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6 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

12 MARTIN CHOONGSUB KIM
13 1303 Beech Avenue
14 Torrance, CA 90501
15 Pharmacist License No. RPH 38130

16 and

17 MARTIN PHARMACY
18 801 South Vermont Avenue, # 104
19 Los Angeles, CA 90005
20 Martin Choongsub Kim, Owner
21 Pharmacy License No. PHY 32469

22 Respondent.

Case No. 2275

OAH No. L-2001080793

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

23 In the interest of a prompt and speedy settlement of this matter, consistent with
24 the public interest and the responsibility of the Board of Pharmacy of the Department of
25 Consumer Affairs, the parties hereby agree to the following Stipulated Settlement and
26 Disciplinary Order which will be submitted to the Board for approval and adoption as the final
27 disposition of the Accusation solely with respect to MARTIN CHOONGSUB KIM and to
28 MARTIN PHARMACY.

PARTIES

1. Patricia F. Harris (Complainant) is the Executive Officer of the Board of

1 the right to present evidence and to testify on his own behalf; the right to the issuance of
2 subpoenas to compel the attendance of witnesses and the production of documents; the right to
3 reconsideration and court review of an adverse decision; and all other rights accorded by the
4 California Administrative Procedure Act and other applicable laws.

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

7 CULPABILITY

8 8. Respondent agrees that the charges and allegations in Accusation No.
9 2275, if proven at a hearing, constitute cause for imposing discipline upon his Pharmacist
10 License. Respondent agrees that at a hearing Complainant could establish a factual basis for the
11 charges in the Accusation, and that Respondent hereby gives up his right to contest those
12 charges.

13 The admissions made by Respondent herein are only for the purposes of this
14 proceeding, or any other proceeding in which the Board or other professional licensing agency is
15 involved, and shall not be admissible in any other criminal or civil proceeding.

16 9. Respondent agrees that both his Pharmacist License and his Pharmacy
17 Permit are subject to discipline and he agrees to be bound by the Board's imposition of discipline
18 as set forth in the Disciplinary Order below.

19 CONTINGENCY

20 10. This stipulation shall be subject to approval by the Board of Pharmacy.
21 Respondent understands and agrees that counsel for Complainant and the staff of the Board of
22 Pharmacy may communicate directly with the Board regarding this stipulation and settlement,
23 without notice to or participation by Respondent or his counsel. By signing the stipulation,
24 Respondent understands and agrees that he may not withdraw his agreement or seek to rescind
25 the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt
26 this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall
27 be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action

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1 between the parties, and the Board shall not be disqualified from further action by having
2 considered this matter.

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

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

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10 **DISCIPLINARY ORDER**

11 IT IS HEREBY ORDERED that Pharmacy Permit No. PHY 32469 issued to
12 Martin Choongsub Kim to do business as MARTIN PHARMACY is hereby revoked.

13 Further, Pharmacist License No. RPH 38130 issued to Respondent Martin
14 Choongsub Kim is revoked. However, the revocation is stayed and Respondent is placed on
15 probation for three (3) years on the following terms and conditions.

16 1. **Actual Suspension - Pharmacist.** As part of probation, Respondent is
17 suspended from the practice of pharmacy for 60 days beginning the effective date of this
18 decision.

19 During suspension, Respondent shall not enter any pharmacy area or any portion
20 of the licensed premises of a wholesaler, medical device retailer or any other distributor of drugs
21 which is licensed by the Board, or any manufacturer, or where dangerous drugs, controlled
22 substances or legend drugs are maintained. Respondent shall not practice pharmacy nor do any
23 act involving drug selection, selection of stock, manufacturing, compounding, dispensing or
24 patient consultation; nor shall Respondent manage, administer, or be a consultant to any licensee
25 of the Board, or have access to or control the ordering, manufacturing or dispensing of dangerous
26 drugs or controlled substances of dangerous drugs or controlled substances. Respondent shall
27 not direct or control any aspect of the practice of pharmacy. Subject to the above restrictions,

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1 Respondent may continue to own or hold an interest in any pharmacy in which he or she holds an
2 interest at the time this decision becomes effective.

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

5 3. **Reporting to the Board.** Respondent shall report to the Board or its
6 designee quarterly. The report shall be made either in person or in writing, as directed. If the
7 final probation report is not made as directed, probation shall be extended automatically until
8 such time as the final report is made.

9 4. **Interview with the Board.** Upon receipt of reasonable notice,
10 Respondent shall appear in person for interviews with the Board or its designee upon request at
11 various intervals at a location to be determined by the Board or its designee. Failure to appear
12 for a scheduled interview without prior notification to Board staff shall be considered a violation
13 of probation.

