTIES

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

27 2. On or about February 22, 2005, the Board issued Pharmacy License No. PHY 46970  
28 to Byung S. Yuh dba Nichols Hill Prescription Pharmacy (Respondent Nichols Hill). The

1 Pharmacy License was in full force and effect at all times relevant to the charges brought herein  
2 and will expire on February 1, 2015, unless renewed.

3 3. On or about February 22, 1982, the Board issued Pharmacist License No. RPH 36896  
4 to Byung Sik Yuh (Respondent Yuh). The Pharmacist License was in full force and effect at all  
5 times relevant to the charges brought herein and will expire on October 31, 2015, unless renewed.  
6 Since on or about July 10, 2011, Respondent Yuh has served and/or was reflected in Board  
7 records as the Pharmacist in Charge for Respondent Nichols Hill.

8 4. In a disciplinary action titled "In the Matter of the Accusation Against Nichols Hill  
9 Prescription Pharmacy and Byung Sik Yuh," Case No. 3737, the Board of Pharmacy issued a  
10 Decision and Order, effective January 7, 2011, in which Respondent Nichols Hill's Pharmacy  
11 License and Respondent Yuh's Pharmacist License were each revoked, with both revocations  
12 stayed and each License placed on probation for five (5) years with certain terms and conditions.  
13 A copy of that Decision and Order is attached as Exhibit A and is incorporated by reference.  
14

#### 15 JURISDICTION

16 5. This Accusation and Petition to Revoke Probation is brought before the Board of  
17 Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws.  
18 All section references are to the Business and Professions Code (Code) unless indicated.

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

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

24 8. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or  
25 suspension of a Board-issued license, the placement of a license on a retired status, or the  
26 voluntary surrender of a license by a licensee, shall not deprive the Board of jurisdiction to  
27 commence or proceed with any investigation of, or action or disciplinary proceeding against, the  
28 licensee or to render a decision suspending or revoking the license.



1 handled by every licensee enumerated in sections 4081 and 4332. It further requires that the  
2 controlled substances inventories required by the Title 21, Code of Federal Regulations, section  
3 1304, shall be available for inspection upon request for at least 3 years.

4 16. Title 21, Code of Federal Regulations, section 1301.76, subdivision (b) requires that  
5 any registrant of the DEA notify the Field Division Office of the DEA in his area, in writing, of  
6 the theft or significant loss of any controlled substances within one business day of discovery of  
7 such loss or theft, and also complete and submit a DEA Form 106 regarding the loss or theft.

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

11  
12 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

13 18. Section 4021 of the Code states:

14 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section  
15 11053) of Division 10 of the Health and Safety Code.”

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

17 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,  
18 except veterinary drugs that are labeled as such, and includes the following:

19 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without  
20 prescription,’ ‘Rx only,’ or words of similar import.

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

23 20. **Norco, Vicodin, Vicodin ES, Lortab, and Lorcet** are among the brand names for  
24 compounds of varying dosages of acetaminophen (aka APAP) and **hydrocodone**, a Schedule III  
25 controlled substance as designated by Health and Safety Code section 11056(e)(4) and dangerous  
26 drug as designated by Business and Professions Code section 4022. The varying compounds are  
27 also known generically as **Hydrocodone with APAP**. These are all narcotic drugs.

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1 FACTUAL BACKGROUND

2 21. According to a Board investigative audit of acquisition and disposition records,  
3 between in or about July 2011 and in or about September 2013, Respondent Nichols Hill  
4 experienced significant shortages of dangerous drugs, including shortages over this period of  
5 7,092 tablets of **Hydrocodone with APAP 7.5/750** (generic **Vicodin ES**) and 42,513 tablets of  
6 **Hydrocodone with APAP 10/325** (generic **Norco**), both narcotic controlled substances.

7 22. Respondents became aware of discrepancies and shortages in the controlled substance  
8 inventory between in or about September 2012 and in or about January 2013, initially as the result  
9 of an audit of pharmacy Medi-Cal billings performed by the California Department of Health Care  
10 Services (DHCS) which identified shortages from January 9, 2012 through September 30, 2012 of  
11 7,310 tablets of **Hydrocodone with APAP 7.5/750** (generic **Vicodin ES**) and 25,459 tablets of  
12 **Hydrocodone with APAP 10/325** (generic **Norco**). These discrepancies/shortages were reported  
13 to Respondents by DHCS no later than in or about December 2012 or January 2013, at which time  
14 Respondent Yuh conducted his own review of records and confirmed the shortages/losses.

15 23. In or about February 2013, Respondents terminated an employee suspected of theft as  
16 a means of addressing what was believed to be the cause of the shortages/losses.

17 24. Respondents did not timely report the losses to either the Board or the DEA.  
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19 **CAUSES FOR DISCIPLINE, AS TO BOTH RESPONDENTS**

20 FIRST CAUSE FOR DISCIPLINE

21 (Failure to Maintain Accurate and Secure Drug Inventory)

22 25. Respondents are each and severally subject to discipline under section 4301(j) and/or  
23 (o) and/or section 4113(c) of the Code, in combination with section(s) 4081 and/or 4332 of the  
24 Code, and/or California Code of Regulations, title 16, section 1718, in that, as described in  
25 paragraphs 21-24 above, Respondents violated statutes regulating controlled substances or  
26 dangerous drugs, and/or directly or indirectly violated, attempted to violate, and/or assisted in or  
27 abetted violation of, laws or regulations governing the practice of pharmacy, by failing to keep or  
28 maintain an accurate and secure inventory of all dangerous drugs.

