

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

In the Matter of the Accusation Against:

**DE ANZA VIEW PHARMACY INC., DBA
GOOD MORNING PHARMACY, SHUN-
MI MOON KIM, OWNER
7655 Clairemont Mesa Blvd., #306**

**Pharmacy Permit Nos. PHY 49904 and PHY
53915**

**SHUN-MI MOON KIM
9384 Pipilo St.
San Diego, CA 92129**

Pharmacist License No. RPH 46783

Respondents.

Case No. 5686

OAH No. 2016050528

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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 23, 2017.

It is so ORDERED on December 23, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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

11 In the Matter of the Accusation Against:

Case No. 5686

12 **DE ANZA VIEW PHARMACY INC., DBA**
13 **GOOD MORNING PHARMACY, SHUN-**
14 **MI MOON KIM, OWNER**
7655 Clairemont Mesa Blvd., #306
San Diego, CA 92111

OAH No. 2016050528

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

15 **Pharmacy Permit Nos. PHY 49904 and PHY**
16 **53915**

17 **SHUN-MI MOON KIM**
9384 Pipilo St.
18 San Diego, CA 92129

19 **Pharmacist License No. RPH 46783**

20 Respondents.

21
22 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
23 entitled proceedings that the following matters are true:

24 PARTIES

25 1. Virginia K. Herold (Complainant) is the Executive Officer of the Board of Pharmacy
26 (Board). She brought this action solely in her official capacity and is represented in this matter by
27

1 Kamala D. Harris, Attorney General of the State of California, by Desiree I. Kellogg, Deputy
2 Attorney General.

3 2. Respondent De Anza View Pharmacy Inc., dba Good Morning Pharmacy
4 (Respondent Good Morning Pharmacy) and Shun-Mi Moon Kim (Respondent Kim) are
5 representing themselves in this proceeding and have chosen not to exercise their right to be
6 represented by counsel.

7 3. On or about June 11, 2009, the Board of Pharmacy issued Pharmacy Permit Number
8 PHY 49904 to Good Morning Pharmacy. The Pharmacy Permit was in full force and effect at all
9 times relevant to the charges brought herein and was cancelled on December 14, 2015. On or
10 about December 11, 2015, Pharmacy Permit No. 53915 was issued to Respondent Good Morning
11 Pharmacy due to a change in location. The pharmacy permit was in full force and effect at all
12 times relevant to the charges brought herein and will expire on December 1, 2016, unless
13 renewed.

14 4. On or about November 29, 1993, the Board of Pharmacy issued Pharmacist License
15 Number RPH 46783 to Respondent Shun Kim. The Pharmacist License was in full force and
16 effect at all times relevant to the charges brought herein and will expire on November 30, 2017,
17 unless renewed.

18 JURISDICTION

19 5. First Amended Accusation No. 5686 was filed before the Board, and is currently
20 pending against Respondent. The First Amended Accusation and all other statutorily required
21 documents were properly served on Respondents on October 31, 2016. Respondents timely filed
22 their Notices of Defense contesting the First Amended Accusation.

23 6. A copy of First Amended Accusation No. 5686 is attached as exhibit A and
24 incorporated herein by reference.

25 ADVISEMENT AND WAIVERS

26 7. Respondents have carefully read, and understand the charges and allegations in First
27 Amended Accusation No. 5686. Respondents have also carefully read, and understand the effects
28 of this Stipulated Settlement and Disciplinary Order.

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

7 15. In consideration of the foregoing admissions and stipulations, the parties agree that
8 the Board may, without further notice or formal proceeding, issue and enter the following
9 Disciplinary Order:

10 **DISCIPLINARY ORDER**

11 IT IS HEREBY ORDERED that Pharmacy Permit Nos. PHY 49904 and PHY 53915,
12 issued to Respondent De Anza View Pharmacy, Inc., doing business as Good Morning Pharmacy,
13 are surrendered and accepted by the Board of Pharmacy. The effective date of the Decision shall
14 be stayed until January 13, 2017, at which time the pharmacy shall be sold or closed.