14 5. **Cooperation with Board Staff.** Respondent shall cooperate with the
15 Board's inspectional program and in the Board's monitoring and investigation of the
16 Respondent's compliance with the terms and conditions of his probation. Failure to cooperate
17 shall be considered a violation of probation.

18 6. **Peer Review.** Respondent shall submit to peer review as deemed
19 necessary by the Board.

20 7. **Continuing Education.** Respondent shall provide evidence of efforts to
21 maintain skill and knowledge as a pharmacist as directed by the Board.

22 8. **Notice to Employers.** Respondent shall notify all present and prospective
23 employers of the decision in Case No. 2275 and the terms, conditions and restrictions imposed
24 on Respondent by the decision. Within thirty (30) days of the effective date of this decision, and
25 within fifteen (15) days of Respondent undertaking new employment, Respondent shall cause his
26 employer to report to the Board in writing acknowledging the employer has read the decision in
27 Case No. 2275.

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1 If Respondent works for or is employed by or through a pharmacy employment
2 service, Respondent must notify the pharmacist-in-charge and/or owner at every pharmacy at
3 which he is to employed or used of the fact and terms of the decision in Case number 2275 in
4 advance of the Respondent commencing work at the pharmacy.

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

8 **9. No Preceptorships, Supervision of Interns, Being Pharmacist-in-**
9 **Charge.** Respondent shall not supervise any intern pharmacist or perform any of the duties of a
10 preceptor, nor shall Respondent be the pharmacist-in-charge of any pharmacy licensed by the
11 Board.

12 **10. Reimbursement of Board Costs.** Respondent shall pay to the Board its
13 costs of investigation and prosecution in the amount of \$10,000.00. Respondent shall make said
14 payments within thirty (30) days of the date that this decision becomes effective. If Respondent
15 fails to pay the costs as specified by the Board and on or before the date(s) determined by the
16 Board, the Board shall, without affording the Respondent notice and the opportunity to be heard,
17 revoke probation and carry out the disciplinary order that was stayed.

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

22 **12. Status of License.** Respondent shall, at all times while on probation,
23 maintain an active current license with the Board, including any period during which suspension
24 or probation is tolled. If Respondent's license expires by operation of law or otherwise, upon
25 renewal or reapplication, Respondent's license shall be subject to all terms of this probation not
26 previously satisfied.

27 **13. Notification of Employment/Mailing Address Change.** Within ten (10)

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1 days of a change in employment -- either leaving or commencing employment -- Respondent
2 shall so notify the Board in writing, including the address of the new employer; within ten (10)
3 days of a change of mailing address, Respondent shall notify the Board in writing. If
4 Respondent works for or is employed through a pharmacy employment service, Respondent
5 shall, as requested, provide to the Board or its designee with a work schedule, indicating dates
6 and location of employment.

7 **14. Tolling of Probation.** If Respondent leaves California to reside or
8 practice outside this state, Respondent must notify the Board in writing of the dates of departure
9 and return within ten (10) days of departure or return. Periods of residency, except such periods
10 where the Respondent is actively practicing pharmacy within California, or practice outside
11 California shall not apply to reduction of the probationary period.

12 Should Respondent, regardless of residency, for any reason cease practicing
13 pharmacy in California, Respondent must notify the Board in writing within ten (10) days of
14 cessation of the practice of pharmacy or resuming the practice of pharmacy. "Cessation of
15 practice" means any period of time exceeding thirty (30) days in which Respondent is not
16 engaged in the practice of pharmacy as defined in section 4052 of the Business and Professions
17 Code.

18 It is a violation of probation for Respondent's probation to remain tolled pursuant
19 to the provisions of this condition for a period exceeding a consecutive period of [three] years.

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

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

27 **16. Violation of Probation.** If Respondent violates probation in any respect,

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1 the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation
2 and carry out the disciplinary order which was stayed. If a petition to revoke probation or an
3 accusation is filed against Respondent during probation, the Board shall have continuing
4 jurisdiction, and the period of probation shall be extended, until the petition to revoke probation
5 is heard and decided. If a Respondent has not complied with any term or condition of probation,
6 the Board shall have continuing jurisdiction over Respondent, and probation shall automatically
7 be extended until all terms and conditions have been met or the Board has taken other action as
8 deemed appropriate to treat the failure to comply as a violation of probation, to terminate
9 probation, and to impose the penalty which was stayed.

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

12 18. **Adoption of Stipulation.** It is understood that, in deciding whether to
13 adopt this stipulation, the Board may receive oral and written presentation from, and make
14 inquiries of, complainant, his attorneys, the Board's attorneys, consulting experts, and the Board's
15 enforcement committee.