1 SECOND CAUSE FOR DISCIPLINE

2 (Failure to Maintain Pharmacy Security)

3 26. Respondents are each and severally subject to discipline under section 4301(j) and/or  
4 (o), and/or section 4113(c), of the Code, in combination with California Code of Regulations, title  
5 16, section 1714, subdivision (b), in that, as described in paragraphs 21-24 above, Respondents  
6 violated statutes regulating controlled substances or dangerous drugs, and/or directly or indirectly  
7 violated, attempted to violate, and/or assisted in or abetted violation of, laws or regulations  
8 governing the practice of pharmacy, by failing to maintain pharmacy facilities, space, fixtures, and  
9 equipment so that drugs were safely and properly prepared, maintained, secured and distributed.

10  
11 THIRD CAUSE FOR DISCIPLINE

12 (Failure to Provide Notifications of Controlled Substance Losses)

13 27. Respondents are each and severally subject to discipline under section 4301(j) and/or  
14 (o), and/or section 4113(c), of the Code, in combination with California Code of Regulations, title  
15 16, section 1715.6 and/or Title 21, Code of Federal Regulations, section 1301.76, subdivision (b),  
16 in that, as described in paragraphs 21-24 above, Respondents violated statutes regulating  
17 controlled substances or dangerous drugs, and/or directly or indirectly violated, attempted to  
18 violate, and/or assisted in or abetted violation of, laws or regulations governing the practice of  
19 pharmacy, by failing to timely report losses of controlled substances to the Board and/or the DEA.

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21 JURISDICTION FOR PETITION TO REVOKE PROBATION

22 28. This Petition to Revoke Probation is brought before the Board of Pharmacy (Board),  
23 Department of Consumer Affairs under Probation Term and Condition Number 11 of the  
24 Decision and Order in "In the Matter of the Accusation Against Nichols Hill Prescription  
25 Pharmacy and Byung Sik Yuh," Case No. 3737.

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1 CAUSE FOR REVOCATION OF PROBATION, AS TO BOTH RESPONDENTS

2 CAUSE TO REVOKE PROBATION

3 (Failure to Obey All Laws)

4 29. At all times after the effective date (January 7, 2011) of the Decision and Order  
5 imposing probation on Respondents' Licenses, Term and Condition 3 of that Order required that  
6 Respondents, inter alia, obey all state and federal laws and regulations. As detailed above in  
7 paragraphs 21-27, Respondents failed to do so. Respondents' failure to obey all laws subject  
8 Respondents' Licenses, each and severally, to revocation.

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10 OTHER MATTERS -- EXTENSION OF PROBATION

11 30. At all times after the effective date (January 7, 2011) of the Decision and Order  
12 imposing probation on Respondents' Licenses, Term and Condition 11 of that Order required:

13 **11. Violation of Probation.**

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

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

21 31. Pursuant to the operation of Term and Condition 11 of the probation order applicable  
22 to Respondents' Licenses, probation is automatically extended by the filing hereof, and/or by  
23 Respondents' failure to comply with the terms and conditions of probation, until such time as this  
24 Accusation and Petition to Revoke Probation is heard and decided, or until the Board has taken  
25 other action as deemed appropriate to treat the failure to comply as a violation of probation.

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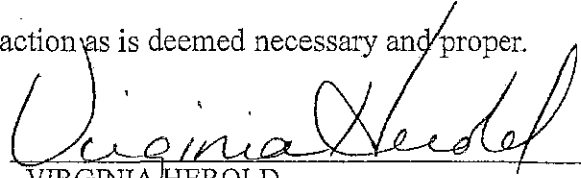
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this  
Accusation and Petition to Revoke Probation, and that following the hearing, the Board of  
Pharmacy issue a decision:

1. Revoking the probation that was granted by the Board of Pharmacy in Case No. 3737  
and imposing the disciplinary order that was stayed, thereby revoking Pharmacy License No. PHY  
46970, issued to Byung S. Yuh dba Nichols Hill Prescription Pharmacy (Respondent Nichols  
Hill), and/or Pharmacist License No. RPH 36896, issued to Byung Sik Yuh (Respondent Yuh);
2. Revoking or suspending Pharmacy License No. PHY 46970, issued to Respondent  
Nichols Hill;
3. Revoking or suspending Pharmacist License No. RPH 36896, issued to Respondent  
Yuh;
4. Ordering Respondents jointly and severally to pay the Board of Pharmacy the  
reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
Professions Code section 125.3; and
5. Taking such other and further action as is deemed necessary and proper.

DATED: 6/5/14



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

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# Exhibit A

Decision and Order

Board of Pharmacy Case No. 3737

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

In the Matter of the Accusation Against:

Case No. 3737

NICHOLS HILL  
PRESCRIPTION PHARMACY  
2844 Summit Street  
Oakland, CA 94609

Pharmacy License No. PHY 46970

and

BYUNG SIK YUH  
1140 Vancouver Avenue  
Burlingame, CA 94010

Pharmacist License No. RPH 36896

Respondent.

DECISION AND ORDER

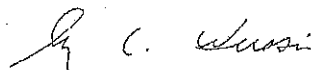
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on January 7, 2011.

It is so ORDERED on December 8, 2010.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By



STANLEY C. WEISSER  
Board President

RECEIVED  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA  
OFFICE OF THE ATTORNEY GENERAL  
SAN FRANCISCO, CALIFORNIA

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 JOSHUA A. ROOM  
Deputy Attorney General  
4 State Bar No. 214663  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 703-1299  
6 Facsimile: (415) 703-5480  
*Attorneys for Complainant*

7  
8 BEFORE THE  
BOARD OF PHARMACY  
9 DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 3737

11 NICHOLS HILL  
12 PRESCRIPTION PHARMACY  
2844 Summit Street  
13 Oakland, California 94609

STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER

14 Pharmacy License No. PHY 46970

15 and

16 BYUNG SIK YUH  
1140 Vancouver Avenue  
17 Burlingame, CA 94010

18 Pharmacist License No. RPH 36896

19 Respondents.

20 In the interest of a prompt and speedy settlement of this matter, consistent with the public  
21 interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs,  
22 the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will  
23 be submitted to the Board for approval and adoption as the final disposition of the Accusation that  
24 has been filed against Respondents Nichols Hill Prescription Pharmacy and Byung Sik Yuh.