15 1. The surrender of Respondent Good Morning Pharmacy's Pharmacy Permit and the
16 acceptance of the surrendered license by the Board shall constitute the imposition of discipline
17 against Respondent Good Morning Pharmacy. This stipulation constitutes a record of the
18 discipline and shall become a part of Respondent's license history with the Board of Pharmacy.

19 2. In the event that Respondent Good Morning Pharmacy is sold and an application for a
20 change of ownership is submitted to the Board, the Board shall expedite the processing of that
21 application.

22 3. Respondent Good Morning Pharmacy shall lose all rights and privileges as a
23 pharmacy in California as of the effective date of the Board's Decision and Order.

24 4. Respondent Good Morning Pharmacy shall cause to be delivered to the Board its
25 pocket license and, if one was issued, its wall certificate on or before the effective date of the
26 Decision and Order.

27 5. If Respondent Good Morning Pharmacy ever applies for licensure or petitions for
28 reinstatement in the State of California, the Board shall treat it as a new application for licensure.

1 Respondent Good Morning Pharmacy must comply with all the laws, regulations and procedures
2 for licensure in effect at the time the application or petition is filed, and all of the charges and
3 allegations contained in First Amended Accusation No. 5686 shall be deemed to be true, correct
4 and admitted by Respondent Good Morning Pharmacy when the Board determines whether to
5 grant or deny the application or petition.

6 6. Respondent Good Morning Pharmacy shall pay the agency its costs of investigation
7 and enforcement in the amount of \$11,055.50, in a payment plan approved by the Board.

8 Respondent Good Morning Pharmacy shall be jointly and severally liable for the full costs with
9 Respondent Shun-Mi Moon Kim.

10 7. If Respondent Good Morning Pharmacy should ever apply or reapply for a new
11 license or certification, or petition for reinstatement of a license, by any other health care
12 licensing agency in the State of California, all of the charges and allegations contained in First
13 Amended Accusation No. 5686 shall be deemed to be true, correct, and admitted by Respondent
14 Good Morning Pharmacy for the purpose of any Statement of Issues or any other proceeding
15 seeking to deny or restrict licensure.

16 8. In the event that Respondent Good Morning Pharmacy is not sold by January 13,
17 2017, Respondent Good Morning Pharmacy shall, within ten (10) days of the stayed effective
18 date of the Board's order, arrange for the destruction of, the transfer to, sale of or storage in a
19 facility licensed by the Board of all controlled substances and dangerous drugs and devices.
20 Respondent Good Morning Pharmacy shall further provide written proof of such disposition and
21 submit a completed Discontinuance of Business form according to Board guidelines.

22 9. In the event that Respondent Good Morning Pharmacy is not sold within thirty (30)
23 days of the effective date of the Order adopting this Stipulated Surrender, Respondent Good
24 Morning Pharmacy shall, within ten (10) days of the stayed effective date of the Board's Order,
25 arrange for the continuation of care for ongoing patients of the pharmacy, by at minimum,
26 providing a written notice to ongoing patients that specifies the anticipated closing date of the
27 pharmacy and that identifies one or more area pharmacies capable of taking up the patients' care,
28 and by cooperating as may be necessary in the transfer of records or prescriptions for ongoing

1 patients. Within five (5) days of satisfaction of this provision to the pharmacy's ongoing patients,
2 Respondent Good Morning Pharmacy shall provide a copy of the written notice to the board. For
3 the purposes of this provision, "ongoing patients" means those patients for whom the pharmacy
4 has on file a prescription with one or more refills outstanding, or for whom the pharmacy has
5 filled a prescription within the preceding sixty (60) days.

6 10. Respondent Good Morning Pharmacy may not apply, reapply, or petition for any
7 licensure or registration of the Board for three (3) years from the effective date of the Decision
8 and Order.

9 **IT IS FURTHER HEREBY ORDERED** that Pharmacist License No. RPH 46783 issued
10 to Respondent Shun-Mi Moon Kim is revoked. However, the revocation is stayed and
11 Respondent Kim is placed on probation for five (5) years on the following terms and conditions.