16 19. **No New Ownership of Licensed Premises.**

17 If Respondent currently owns or has any legal or beneficial interest in, or serves as a
18 manager, administrator, member, officer, director, associate, or partner of any business, firm,
19 partnership, or corporation currently or hereinafter licensed by the Board, Respondent shall not
20 acquire any new ownership, legal or beneficial interest nor serve as a manager, administrator,
21 member, officer, director, associate, or partner of any additional business, firm, partnership, or
22 corporation.

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ACCEPTANCE

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

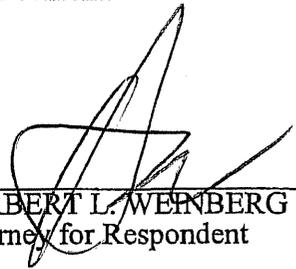
DATED: 11/28/01



MARTIN CHOONGSUB KIM
Respondent

I have read and fully discussed with Respondent Martin Choongsub Kim the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 11/29/01



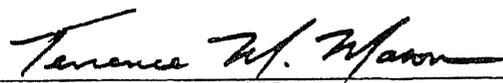
HERBERT L. WEINBERG
Attorney for Respondent

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: 12/2/01

BILL LOCKYER, Attorney General
of the State of California



TERRENCE M. MASON
Deputy Attorney General
Attorneys for Complainant

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

In the Matter of the Accusation Against:

MARTIN CHOONGSUB KIM
1303 Beech Avenue
Torrance, CA 90501
Pharmacist License No. RPH 38130

and

MARTIN PHARMACY
801 South Vermont Avenue, #104
Los Angeles, CA 90005
Pharmacy License No. PHY 32469

Respondent.

Case No. 2275

OAH No. L-2001080793

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 March 17, 2002.

It is so ORDERED February 15, 2002.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STEVE LITSEY
Board President

1 **LICENSE HISTORY**

2 2. On September 20, 1983, the Board of Pharmacy issued Original
3 Pharmacist License Number RPH 38130 to Martin Choongsub Kim (hereinafter
4 "respondent Kim") to practice pharmacy in California. Said license was at all times
5 relevant herein, in full force and effect and will expire on November 30, 2001, unless
6 renewed.

7 3. On November 18, 1985, the Board of Pharmacy issued Original
8 Pharmacy Permit Number PHY 32469 to Martin Choongsub Kim, to do business as
9 Martin Pharmacy (hereinafter "respondent Pharmacy"). Said license was at all times
10 relevant herein, in full force and effect and will expire on November 1, 2000, unless
11 renewed.

12 Martin Kim, RPH 38130, was the Pharmacist-in-Charge from November
13 18, 1985 through June 20, 1994. Jin Tae Kim, PHY 46531, was the Pharmacist-in-
14 Charge from June 20, 1994 through July 1, 1995. Martin Kim, RPH 38130 was the
15 Pharmacist-in-Charge from July 1, 1995 through September 30, 1998. Kiok Baie, RPH
16 45366 was the Pharmacist-in-Charge from October 1, 1998 through February 14, 1999.
17 Seung Hee Choi, RPH 47972 was the Pharmacist-in-Charge from February 14, 1999
18 through June 20, 1999. Martin Kim, RPH 38130 was and still is the Pharmacist-in-
19 Charge since June 20, 1999.

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21 **STATUTES AND REGULATIONS**

22 4. Business and Professions Code section 118(b) (hereinafter the
23 "Code") provides that the suspension, expiration, or forfeiture by operation of law of a
24 certificate does not deprive the Board of authority or jurisdiction to institute or continue
25 with disciplinary action against the certificate or to order suspension or revocation of the
26 certificate, during the period within which the certificate may be renewed, restored,
27 reissued or reinstated.

1 5. Section 4300 of the Code permits the Board to take disciplinary
2 action to suspend or revoke a license issued by the Board.

3 6. Pursuant to section 4301, the Board shall take action against any
4 holder of a license who is guilty of unprofessional conduct. Unprofessional conduct
5 shall include, but is not limited to, any of the following:

6 (f) The commission of any act involving moral turpitude, dishonesty,
7 fraud, deceit, or corruption, whether the act is committed in the course of
8 relations as a licensee or otherwise, and whether the act is a felony or
9 misdemeanor or not, constitutes unprofessional conduct.

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

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

14 (o) Violating or attempting to violate, directly or indirectly, or assisting in
15 or abetting the violation of, or conspiring to violate any provision or term of this
16 chapter or of the applicable federal and state laws and regulations governing
17 pharmacy, including regulations established by the Board, constitutes
18 unprofessional conduct.