25 PARTIES

26 1. Virginia Herold (Complainant), Executive Officer of the Board of Pharmacy, brought  
27 this action solely in her official capacity and is represented in this matter by Edmund G. Brown  
28 Jr., Attorney General of the State of California, by Joshua A. Room, Deputy Attorney General.

1 2. Both Respondents are represented in this proceeding by attorney Paul Delano Wolf,  
2 whose address is The Evers Building, 717 Washington Street, 2nd Floor, Oakland, CA 94607.

3 3. On or about February 22, 2005, the Board of Pharmacy issued Pharmacy License No.  
4 PHY 46970 to Byung Sik Yuh dba Nichols Hill Prescription Pharmacy (Respondent Nichols  
5 Hill). The Pharmacy License was in full force and effect at all times relevant to the charges  
6 brought in Accusation No. 3737 and will expire on February 1, 2011, unless renewed.

7 4. On or about February 22, 1982, the Board of Pharmacy issued Pharmacist License  
8 No. RPH 36896 to Byung Sik Yuh (Respondent Yuh). The Pharmacist License was in full force  
9 and effect at all times relevant to the charges brought in Accusation No. 3737 and will expire on  
10 October 31, 2011, unless renewed. Between on or about February 22, 2005 and on or about  
11 January 5, 2010, Respondent Yuh was the Pharmacist in Charge for Respondent Nichols Hill.

#### 12 JURISDICTION

13 5. Accusation No. 3737 was filed before the Board of Pharmacy (Board), Department of  
14 Consumer Affairs, and is currently pending against Respondents. The Accusation and all other  
15 statutorily required documents were properly served on Respondents. Respondents timely filed  
16 Notice(s) of Defense contesting the Accusation. A copy of Accusation No. 3737 is attached as  
17 exhibit A and incorporated herein by reference.

#### 18 ADVISEMENT AND WAIVERS

19 6. Respondents have carefully read, fully discussed with counsel, and understand the  
20 charges in Accusation No. 3737. Respondents have also carefully read, fully discussed with  
21 counsel, and understand the effects of this Stipulated Settlement and Disciplinary Order.

22 7. Respondents are fully aware of their legal rights in this matter, including the right to a  
23 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at  
24 their own expense; the right to confront and cross-examine the witnesses against them; the right  
25 to present evidence and to testify on their own behalf; the right to the issuance of subpoenas to  
26 compel the attendance of witnesses and the production of documents; the right to reconsideration  
27 and court review of an adverse decision; and all other rights accorded by the California  
28 Administrative Procedure Act and other applicable laws.



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

3 CULPABILITY

4 9. Respondents admit the truth of each and every charge and allegation in Accusation  
5 No. 3737. Respondents agree that their Licenses are subject to discipline and agree to be bound  
6 by the Board's imposition of discipline as set forth in the Disciplinary Order below.

7 RESERVATION

8 10. Admissions made by Respondents herein are only for the purposes of this proceeding,  
9 or any other proceedings in which the Board of Pharmacy or other professional licensing agency  
10 is involved, and shall not be admissible in any other criminal or civil proceeding.

11 CONTINGENCY

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

21 12. The parties understand and agree that facsimile copies of this stipulation, including  
22 facsimile signatures thereto, shall have the same force and effect as the originals.

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

1 14. In consideration of the foregoing, the parties agree that the Board may, without  
2 further notice or formal proceeding, issue and enter the following Order and Disciplinary Order:

3  
4 ORDER

5 IT IS HEREBY ORDERED that Citation Nos. CI 2006 33905 and CI 2009 40806, issued  
6 on or about July 21, 2009 to Respondent Nicholls Hill and Respondent Yuh, respectively, as well  
7 as the abatements and fines ordered by those Citations, are withdrawn and/or dismissed.

8  
9 DISCIPLINARY ORDER

10 IT IS HEREBY ORDERED that Pharmacy License No. PHY 46970, issued to Byung Sik  
11 Yuh dba Nichols Hill Prescription Pharmacy, is revoked, and that Pharmacist License No. RPH  
12 36896, issued to Byung Sik Yuh, is revoked. However, each revocation is stayed and each  
13 Respondent is placed on probation for five (5) years on the following terms and conditions.

14 TERMS APPLICABLE TO BOTH RESPONDENTS

15 1. Payment of Civil Penalties

16 Respondents shall pay civil penalties to the Board in the amount and on such terms as are  
17 specified below. Respondents understand and agree that such civil penalties are administrative  
18 fines pursuant to 11 U.S.C. § 523(a)(7), and as such are not dischargeable in bankruptcy. They  
19 further understand and agree that the filing of bankruptcy by either or both Respondents shall not  
20 relieve either Respondent of the obligation to pay the balance of the civil penalties to the Board.

21 Respondents shall be jointly and severally liable for payment to the Board of \$150,000.00  
22 (one hundred fifty thousand dollars) in civil penalties. Respondents shall pay \$50,000.00 (fifty  
23 thousand dollars) on or before the effective date of this decision, and shall thereafter make ten  
24 (10) quarterly payments of \$10,000.00 (ten thousand dollars) every ninety (90) days until the  
25 amount is paid in full. Respondents may pay the full remaining balance due at any time, and may  
26 make extra payments. Aside from such expedited payment(s), there shall be no deviation from  
27 this schedule absent prior written approval by the Board or its designee. Failure to pay these civil  
28 penalties by the deadlines as directed shall be considered a violation of probation.