12 **1. Suspension**

13 As part of probation, respondent Kim is suspended from the practice of pharmacy until she
14 completes ten (10) hours of in-person remedial education in the area of corresponding
15 responsibility, prescription drug abuse, record keeping for opioids and CURES beginning the
16 effective date of this decision.

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

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

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

4 2. Obey All Laws

5 Respondent Kim shall obey all state and federal laws and regulations.

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

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

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

19 3. Report to the Board

20 Respondent Kim shall report to the board quarterly, on a schedule as directed by the board
21 or its designee. The report shall be made either in person or in writing, as directed. Among other
22 requirements, respondent shall state in each report under penalty of perjury whether there has
23 been compliance with all the terms and conditions of probation. Failure to submit timely reports
24 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency
25 in submission of reports as directed may be added to the total period of probation. Moreover, if
26 the final probation report is not made as directed, probation shall be automatically extended until
27 such time as the final report is made and accepted by the board.
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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, or failure to appear for two (2) or more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

5. Cooperate with Board Staff

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

6. Continuing Education

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

7. Notice to Employers

During the period of probation, respondent Kim shall notify all present and prospective employers of the decision in case number 5686 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent Kim shall cause their direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 5686, and terms and conditions imposed thereby. It shall be respondent Kim's responsibility to ensure that their employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

If respondent Kim works for or is employed by or through a pharmacy employment service, respondent must notify their direct supervisor, pharmacist-in-charge, and owner at every entity licensed by the board of the terms and conditions of the decision in case number 5686 in advance

1 of the respondent Kim commencing work at each licensed entity. A record of this notification
2 must be provided to the board upon request.

3 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
4 (15) days of respondent Kim undertaking any new employment by or through a pharmacy
5 employment service, respondent shall cause their direct supervisor with the pharmacy
6 employment service to report to the board in writing acknowledging that they has read the
7 decision in case number 5686 and the terms and conditions imposed thereby. It shall be
8 respondent's responsibility to ensure that their employer(s) and/or supervisor(s) submit timely
9 acknowledgment(s) to the board.

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

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

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

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

23 **9. Reimbursement of Board Costs**

24 As a condition precedent to successful completion of probation, respondent shall pay to the
25 board its costs of investigation and prosecution in the amount of \$11,055.50. Respondent Kim
26 shall make said payments in a payment plan to be approved by the Board. Respondent shall be
27 jointly and severally liable for the costs with Respondent Good Morning Pharmacy.
28

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

4 The filing of bankruptcy by respondent shall not relieve respondent Kim of their
5 responsibility to reimburse the board its costs of investigation and prosecution.

6 **10. Probation Monitoring Costs**

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

11 **11. Status of License**

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

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

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

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

27 Upon acceptance of the surrender, respondent Kim shall relinquish their pocket and wall
28 license to the board within ten (10) days of notification by the board that the surrender is

1 accepted. Respondent Kim may not reapply for any license from the board for three (3) years
2 from the effective date of the surrender. Respondent Kim shall meet all requirements applicable
3 to the license sought as of the date the application for that license is submitted to the board,
4 including any outstanding costs.

5 **13. Notification of a Change in Name, Residence Address, Mailing**
6 **Address or Employment**

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

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

14 **14. Tolling of Probation**

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

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

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

1 "Cessation of practice" means any calendar month during which respondent
2 Kim is not practicing as a pharmacist for at least forty (40) hours, as defined by
3 Business and Professions Code section 4000 et seq . "Resumption of practice" means
4 any calendar month during which respondent Kim is practicing as a pharmacist for at
5 least forty (40) hours as a pharmacist as defined by Business and Professions Code
6 section 4000 et seq.

