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

10 In the Matter of the Accusation Against:

Case No. 3737

11 **NICHOLS HILL**
12 **PRESCRIPTION PHARMACY**
13 **2844 Summit Street**
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**
17 **1140 Vancouver Avenue**
Burlingame, CA 94010

18 **Pharmacist License No. RPH 36896**

19 Respondents.

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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 3. On or about February 22, 1982, the Board issued Pharmacist License No. RPH 36896
2 to Byung Sik Yuh (Respondent Yuh). The Pharmacist License was in full force and effect at all
3 times relevant to the charges brought herein and will expire on October 31, 2011, unless renewed.
4 Between on or about February 22, 2005 and on or about January 5, 2010, Respondent Yuh served
5 and/or was reflected in Board records as the Pharmacist in Charge for Respondent Nichols Hill.

6 JURISDICTION

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

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

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

15 7. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration,
16 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
17 disciplinary action during the period within which the license may be renewed, restored, reissued
18 or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not
19 renewed within three years following its expiration may not be renewed, restored, or reinstated
20 and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of
21 the Code provides that any other license issued by the Board may be canceled by the Board if not
22 renewed within 60 days after its expiration, and any license canceled in this fashion may not be
23 reissued but will instead require a new application to seek reissuance.

24 STATUTORY AND REGULATORY PROVISIONS

25 8. Section 4301 of the Code provides, in pertinent part, that the Board shall take action
26 against any holder of a license who is guilty of “unprofessional conduct,” defined to include, but
27 not be limited to, any of the following:

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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 SECOND CAUSE FOR DISCIPLINE

17 (Failure to Report Dispensing of Controlled Substances to CURES)

18 26. Respondents are each and severally subject to discipline under section(s) 4301(j), (o),
19 and/or 4113(b) of the Code, and/or Health and Safety Code section 11165, in that in and between
20 in or about November 2006 and February 2007, Respondents dispensed, attempted to dispense,
21 assisted or abetted the dispensing of, and/or conspired to dispense, Schedule II to IV controlled
22 substances, without adequately reporting that dispensing to the CURES database, including:

23 a. One hundred and twenty-eight (128) prescriptions for Schedule II or III controlled
24 substances dispensed in or about November 2006, including **APAP with Codeine** drugs (brand or
25 generic) and **Hydrocodone with APAP** drugs (brand or generic);

26 b. One hundred and fifty-two (152) prescriptions for Schedule IV controlled substances
27 dispensed in or about January-February 2007, including **Xanax/alprazolam**, **Valium/diazepam**,
28 **Ativan/lorazepam**, and **Ambien/zolpidem tartrate**.

1 THIRD CAUSE FOR DISCIPLINE

2 (Mislabeling of Container/Deviation from Prescription)

3 27. Respondents are each and severally subject to discipline under section(s) 4301(j), (o),
4 4113(b) and/or 4076(a)(3) of the Code, and/or California Code of Regulations, title 16, section
5 1716,, in that on or about March 8, 2007, Respondents mislabeled a container and/or deviated
6 from a written prescription, and/or attempted, assisted or abetted, and/or conspired to do so, by
7 dispensing a prescription written for Ana T. in a container labeled for Ann T.

8 FOURTH CAUSE FOR DISCIPLINE

9 (Dispensing of Erroneous or Uncertain Prescription(s))

10 28. Respondents are each and severally subject to discipline under section(s) 4301(j), (o),
11 and/or 4113(b) of the Code, and/or California Code of Regulations, title 16, section 1761, in that
12 on or about February 2, 2007, April 4, 2007, or April 19, 2007, Respondents dispensed, attempted
13 to dispense, assisted or abetted the dispensing of, and/or conspired to dispense, prescription(s)
14 containing one or more significant errors, omissions, irregularities, uncertainties, ambiguities or
15 alterations, without contacting the prescriber to validate the prescription, and/or having objective
16 reason(s) to know that the prescription(s) was/were not issued for a legitimate medical purpose.

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19 PRAYER

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

22 1. Revoking or suspending Pharmacy License Number PHY 46970, issued to Byung Sik
23 Yuh dba Nichols Hill Prescription Pharmacy (Respondent Nichols Hill);

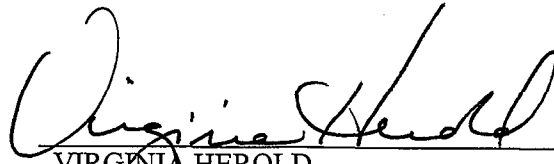
24 2. Revoking or suspending Pharmacist License Number RPH 36896, issued to Byung
25 Sik Yuh (Respondent Yuh);

26 3. Ordering Respondent Nichols Hill and Respondent Yuh, jointly and severally, to pay
27 to the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case,
28 pursuant to Business and Professions Code section 125.3;

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4. Taking such other and further action as is deemed necessary and proper.

DATED: 6/28/10



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

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