1 Further, absent prior written approval by the Board or its designee, neither Respondent may  
2 successfully complete probation until this amount is paid in full. Each Respondent is responsible  
3 for payment of the full amount and neither may claim to owe only a portion or a share.

#### 4 2. Community Services Program - Testimonial

5 Respondents have authored a letter describing their incentives to participate and their level  
6 of participation in filling and/or dispensing internet prescriptions, and detailing the consequences  
7 of this participation for them, their families, the public health, and the profession, what they have  
8 learned from this experience, and what they would advise others who are approached to fill or  
9 dispense internet prescriptions. The letter is attached hereto as exhibit B, is incorporated herein  
10 by reference, and is part of Respondents' public record of discipline with the Board. The Board  
11 may print, reprint, quote, or make other use of this letter in Board communications and/or on its  
12 website. Further, upon provision of reasonable notice, Respondent Yuh shall appear for and take  
13 part in a videotaping of him reading the letter, at a time and place arranged by the Board or its  
14 designee, which video shall be similarly subject to use by the Board in its communications and/or  
15 on its website. Failure by Respondent Yuh, upon reasonable notice, to timely appear for and  
16 participate in such videotaping shall be considered a violation of probation.

#### 17 3. Obey All Laws

18 Each Respondent shall obey all state and federal laws and regulations.

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

- 21 • an arrest or issuance of a criminal complaint for violation of any provision of the  
22 Pharmacy Law, state and federal food and drug laws, or state and federal controlled  
substances laws
- 23 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to any  
24 criminal complaint, information or indictment
- 25 • a conviction of any crime
- 26 • discipline, citation, or other administrative action filed by any state or federal agency  
27 which involves either of Respondents' licenses 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.

28 Failure to timely report such occurrence(s) shall be considered a violation of probation.

1           4.     Report to the Board

2           Each Respondent shall report to the board quarterly, on a schedule as directed by the Board  
3 or its designee. The report shall be made either in person or in writing, as directed. Among other  
4 requirements, each Respondent shall state in each report under penalty of perjury whether there  
5 has been compliance with all the terms and conditions of probation. Failure to submit timely  
6 reports in a form as directed shall be considered a violation of probation. Any period(s) of  
7 delinquency in submission of reports as directed may be added to the total period of probation.  
8 Moreover, if the final probation report is not made as directed, probation shall be automatically  
9 extended until such time as the final report is made and accepted by the Board.

10           5.     Interview with the Board

11           Upon receipt of reasonable prior notice, each Respondent<sup>1</sup> shall appear in person for  
12 interviews with the Board or its designee, at such intervals and locations as are determined by the  
13 Board or its designee. Failure to appear for any scheduled interview without prior notification to  
14 Board staff, or failure to appear for two (2) or more scheduled interviews with the Board or its  
15 designee during the period of probation, shall be considered a violation of probation.

16           6.     Cooperate with Board Staff

17           Each Respondent shall cooperate with the Board's inspection program and with the Board's  
18 monitoring and investigation of Respondents' compliance with the terms and conditions of their  
19 probation(s). Failure to cooperate shall be considered a violation of probation.

20           7.     Reimbursement of Board Costs

21           Reimbursement of costs per Business and Professions Code section 125.3 is waived.

22           8.     Probation Monitoring Costs

23           Each Respondent shall pay any costs associated with probation monitoring as determined  
24 by the Board each and every year of probation. Such costs shall be payable to the Board on a  
25 schedule as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as  
26 directed shall be considered a violation of probation.

27 \_\_\_\_\_  
28           <sup>1</sup> Appearances by Respondent Nicholls Hill shall be made by an owner or officer.

1           9.     Status of License

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

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

9           10.    License Surrender While on Probation/Suspension

10          Following the effective date of this decision, should either Respondent cease practice due to  
11 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, that  
12 Respondent may tender its or his license to the Board for surrender. The Board or its designee  
13 shall have the discretion whether to grant the request for surrender or take any other appropriate  
14 and reasonable action. Upon formal acceptance of the surrender of the license, Respondent will  
15 no longer be subject to the terms and conditions of probation. This surrender constitutes a record  
16 of discipline and shall become a part of the Respondent's license history with the board.

17          Upon acceptance of the surrender, Respondent shall relinquish its or his pocket and wall  
18 license(s) to the Board within ten (10) days of notification by the Board the surrender is accepted.  
19 Respondent may not reapply for any license from the Board for three (3) years from the effective  
20 date of the surrender. Respondent shall meet all requirements applicable to the license sought as  
21 of the date application for that license is submitted to the Board, including any outstanding costs.

22          11.    Violation of Probation

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

28          ///

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

6 12. Completion of Probation

7 Upon written notice by the Board or its designee indicating successful completion of  
8 probation, the successfully-completing Respondent's license will be fully restored.

9 TERMS APPLICABLE TO RESPONDENT NICHOLLS HILL

10 13. Notice to Employees

11 Respondent Nicholls Hill shall, on or before the effective date of this decision, ensure that  
12 all employees are made aware of the terms and conditions of probation, either by posting a notice  
13 of the terms and conditions, circulating such notice, or both. If the notice is posted, it shall be  
14 posted in a prominent place and shall remain posted throughout the probation period. Respondent  
15 shall ensure that any employees hired or used after the effective date of this decision are made  
16 aware of the terms and conditions of probation by posting a notice, circulating a notice, or both.  
17 Respondent shall submit written notification to the Board, within fifteen (15) days of the effective  
18 date of this decision, that this term has been satisfied. Failure to timely post or provide notice, or  
19 to timely submit notification to the Board, shall be considered a violation of probation.

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

22 14. Owners and Officers: Knowledge of the Law

23 Respondent Nicholls Hill shall provide, within thirty (30) days after the effective date of  
24 this decision, signed and dated statements from its owners, including any owner or holder of ten  
25 percent (10%) or more of the interest in Respondent or Respondent's stock, and any officer,  
26 stating under penalty of perjury that said individuals have read and are familiar with state and  
27 federal laws and regulations governing the practice of pharmacy. The failure to timely provide  
28 said statements under penalty of perjury shall be considered a violation of probation.