7 **15. Violation of Probation**

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

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

20 **16. Completion of Probation**

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

23 **17. Remedial Education**

24 Within thirty (30) days of the effective date of this decision, respondent Kim shall submit to
25 the board or its designee, for prior approval, an appropriate program of remedial education related
26 to corresponding responsibility, prescription drug abuse, record keeping for opioids and CURES.
27 Fifty (50) percent of this remedial education must be completed in-person. The program of
28 remedial education shall consist of at least ten (10) hours per year for a total of fifty (50) hours,

1 which shall be completed at respondent's own expense. All remedial education shall be in
2 addition to, and shall not be credited toward, continuing education (CE) courses used for license
3 renewal purposes.

4 Failure to timely submit or complete the approved remedial education shall be considered a
5 violation of probation. The period of probation will be automatically extended until such
6 remedial education is successfully completed and written proof, in a form acceptable to the board,
7 is provided to the board or its designee.

8 Following the completion of each course, the board or its designee may require the
9 respondent Kim, at their own expense, to take an approved examination to test the respondent
10 Kim's knowledge of the course. If respondent Kim does not achieve a passing score on the
11 examination, this failure shall be considered a violation of probation. Any such examination
12 failure shall require respondent Kim to take another course approved by the board in the same
13 subject area.

14 18. Supervised Practice

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

20 Continuous – At least 75% of a work week

21 Substantial - At least 50% of a work week

22 Partial - At least 25% of a work week

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

24 Within thirty (30) days of the effective date of this decision, respondent Kim shall have her
25 supervisor submit notification to the board in writing stating that the supervisor has read the
26 decision in case number 5686 and is familiar with the required level of supervision as determined
27 by the board or its designee. It shall be respondent Kim's responsibility to ensure that their
28 employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the

1 board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
2 acknowledgements to the board shall be considered a violation of probation.

3 If respondent Kim changes employment, it shall be respondent Kim's responsibility to
4 ensure that their employer(s), pharmacist-in-charge and/or supervisor(s) submit timely
5 acknowledgement(s) to the board. Respondent Kim shall have her new supervisor, within fifteen
6 (15) days after employment commences, submit notification to the board in writing stating the
7 direct supervisor and pharmacist-in-charge have read the decision in case number 5686 and is
8 familiar with the level of supervision as determined by the board. Respondent Kim shall not
9 practice pharmacy and her license shall be automatically suspended until the board or its designee
10 approves a new supervisor. Failure to cause the direct supervisor and the pharmacist-in-charge to
11 submit timely acknowledgements to the board shall be considered a violation of probation.

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

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

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

27 Subject to the above restrictions, respondent Kim may continue to own or hold an interest
28 in any licensed premises in which she holds an interest at the time this decision becomes effective

1 unless otherwise specified in this order.

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

3 **19. No Ownership of Licensed Premises**

4 Respondent Kim shall not own, have any legal or beneficial interest in, or serve as a
5 manager, administrator, member, officer, director, trustee, associate, or partner of any business,
6 firm, partnership, or corporation currently or hereinafter licensed by the board. Respondent Kim
7 shall sell or transfer any legal or beneficial interest in any entity licensed by the board within
8 ninety (90) days following the effective date of this decision and shall immediately thereafter
9 provide written proof thereof to the board. Failure to timely divest any legal or beneficial
10 interest(s) or provide documentation thereof shall be considered a violation of probation.

11 **20. Ethics Course**

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

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

18 **ACCEPTANCE**

19 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
20 stipulation and the effect it will have on the Pharmacy Permits and Pharmacist License. I enter
21 into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently,
22 and agree to be bound by the Decision and Order of the Board of Pharmacy.

23
24 DATED: NOV. 14th, 2016



25 SHUN-MI MOON KIM, as an individual and as the
26 authorized agent on behalf of DE ANZA VIEW
27 PHARMACY, INC., DBA GOOD MORNING
28 PHARMACY
Respondents

ENDORSEMENT

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

DATED: 11/14/16

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General

DESIREE I. KELLOGG
Deputy Attorney General
Attorneys for Complainant

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81507994.doc

Exhibit A

First Amended Accusation No. 5686

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Attorneys for Complainant

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20 Pharmacist License No. RPH 46783
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FIRST AMENDED ACCUSATION

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22 Complainant alleges:

23 **PARTIES**

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

27 2. On or about June 11, 2009, the Board of Pharmacy issued Pharmacy Permit Number
28 PHY 49904 to De Anza View Pharmacy Inc., doing business as Good Morning Pharmacy. The

1 Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein
2 and was cancelled on December 14, 2015. On or about December 11, 2015, Pharmacy Permit
3 No. 53915 was issued to Respondent De Anza View Pharmacy Inc., doing business as Good
4 Morning Pharmacy (Respondent Good Morning Pharmacy) due to a change in location. The
5 pharmacy permit was in full force and effect at all times relevant to the charges brought herein
6 and will expire on December 1, 2016, unless renewed.

7 3. On or about November 29, 1993, the Board of Pharmacy issued Pharmacist License
8 Number RPH 46783 to Shun-Mi Moon Kim (Respondent Shun-Mi Kim). The Pharmacist
9 License was in full force and effect at all times relevant to the charges brought herein and will
10 expire on November 30, 2017, unless renewed.

11 JURISDICTION

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

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

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

20 7. Section 4300.1 of the Code states:

21 The expiration, cancellation, forfeiture, or suspension of a board-issued license
22 by operation of law or by order or decision of the board or a court of law, the
23 placement of a license on a retired status, or the voluntary surrender of a license by a
24 licensee shall not deprive the board of jurisdiction to commence or proceed with any
investigation of, or action or disciplinary proceeding against, the licensee or to render
a decision suspending or revoking the license.

25 STATUTORY AND REGULATORY PROVISIONS

26 8. Section 4301 of the Code states in pertinent part:

27 The board shall take action against any holder of a license who is guilty of
unprofessional conduct or whose license has been procured by fraud or
28 misrepresentation or issued by mistake. Unprofessional conduct shall include, but is
not limited to, any of the following:

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

...

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

...

9. Section 4307(a) of the Code states that:

Any person who has been denied a license or whose license has been revoked or is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a manager, administrator, owner member, officer, director, associate, or partner of any partnership, corporation, firm, or association whose application for a license has been denied or revoked, is under suspension or has been placed on probation, and while acting as the manger, administrator, owner, member, officer, director, associate, or partner had knowledge or knowingly participated in any conduct for which the license was denied, revoked, suspended, or placed on probation, shall be prohibited from serving as a manger, administrator, owner, member, officer, director, associate, or partner of a licensee as follows:

(1) Where a probationary license is issued or where an existing license is placed on probation, this prohibition shall remain in effect for a period not to exceed five years.

(2) Where the license is denied or revoked, the prohibition shall continue until the license is issued or reinstated.

....

10. Section 4113(c) of the Code states:

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

11. Health and Safety Code section 11153(a) states:

A prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. Except as authorized by this division, the following are not legal prescriptions: (1) an order purporting to be a prescription which is issued not in the usual course of professional treatment or in legitimate and authorized research; or (2) an order for an addict or habitual user of controlled substances, which is issued not in the course of professional treatment or as part of an authorized narcotic treatment program, for the purpose of providing the user with controlled substances, sufficient to keep him

1 or her comfortable by maintaining customary use.

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3 12. Section 1761 of title 16, California Code of Regulations states:

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

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

12 COST RECOVERY

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

17 DRUGS

18 14. Adderall is a brand name for mixed amphetamine salts, a Schedule II controlled
19 substance pursuant to Health and Safety Code section 11055(d)(1) and a dangerous drug pursuant
20 to Business and Professions Code section 4022.

21 15. Norco is a brand name for hydrocodone/acetaminophen, a Schedule III controlled
22 substance pursuant to Health and Safety Code section 11056(e)(5) and a dangerous drug pursuant
23 to Business and Professions Code section 4022.

24 16. Oxycodone is a Schedule II controlled substance pursuant to Health and Safety Code
25 section 11055(b)(1)(M) and a dangerous drug pursuant to Business and Professions Code section
26 4022.