19 7. Section 4160(a) the Code states, in pertinent part, that no person
20 shall act as a wholesaler of any dangerous drug or dangerous device unless he or she
21 has obtained a license from the Board. Upon approval by the Board and the payment
22 of the required fee, the Board shall issue a license to the applicant.

23 8. Section 4081(a) of the Code states, in pertinent part, that all records
24 of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous
25 devices shall be at all times during business hours open to inspection by authorized
26 officers of the law, and shall be preserved for at least three years from the date of
27 making.

1 Federal Regulations in that from on or about April 8, 1998 to on or about December 1,
2 1998, respondents were not registered with the Drug Enforcement Agency during the
3 time respondents were exporting the drug, Viagra, to Brazil.

4 14. Respondents Martin and Pharmacy have further subjected their
5 licenses to discipline pursuant to sections 4300 and 4301(j) and (o) of the Code on the
6 grounds of unprofessional conduct for violating section 1312.21 of Title 21, Code of
7 Federal Regulations in that from on or about April 8, 1998 to on or about December 1,
8 1998, respondents did not furnish special controlled substance export invoices to the
9 Drug Enforcement Agency during the time respondents were exporting the drug,
10 Viagra, to Brazil.

11 15. Respondents Martin and Pharmacy have subjected their licenses to
12 discipline pursuant to sections 4300 and 4301 (o) on the grounds of unprofessional
13 conduct for violating section 4081 of the Code as defined in Title 16, California Code of
14 Regulations, section 1718, in that respondents failed to keep a complete, accurate and
15 current inventory or complete accountability of dangerous drugs. During an inspection
16 of respondent Pharmacy, respondent Pharmacy could not provide the inspector with
17 transfer documentation as to check, invoices from Plaza Pharmacy to respondent
18 Pharmacy, totaling to \$299,511.51

19 16. Respondents Martin and Pharmacy have subjected their licenses to
20 discipline pursuant to sections 4300 and 4301(o) on the grounds of unprofessional
21 conduct for violating Title 16, California Code of Regulations, section 1714, in that on or
22 about April 16, 1999, respondent Kim left the pharmacy unsecured. An inspector for
23 the Board arrived on April 16, 1999 at respondent Pharmacy's location and found that
24 respondent Kim had left the premises, leaving an unlicensed clerk in the pharmacy
25 area.

26 17. Respondents Martin and Pharmacy have further subjected their
27 licenses to discipline pursuant to sections 4300 and 4301(j) and (o) of the Code on the

1 grounds of unprofessional conduct for violating section 4059.5(c) of the Code in that
2 from on or about April 8, 1998 to on or about December 1, 1998, respondents exported
3 dangerous drugs, to wit: Viagra and Meridia, to Brazil, a foreign nation, without
4 documentation as to showing compliance with the laws of that foreign nations and that
5 the recipients were authorized to receive them.

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7 **AGGRAVATING CIRCUMSTANCES**

8 18. Complainant further alleges by way of aggravation that respondent
9 Martin Choongsub Kim was subject to prior disciplinary orders of the Board of
10 Pharmacy in case Number 1377 on March 14, 1988, both personally and as owner of
11 Martin Pharmacy. Said disciplinary order consisted, in part, of three (3) years
12 probation, with terms and conditions.

13
14 **OTHER MATTERS**

15 19. Business and Professions Code section 4307(a) provides, in
16 pertinent part, that any person whose license has been revoked or is under suspension,
17 or who has failed to renew his or her license while it was under suspension, or who has
18 been a manager, administrator, owner, member, officer, director, associate, or partner
19 and while acting as the manager, administrator, owner, member, officer, director,
20 associate, or partner had knowledge of or knowingly participated in any conduct for
21 which the license was denied, revoked, suspended, or placed on probation, shall be
22 prohibited from serving as a manager, administrator, owner, member, officer, director,
23 associate, or partner of a license.

24
25 WHEREFORE, Complainant prays that a hearing be held and that
26 following said hearing that the Board of Pharmacy makes its Order:

27 1. Revoking or suspending License Number RPH 38130 issued to

1 Martin Choongsub Kim;

2 2. Revoking or suspending Permit Number PHY 32469 issued to Martin
3 Pharmacy;

4 3. Issue an order compelling the respondent to reimburse the Board for
5 the reasonable costs and its investigation, enforcement and prosecution of this matter,
6 up to the day of hearing.

7 4. Taking such other and further action as the Board deems proper.

8 DATED: 8/7/00

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P. F. Harris

PATRICIA F. HARRIS
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California

Complainant

03583110-LA1999AD2387
(CML) 04/03/2000