1           15. Posted Notice of Probation

2           Respondent Nicholls Hill shall prominently post a probation notice provided by the Board  
3 in a place conspicuous and readable to the public. The probation notice shall remain posted  
4 during the entire period of probation.

5           Respondents shall not, directly or indirectly, engage in any conduct or make any statement  
6 which is intended to mislead or is likely to have the effect of misleading any patient, customer,  
7 member of the public, or other person(s) as to the nature of and reason for the probation of the  
8 licensed entity. Failure to timely post such notice shall be considered a violation of probation.

9   TERMS APPLICABLE TO RESPONDENT YUH

10          16. Continuing Education

11          Respondent Yuh shall provide evidence of efforts to maintain skill and knowledge as a  
12 pharmacist as directed by the Board or its designee.

13          17. Notice to Employers

14          During the period of probation, Respondent Yuh shall notify all present and prospective  
15 employers of the decision in case number 3737 and the terms, conditions and restrictions imposed  
16 on Respondent Yuh by the decision, as follows:

17          Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of  
18 Respondent Yuh undertaking any new employment, Respondent Yuh shall cause his direct  
19 supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during  
20 Respondent's tenure of employment) and owner to report to the Board in writing acknowledging  
21 that the listed individual(s) has/have read the decision in case number 3737, and terms and  
22 conditions imposed thereby. It shall be Respondent Yuh's responsibility to ensure that his  
23 employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

24          If Respondent Yuh works for or is employed by or through a pharmacy employment  
25 service, Respondent Yuh must notify his direct supervisor, pharmacist-in-charge, and owner at  
26 every entity licensed by the Board of the terms and conditions of the decision in case number  
27 3737 in advance of Respondent Yuh commencing work at each licensed entity. A record of this  
28 notification must be provided to the Board upon request.

1 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen  
2 (15) days of Respondent Yuh undertaking any new employment by or through a pharmacy  
3 employment service, Respondent Yuh shall cause his direct supervisor with the pharmacy  
4 employment service to report to the Board in writing acknowledging he/she has read the decision  
5 in case number 3737 and the terms and conditions imposed thereby. It shall be Respondent Yuh's  
6 responsibility to ensure his employer(s) and/or supervisor(s) submit timely acknowledgment(s).

7 Failure to timely notify present or prospective employer(s) or to cause /those employer(s) to  
8 submit timely acknowledgments to the Board shall be considered a violation of probation.

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

12 18. Notification of a Change in Employment, Name, Address(es), or Phone(s)

13 Respondent Yuh shall notify the board in writing within ten (10) days of any change of  
14 employment. Said notification shall include the reasons for leaving, the address of the new  
15 employer, the name of the supervisor and owner, and the work schedule if known. Respondent  
16 Yuh shall further notify the board in writing within ten (10) days of a change in name, residence  
17 address, mailing address, or phone number.

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

20 19. Tolling of Probation

21 Except during periods of suspension, Respondent Yuh shall, at all times while on probation,  
22 be employed as a pharmacist in California for a minimum of forty (40) hours per calendar month.  
23 Any month during which this minimum is not met shall toll the period of probation, i.e., the  
24 period of probation shall be extended by one month for each month during which this minimum is  
25 not met. During any such period of tolling of probation, Respondent Yuh must nonetheless  
26 comply with all terms and conditions of probation.

27 Should Respondent Yuh, regardless of residency, for any reason (including vacation) cease  
28 practicing as a pharmacist for a minimum of forty (40) hours per calendar month in California,



1 Respondent Yuh must notify the Board in writing within ten (10) days of the cessation of  
2 practice, and must further notify the Board in writing within ten (10) days of the resumption of  
3 practice. Any failure to provide such notification(s) shall be considered a violation of probation.

4 It is a violation of probation for Respondent Yuh's probation to remain tolled pursuant to  
5 the provisions of this condition for a total period, counting consecutive and non-consecutive  
6 months, exceeding thirty-six (36) months.

7 "Cessation of practice" means any calendar month during which Respondent is  
8 not practicing as a pharmacist for at least forty (40) hours, as defined by Business and  
9 Professions Code section 4000 et seq. "Resumption of practice" means any calendar  
month during which Respondent practices as a pharmacist for at least forty (40) hours  
as a pharmacist as defined by Business and Professions Code section 4000 et seq.

10 **20. Limitations on Supervision, Being Pharmacist-in-Charge, and Consultancy**

11 During the period of probation, Respondent Yuh shall not supervise any intern pharmacist,  
12 be the designated representative-in-charge of any entity licensed by the Board, nor serve as a  
13 consultant to any entity licensed by the Board. Assumption of any such unauthorized supervision  
14 responsibilities shall be considered a violation of probation.

15 Respondent may be a pharmacist-in-charge. However, if Respondent Yuh is a pharmacist-  
16 in-charge during the period of probation, Respondent shall retain an independent consultant at his  
17 own expense who shall be responsible for reviewing pharmacy operations on a quarterly basis for  
18 compliance with state and federal laws and regulations governing the practice of pharmacy and  
19 for compliance with the obligations of a pharmacist-in-charge. The consultant shall be a  
20 pharmacist licensed by and not on probation with the Board and whose name shall be submitted  
21 to the Board or its designee, for prior approval, within thirty (30) days of the effective date of this  
22 decision. Respondent shall not be a pharmacist-in-charge at more than one pharmacy or at any  
23 pharmacy of which he is not an owner (10% or more). Failure to timely retain, seek approval of,  
24 or ensure timely reporting by the consultant shall be considered a violation of probation.