27 17. Phenergan with Codeine is the brand name for promethazine with codeine, a
28 Schedule V controlled substance pursuant to Health and Safety Code section 11058(c)(1) and is a
dangerous drug pursuant to Business and Professions Code section 4022.

1 18. Xanax is the brand name for alprazolam, a Schedule IV controlled substance pursuant
2 to Health and Safety Code section 11057(d)(1) and a dangerous drug pursuant to Business and
3 Professions Code section 4022.

4 FACTUAL ALLEGATIONS

5 19. From June 11, 2009 through the present, Respondent Shun-Mi Kim was the
6 Pharmacist-in-Charge of Respondent Good Morning Pharmacy. From June 11, 2009 to the
7 present, Respondent Shun-Mi Kim was the Chief Executive Officer, Director, Secretary,
8 Treasurer/Chief Financial Officer and one hundred percent shareholder of Respondent Good
9 Morning Pharmacy.

10 20. From January 9, 2012 to August 11, 2012, Respondents filled 134 prescriptions
11 which were written by Dr. W.W. All but one of these prescriptions were issued for controlled
12 substances.

13 21. To obtain controlled substances, patients traveled a range between 26 and 63.9 miles
14 from their residences to Dr. W.W.'s offices, from the prescribers' offices to Respondent Good
15 Morning Pharmacy and from Respondent Good Morning Pharmacy to their residences. These
16 distances were irregular in an urban area well served by pharmacies and physicians.

17 22. Patients paid for the controlled substance prescriptions in cash and did not seek
18 reimbursement from an insurance company or government agency.

19 23. Dr. W.W. wrote the majority of these controlled substance prescriptions for patients
20 who were mostly under the age of thirty.

21 24. Respondents' records listed the same home address or last name for various patients
22 who were written prescriptions by Dr. W.W. and dispensed the same drug therapy by
23 Respondents.

24 25. Respondents filled prescriptions for controlled substances which were written in an
25 identical fashion by Dr. W.W. for multiple patients. Dr. W.W. wrote the majority of these
26 prescriptions for the same combination of controlled substances in the same strength (the highest
27 available), Oxycodone 30 mg, hydrocodone/acetaminophen 10/325mg and alprazolam 2mg to
28 multiple patients.

1 26. Dr. W.W. prescribed the same drug therapy to patients who suffered from multiple
2 conditions or diagnoses which typically require separate drug therapies and specialists.

3 27. Respondents did not adequately verify or otherwise research whether the
4 prescriptions described in paragraph 19 were written for a legitimate medical purpose before
5 filling them.

6 28. On or about December 8, 2014, Dr. W.W. pled guilty to operating a "pill mill."
7 Namely, he pled guilty to knowingly and intentionally conspiring to unlawfully distribute and
8 dispense oxycodone without a legitimate medical purpose, in violation of title 21 United States
9 Code sections 841(a)(1) and 846.

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(Failing to Comply with Corresponding Responsibility**
12 **for Legitimate Controlled Substance Prescriptions)**

13 29. Respondents are subject to disciplinary action under Code section 4301(j), for
14 violating Health and Safety Code section 11153(a), in that they failed to comply with their
15 corresponding responsibility to ensure that controlled substances were dispensed for a legitimate
16 medical purpose when Respondents furnished prescriptions for controlled substances even though
17 "red flags" were present to indicate those prescriptions were not issued for a legitimate medical
18 purpose, as set forth in paragraphs 18 through 28 above, which are incorporated herein by
19 reference.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Dispensing Controlled Substance Prescriptions with Significant Errors, Omissions,**
22 **Irregularities, Uncertainties, Ambiguities or Alterations)**

23 30. Respondents are subject to disciplinary action under Code section 4301(o), for
24 violating title 16, California Code of Regulations, sections 1761(a) and (b), in that they dispensed
25 prescriptions for controlled substances, which contained significant errors, omissions,
26 irregularities, uncertainties, ambiguities or alterations, as set forth in paragraphs 18 through 28
27 above, which are incorporated herein by reference.

