

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 DESIREE I. KELLOGG
Deputy Attorney General
4 State Bar No. 126461
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2996
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

FIRST AMENDED ACCUSATION

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 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:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

...

(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

or her comfortable by maintaining customary use.

....

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

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

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

COST RECOVERY

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

DRUGS

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

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

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

17. Phenergan with Codeine is the brand name for promethazine with codeine, a 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 **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;

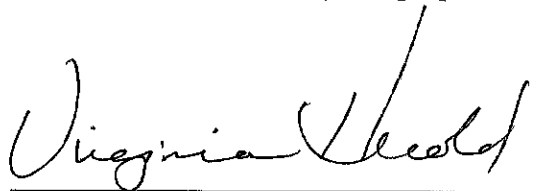
20 5. Prohibiting Shun-Mi Moon Kim from serving as a manager, administrator, owner,
21 member, officer, director, associate, or partner of a licensee for five years if Pharmacist License
22 Number RPH 46783 is placed on probation or until Pharmacist License Number RPH 46783 is
23 reinstated if Pharmacist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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

SD2015803066
81497959.docx

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 DESIREE I. KELLOGG
Deputy Attorney General
4 State Bar No. 126461
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2996
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:
12
13 **DE ANZA VIEW PHARMACY INC., DBA**
GOOD MORNING PHARMACY
14 **4898 Convoy Street #102**
San Diego, CA 92111
15 **Pharmacy Permit No. PHY 49904**
16 **SHUN-MI MOON KIM**
17 **9384 Pipilo St.**
San Diego, CA 92129
18 **Pharmacist License No. RPH 46783**
19
20 Respondents.

Case No. 5686

A C C U S A T I O N

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, Department of Consumer Affairs.
- 25 2. On or about June 11, 2009, the Board of Pharmacy issued Pharmacy Permit Number
26 PHY 49904 to De Anza View Pharmacy Inc., doing business as Good Morning Pharmacy
27 (Respondent Good Morning Pharmacy). The Pharmacy Permit was in full force and effect at all
28 times relevant to the charges brought herein and will expire on June 1, 2016, unless renewed.

1 agency.

2 ...

3 9. Section 4113(c) of the Code states:

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

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

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

19

20 11. Section 1761 of title 16, California Code of Regulations states:

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

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

29 COST RECOVERY

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

34 DRUGS

35 13. Adderall is a brand name for mixed amphetamine salts, a Schedule II controlled
36 substance pursuant to Health and Safety Code section 11055(d)(1) and a dangerous drug pursuant
37 to Business and Professions Code section 4022.
38

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SECOND CAUSE FOR DISCIPLINE

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

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

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

30. Respondents are subject to disciplinary action under Code section 4301 for unprofessional conduct in that they engaged in the activities described in paragraphs 18 through 27 above, which are incorporated herein by reference.

PRAYER

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

1. Revoking or suspending Pharmacy Permit Number PHY 49904, issued to De Anza View Pharmacy Inc., doing business as Good Morning Pharmacy;
2. Revoking or suspending Pharmacist License Number RPH 46783, issued to Shun-Mi Moon Kim;
3. Ordering De Anza View Pharmacy Inc., doing business as Good Morning Pharmacy and Shun-Mi Moon Kim 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;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

DATED: 3/18/16

Virginia Herold

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

SD2015803066
81255393.doc