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26 ///

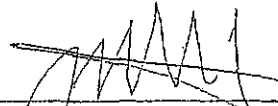
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ACCEPTANCE

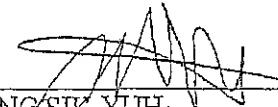
I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Paul Delano Wolf. I understand the stipulation and the effect it has on my Pharmacy License. I enter into this settlement voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 8-19-10

  
Byung Sik Yuh, Owner, NICHOLS HILL  
PRESCRIPTION PHARMACY  
Respondent

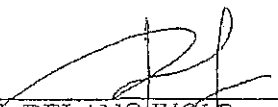
I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Paul Delano Wolf. I understand the stipulation and the effect it has on my Pharmacist License. I enter into this settlement voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 8-19-10

  
BYUNG'SIK YUH  
Respondent

I have read and fully discussed with Respondent Nichols Hill Prescription Pharmacy and Respondent Byung Sik Yuh the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 8/18/10

  
PAUL DELANO WOLF  
Law Offices of Paul Delano Wolf  
Attorneys for Respondents

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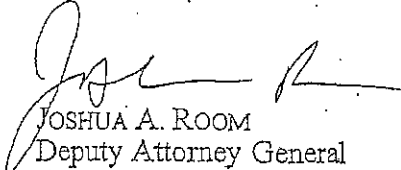
ENDORSEMENT

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

Dated: 10/6/2010

Respectfully Submitted,

EDMUND G. BROWN JR.  
Attorney General of California  
FRANK H. PACOE  
Supervising Deputy Attorney General

  
JOSHUA A. ROOM  
Deputy Attorney General  
*Attorneys for Complainant*

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Exhibit A

Accusation No. 3737

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 JOSHUA A. ROOM  
Deputy Attorney General  
4 State Bar No. 214663  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 703-1299  
6 Facsimile: (415) 703-5480  
*Attorneys for Complainant*

7  
8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 3737

11 **NICHOLS HILL**  
12 **PRESCRIPTION PHARMACY**  
2844 Summit Street  
13 Oakland, California 94609

**A C C U S A T I O N**

14 Pharmacy License No. PHY 46970

15 and

16 **BYUNG SIK YUH**  
1140 Vancouver Avenue  
17 Burlingame, CA 94010

18 Pharmacist License No. RPH 36896

19 Respondents.

20  
21 Complainant alleges:

22 PARTIES

- 23 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
24 as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.  
25 2. On or about February 22, 2005, the Board issued Pharmacy License No. PHY 46970  
26 to Byung Sik Yuh dba Nichols Hill Prescription Pharmacy (Respondent Nichols Hill). The  
27 Pharmacy License was in full force and effect at all times relevant to the charges brought herein  
28 and will expire on February 1, 2011, unless renewed.



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

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

7 9. Section 4067 of the Code provides, in pertinent part, that no person or entity shall  
8 dispense or furnish, or cause to be dispensed or furnished, dangerous drugs or dangerous devices,  
9 as defined in Section 4022 of the Code, on the Internet for delivery to any person in this state  
10 without a prescription issued pursuant to a good faith prior examination of a human or animal for  
11 whom the prescription is meant if the person or entity either knew or reasonably should have  
12 known that the prescription was not issued pursuant to a good faith prior examination of a human  
13 or animal, or if the person or entity did not act in accordance with Section 1761 of Title 16 of the  
14 California Code of Regulations. A "good faith prior examination" includes the requirements for a  
15 physician and surgeon in Section 2242 of the Code and the requirements for a veterinarian in  
16 Section 2032.1 of Title 16 of the California Code of Regulations.

17 10. Section 4076, subdivision (a)(3) of the Code requires, in pertinent part, that a  
18 pharmacist shall not dispense a prescription except in a container that meets the requirements of  
19 state and federal law and is correctly labeled with the name of the patient or patients.

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

21 "The pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state  
22 and federal laws and regulations pertaining to the practice of pharmacy."

23 12. Health and Safety Code section 11165 provides, in pertinent part, for establishment  
24 and maintenance of a Controlled Substance Utilization Review and Evaluation System (CURES)  
25 for the electronic monitoring of prescribing and dispensing of Schedule II, III, and IV controlled  
26 substances, and requires, in pertinent part, that for each prescription for a Schedule II, III, or IV  
27 controlled substance, the dispensing pharmacy or clinic transmit a report with certain information  
28 on the patient, prescriber, controlled substance, and prescription, to the Department of Justice.

1 13. California Code of Regulations, title 16, section 1716, states in pertinent part:  
2 "Pharmacists shall not deviate from the requirements of a prescription except upon the prior  
3 consent of the prescriber or to select the drug product in accordance with Section 4073. . . ."

4 14. California Code of Regulations, title 16, section 1761, states:

5 "(a) No pharmacist shall compound or dispense any prescription which contains any  
6 significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon receipt of any  
7 such prescription, the pharmacist shall contact the prescriber to obtain the information needed to  
8 validate the prescription.

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

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

15 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

16 16. Section 4021 of the Code provides that a "controlled substance" means any substance  
17 listed in Schedules I through V contained in Health and Safety Code section 11053 et seq.

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

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

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

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

25 18. Tylenol #3, Tylenol #4, and APAP with Codeine are commonly used designations  
26 for compounds of varying dosages of acetaminophen (APAP) and codeine, a Schedule III  
27 controlled substance as designated by Health and Safety Code section 11056(e)(2) and dangerous  
28 drug as designated by Business and Professions Code section 4022. These are narcotic drugs.



1 19. Norco, Vicodin, Vicodin ES, Lortab, and Lorcet are among the brand names for  
2 compounds of varying dosages of acetaminophen (APAP) and hydrocodone, a Schedule III  
3 controlled substance as designated by Health and Safety Code section 11056(e)(4) and dangerous  
4 drug as designated by Business and Professions Code section 4022. The varying compounds are  
5 also known generically as Hydrocodone with APAP. These are narcotic drugs.