28

1 THIRD CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct)

3 31. Respondents are subject to disciplinary action under Code section 4301 for
4 unprofessional conduct in that they engaged in the activities described in paragraphs 18 through
5 28 above, which are incorporated herein by reference.

6 **OTHER MATTERS**

7 32. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit
8 Numbers PHY 49904 and PHY 53915 issued to De Anza View Pharmacy Inc., doing business as
9 Good Morning Pharmacy, De Anza View Pharmacy Inc., doing business as Good Morning
10 Pharmacy shall be prohibited from serving as a manager, administrator, owner, member, officer,
11 director, associate, or partner of a licensee for five years if Pharmacy Permit Numbers PHY
12 49904 and PHY 53915 are placed on probation or until Pharmacy Permit Numbers PHY 49904
13 and PHY 53915 are reinstated if they are revoked.

14 33. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit
15 Numbers PHY 49904 and PHY 53915 issued to De Anza View Pharmacy Inc., doing business as
16 Good Morning Pharmacy while Shun-Mi Moon Kim has been an officer and owner and had
17 knowledge of or knowingly participated in any conduct for which the licensee was disciplined,
18 Shun-Mi Moon Kim shall be prohibited from serving as a manager, administrator, owner,
19 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit
20 Numbers PHY 49904 and PHY 53915 are placed on probation or until Pharmacy Permit
21 Numbers PHY 49904 and PHY 53915 are reinstated if they are revoked.

22 34. Pursuant to Code section 4307, if discipline is imposed on Pharmacist License No.
23 RPH 46783 issued to Shun-Mi Moon Kim, Shun-Mi Moon Kim shall be prohibited from serving
24 as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee
25 for five years if Pharmacist License Number RPH 46783 is placed on probation or until
26 Pharmacist License Number RPH 46783 is reinstated if it is revoked.

1 PRAYER

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

4 1. Revoking or suspending Pharmacy Permit Numbers PHY 49904 and PHY 53915,
5 issued to De Anza View Pharmacy Inc., doing business as Good Morning Pharmacy;

6 2. Revoking or suspending Pharmacist License Number RPH 46783, issued to Shun-Mi
7 Moon Kim;

8 3. Prohibiting De Anza View Pharmacy Inc., doing business as Good Morning
9 Pharmacy from serving as a manager, administrator, owner, member, officer, director, associate,
10 or partner of a licensee for five years if Pharmacy Permit Numbers PHY 49904 and PHY 53915
11 are placed on probation or until Pharmacy Permit Numbers PHY 49904 and PHY 53915 are
12 reinstated if Pharmacy Permit Numbers PHY 49904 and PHY 53915 issued to De Anza View
13 Pharmacy Inc., doing business as Good Morning Pharmacy are revoked;

14 4. Prohibiting Shun-Mi Moon Kim from serving as a manager, administrator, owner,
15 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit
16 Numbers PHY 49904 and PHY 53915 are placed on probation or until Pharmacy Permit
17 Numbers PHY 49904 and PHY 53915 are reinstated if Pharmacy Permit Numbers PHY 49904
18 and PHY 53915 issued to De Anza View Pharmacy Inc., doing business as Good Morning
19 Pharmacy are revoked;

20 5. Prohibiting Shun-Mi Moon Kim from serving as a manager, administrator, owner,
21 member, officer, director, associate, or partner of a licensee for five years if Pharmacist License
22 Number RPH 46783 is placed on probation or until Pharmacist License Number RPH 46783 is
23 reinstated if Pharmacist License Number RPH 46783 issued to Shun-Mi Moon Kim is revoked;

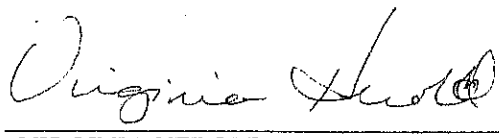
24 6. Ordering De Anza View Pharmacy Inc., doing business as Good Morning Pharmacy
25 and Shun-Mi Moon Kim to pay the Board of Pharmacy the reasonable costs of the investigation
26 and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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7. Taking such other and further action as deemed necessary and proper.

DATED: 10/31/16



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

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