6 20. Xanax is a brand name for alprazolam, a Schedule IV controlled substance as  
7 designated by Health and Safety Code section 11057(d)(1) and dangerous drug as designated by  
8 Business and Professions Code section 4022. It is a depressant drug.

9 21. Valium is a brand name for diazepam, a Schedule IV controlled substance as  
10 designated by Health and Safety Code section 11057(d)(9) and dangerous drug as designated by  
11 Business and Professions Code section 4022. It is a depressant drug.

12 22. Ativan is a brand name for lorazepam, a Schedule IV controlled substance as  
13 designated by Health and Safety Code section 11057(d)(16) and dangerous drug as designated by  
14 Business and Professions Code section 4022. It is a depressant drug.

15 23. Ambien is a brand name for zolpidem tartrate, a Schedule IV controlled substance  
16 as designated by Health and Safety Code section 11057(d)(32) and dangerous drug as designated  
17 by Business and Professions Code section 4022. It is a depressant drug.

18 24. Soma is a brand name for carisoprodol, a dangerous drug as designated by Business  
19 and Professions Code section 4022. It is a muscle relaxant drug.

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1 CAUSES FOR DISCIPLINE, AS TO BOTH RESPONDENTS

2 FIRST CAUSE FOR DISCIPLINE

3 (Improper Dispensing Pursuant to Internet Prescriptions)

4 25. Respondents are each and severally subject to discipline under section(s) 4301(j), (o),  
5 4113(b), and/or 4067 of the Code, in that between on or about December 19, 2006 and May 30,  
6 2007, Respondents dispensed, furnished, caused to be dispensed or furnished, attempted to  
7 dispense or furnish, assisted or abetted the dispensing or furnishing of, and/or conspired to  
8 dispense or furnish, controlled substances and dangerous drugs to California residents pursuant to  
9 prescriptions issued via the Internet for which Respondents knew or should have known there was  
10 no good faith prior examination of a human or animal, and/or for which Respondents did not act  
11 in accordance with California Code of Regulations, title 16, section 1761, including:

12 a. Four hundred and sixty-eight (468) prescriptions for controlled substances, including  
13 APAP with Codeine drugs (brand or generic), Hydrocodone with APAP drugs (brand or  
14 generic), Xanax/alprazolam, Valium/diazepam, and Ativan/lorazepam;

15 b. Fourteen (14) prescriptions for dangerous drugs, including Soma/carisoprodol.

16  
17 SECOND CAUSE FOR DISCIPLINE

18 (Mislabeling of Container/Deviation from Prescription)

19 26. Respondents are each and severally subject to discipline under section(s) 4301(j), (o),  
20 4113(b) and/or 4076(a)(3) of the Code, and/or California Code of Regulations, title 16, section  
21 1716., in that on or about March 8, 2007, Respondents mislabeled a container and/or deviated  
22 from a written prescription, and/or attempted, assisted or abetted, and/or conspired to do so, by  
23 dispensing a prescription written for Ana T. in a container labeled for Ann T.

24  
25 THIRD CAUSE FOR DISCIPLINE

26 (Dispensing of Erroneous or Uncertain Prescription(s)).

27 27. Respondents are each and severally subject to discipline under section(s) 4301(j), (o),  
28 and/or 4113(b) of the Code, and/or California Code of Regulations, title 16, section 1761, in that

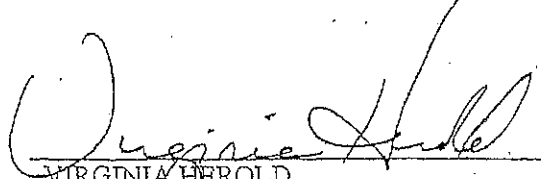
1 on or about February 2, 2007, April 4, 2007, or April 19, 2007, Respondents dispensed, attempted  
2 to dispense, assisted or abetted the dispensing of, and/or conspired to dispense, prescription(s)  
3 containing one or more significant errors, omissions, irregularities, uncertainties, ambiguities or  
4 alterations, without contacting the prescriber to validate the prescription, and/or having objective  
5 reason(s) to know that the prescription(s) was/were not issued for a legitimate medical purpose.

6  
7  
8 PRAYER

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

- 11 1. Revoking or suspending Pharmacy License Number PHY 46970, issued to Byung Sik  
12 Yuh dba Nichols Hill Prescription Pharmacy (Respondent Nichols Hill);
- 13 2. Revoking or suspending Pharmacist License Number RPH 36896, issued to Byung  
14 Sik Yuh (Respondent Yuh);
- 15 3. Ordering Respondent Nichols Hill and Respondent Yuh, jointly and severally, to pay  
16 to the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case,  
17 pursuant to Business and Professions Code section 125.3;
- 18 4. Taking such other and further action as is deemed necessary and proper.

19  
20  
21 DATED: 8/19/10

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

28  
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30 SF2010200855  
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Exhibit B  
Letter by Respondents

BYUNG SIK YUH  
NICHOLS HILL PHARMACY  
2844 Summit Street  
Oakland, CA 94609

October 5, 2010

Re: Pharmacy License Nos. RPH 36896 and PHY 46970

To My Colleagues Licensed by the  
California Board of Pharmacy:

I am ashamed to have to write this letter and admit my stupidity, actually my extreme short sightedness caused by greed induced by promises of quick easy money. And so little money. My shame is increased not only by the relatively small amount of money I was promised and paid but also because I have been a pharmacist licensed in and by this state for almost thirty (30) years and throughout those many years I had an unblemished professional record and prided myself in the belief that I had never violated any laws or regulations related to my profession or the distribution of controlled substances.

Then in late 2006 I was contacted over the telephone by a representative of a company proposing that I fill prescriptions that would be sent to my pharmacy over the internet and very unfortunately I agreed to do so. I was promised, over the telephone, by a faceless, smooth talker: a net profit of \$5.00 for each prescription I filled (they also promised to pay all shipping charges). When I was first contacted by that persistent, persuasive and reassuring representative of "an internet prescription company," he helped lead me to the conclusion that this would be an easy way to make a little extra money with a minimum of effort. That promise of easy, extra money partially blinded me to aspects of the arrangement that were illegal as well as professional misconduct.

I knew immediately that I would have to confirm that each of the prescribing parties was a physician licensed in the state in which the prescription was written and, if I could not confirm the doctor was licensed and had a valid DEA number, I could not and would not fill a prescription from that doctor. I soon realized that the prescriptions were from doctors all over the country; but in each case I was able to verify that the prescribing doctor was licensed with valid state and DEA numbers. Under those circumstances, based upon the fact that all of the prescribers were physicians, I thought at the time that it was

Page two

alright to fill the prescriptions and all that was required of me was spending the time to fill the prescription and ship it. I also realized the drugs I was shipping were primarily controlled substances but I was receiving all of the appropriate prescription forms in order to comply with the law. I was also quickly and reliably paid \$5.00 plus costs for each prescription dispensed.

Obviously, I did not give the proposal enough thought before I agreed and once I started receiving and filling prescriptions, I should have paid more attention to and thought more about all the information on the prescriptions. I was repeatedly receiving prescriptions from the same half dozen or do doctors who were prescribing mostly very strong (and controlled) painkillers to patients in areas, even states far away from the doctors's office and address. In hindsight, I should have noticed that geographical distance, questioned whether those doctors were really even seeing or communicating with these "patients" much less properly examining them before dispensing any drugs much less those types of drugs. I never directly confirmed that there were good faith prior examinations of the patients by the prescribing doctors before I dispensed the drugs.

Honestly, I did not notice the disparity or think of the possibility that there was not a professional examination and relationship between the prescribing doctor and recipient; but, again in hindsight, the nature of most of the drugs (painkillers) should also have alerted me to the potential impropriety. I was so busy, especially with all these additional prescriptions to fill (another warning signal I missed then but now see in hindsight) that I just kept working as fast as I could, never imagining that I was breaking not one but many very serious federal and state laws. Now I know, I could have been charged with criminal felonies in both state and federal courts!

Thankfully a representative of one of the companies I buy my drugs from who had known me a long time and correctly did not believe I would knowingly distribute any prescription much less controlled substances illegally or improperly, warned me about dealing with such internet companies. I filled prescriptions over the internet for about four months. As soon as I was warned that what we had been doing might be illegal, I immediately stopped that practice, but by then we had already filled over 5,000 prescriptions all around the country, almost 500 in California and 90 percent of those prescriptions were for painkillers. As soon as I agreed to fill internet prescriptions for one of those companies, more contacted me with the same

Page three

proposal and in those four months we dispensed prescriptions for five (5) of those internet companies. (Another warning I now see too late).

I was eventually contacted by both the federal Drug Enforcement Administration (DEA) and the State Board of Pharmacy. Both instituted investigations and those investigations have resulted in me incurring significant fines both to the State Board and to the DEA and my license and that of my store being placed on probation with a number of conditions attached to the probation. Those penalties are many times the money I made filling those internet prescriptions. My family has been hurt by my conduct both financially and emotionally and I would do anything to be able to go back and undo the decisions I made without adequate thought and consideration.

Believe it or not, my fines could have been much, much higher. Both the State of California and the Federal Government could have fined both me and my pharmacy \$25,000 for every prescription dispensed by us in this fashion. In fact, the Board of Pharmacy sent both me and my pharmacy (since we have different licenses) formal written penalty demands for \$11,700,000 each! Imagine my fear and that of my wife and others when we saw those documents!

The practice of filling prescriptions over the internet for patients previously unknown to my practice is dangerous to the patients and to the profession. I have come to learn that in many cases the patients contacted physicians only through a website and that they never had any personal contact with the physician. A few form questions were answered on the website by the patient which resulted in the generation of the prescription by the physician which was relayed to me over the internet and filled by me and mailed to the patients in various states. I also never had any personal contact with the patient or the physician. Obviously the physicians should not be issuing prescriptions to persons unknown to them and I should not have been filling those prescriptions.

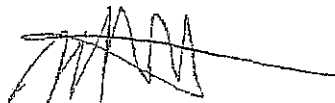
In hindsight I now can see the purpose of the law. Many potential drug abusers who are unable to obtain controlled substances through a legitimate physician relationship turn to the internet to continue the abusive practices. Filling of prescriptions in these circumstances makes the pharmacist at least an enabler if not more culpable than that. By filling internet prescriptions we are exposing people to unknown risks from drugs about which they have never realistically consulted a physician. Drug interactions are possible resulting in untold

Page four

potential complications, including death. Further, my attorneys advise me that if injury occurs to a person to whom I supplied drugs over the internet that I could well be liable for their damages, and that is a liability I am not certain my insurance would cover.

We are in the electronic age and more and more matters are being handled by e-mail and by internet communications. These forms of communication are fraught with danger for abuse and as pharmacists we all will have to be on guard to prevent misuse. The old adage to be careful if it seems too good to be true, is correct. Somebody, not me, was making a significant amount of money with this process and I was only an incidental part of it; however, without a pharmacist, the scheme cannot work. We must all be careful to screen prescriptions and the prescribers and err on the side of caution, not greed. The public relies more and more on us and we must step up and protect them as much as we can.

Sincerely,

A handwritten signature in black ink, appearing to read 'Byung Sik Yuh', with a long horizontal line extending to the right.

Byung Sik Yuh  
Nichols Hill Pharmacy