

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

In the Matter of the Accusation Against:

Case No. 3479

MARVIN YUK-KWAN FONG
2107 W. Commonwealth Ave., #D 375
Alhambra, CA 91803

Pharmacist License No. RPH 46421

Respondent.

DECISION AND ORDER

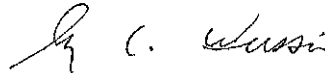
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on October 15, 2012.

It is so ORDERED on September 14, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STANLEY C. WEISSER
Board President

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 HEATHER HUA
Deputy Attorney General
4 State Bar No. 223418
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
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Attorneys for Complainant

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

10
11 In the Matter of the Accusation Against:

Case No. 3479

12 **MARVIN YUK-KWAN FONG**
2107 W. Commonwealth Avenue, #D 375
13 Alhambra, CA 91803

OAH No. L-2011120735

14 **STIPULATED SETTLEMENT AND**
DISCIPLINARY ORDER

15 **Pharmacist License No. RPH 46421**

16 Respondent.

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 **PARTIES**

21 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
22 She brought this action solely in her official capacity and is represented in this matter by Kamala
23 D. Harris, Attorney General of the State of California, by Heather Hua, Deputy Attorney General.

24 2. Respondent Marvin Yuk-Kwan Fong (Respondent) is represented in this proceeding
25 by attorney Herbert Weinberg, Esq., whose address is: 1800 Century Park East, 8th Floor, Los
26 Angeles, CA 90067.

27 3. On or about August 13, 1993, the Board of Pharmacy issued Pharmacist License No.
28 RPH 46421 to Marvin Yuk-Kwan Fong (Respondent). The Pharmacist License was in full force

1 and effect at all times relevant to the charges brought in Accusation No. 3479 and will expire on
2 November 30, 2012, unless renewed.

3 **JURISDICTION**

4 4. Accusation No. 3479 was filed before the Board of Pharmacy (Board), Department of
5 Consumer Affairs; and is currently pending against Respondent. The Accusation and all other
6 statutorily required documents were properly served on Respondent on September 1, 2011.
7 Respondent timely filed his Notice of Defense contesting the Accusation.

8 5. A copy of Accusation No. 3479 is attached as exhibit A and incorporated herein by
9 reference.

10 **ADVISEMENT AND WAIVERS**

11 6. Respondent has carefully read, fully discussed with counsel, and understands the
12 charges and allegations in Accusation No. 3479. Respondent has also carefully read, fully
13 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
14 Order.

15 7. Respondent is fully aware of his legal rights in this matter, including the right to a
16 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
17 his own expense; the right to confront and cross-examine the witnesses against him; the right to
18 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
19 the attendance of witnesses and the production of documents; the right to reconsideration and
20 court review of an adverse decision; and all other rights accorded by the California
21 Administrative Procedure Act and other applicable laws.

22 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
23 every right set forth above.

24 **CULPABILITY**

25 9. Respondent admits the truth of each and every charge and allegation in Accusation
26 No. 3479.

27 10. Respondent agrees that his Pharmacist License is subject to discipline and he agrees
28 to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

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CONTINGENCY

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

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

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

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Pharmacist License No. RPH 46421 issued to Respondent Marvin Yuk-Kwan Fong is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

1. **Suspension**

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1 As part of probation, Respondent is suspended from the practice of pharmacy for one
2 hundred twenty (120) days beginning the effective date of this decision.

3 During suspension, Respondent shall not enter any pharmacy area or any portion of the
4 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
5 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices
6 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
7 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
8 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the
9 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
10 and devices or controlled substances.

11 Respondent shall not engage in any activity that requires the professional judgment of a
12 pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy.
13 Respondent shall not perform the duties of a pharmacy technician or a designated representative
14 for any entity licensed by the board.

15 Subject to the above restrictions, respondent may continue to own or hold an interest in any
16 licensed premises in which he holds an interest at the time this decision becomes effective unless
17 otherwise specified in this order.

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

19 **2. Obey All Laws**

20 Respondent shall obey all state and federal laws and regulations.

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

- 23 • an arrest or issuance of a criminal complaint for violation of any provision of the
24 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
25 substances laws
- 26 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
27 criminal complaint, information or indictment
- 28 • a conviction of any crime

- 1 • discipline, citation, or other administrative action filed by any state or federal agency
2 which involves respondent's pharmacist license or which is related to the practice of
3 pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging
4 for any drug, device or controlled substance.

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

6 **3. Report to the Board**

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

15 **4. Interview with the Board**

16 Upon receipt of reasonable prior notice, respondent shall appear in person for interviews
17 with the board or its designee, at such intervals and locations as are determined by the board or its
18 designee. Failure to appear for any scheduled interview without prior notification to board staff,
19 or failure to appear for two (2) or more scheduled interviews with the board or its designee during
20 the period of probation, shall be considered a violation of probation.

21 **5. Cooperate with Board Staff**

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

25 **6. Continuing Education**

26 Respondent shall provide evidence of efforts to maintain skill and knowledge as a
27 pharmacist as directed by the board or its designee.
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1 **7. Notice to Employers**

2 During the period of probation, respondent shall notify all present and prospective
3 employers of the decision in case number 3479 and the terms, conditions and restrictions imposed
4 on respondent by the decision, as follows:

5 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
6 respondent undertaking any new employment, respondent shall cause his direct supervisor,
7 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's
8 tenure of employment) and owner to report to the board in writing acknowledging that the listed
9 individual(s) has/have read the decision in case number 3479, and terms and conditions imposed
10 thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s)
11 submit timely acknowledgment(s) to the board.

12 If respondent works for or is employed by or through a pharmacy employment service,
13 respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity
14 licensed by the board of the terms and conditions of the decision in case number 3479 in advance
15 of the respondent commencing work at each licensed entity. A record of this notification must be
16 provided to the board upon request.

17 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
18 (15) days of respondent undertaking any new employment by or through a pharmacy employment
19 service, respondent shall cause his direct supervisor with the pharmacy employment service to
20 report to the board in writing acknowledging that he has read the decision in case number 3479
21 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure
22 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

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

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

9 **9. Reimbursement of Board Costs**

10 As a condition precedent to successful completion of probation, respondent shall pay to the
11 board its costs of investigation and prosecution in the amount of sixteen thousand two hundred
12 sixty two dollars (\$16,262.00). Respondent shall coordinate a payment schedule with the Board.
13 Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

14 The filing of bankruptcy by respondent shall not relieve respondent of his responsibility to
15 reimburse the board its costs of investigation and prosecution.

16 **10. Probation Monitoring Costs**

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

21 **11. Status of License**

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

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

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

2 Following the effective date of this decision, should respondent cease practice due to
3 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
4 respondent may tender his license to the board for surrender. The board or its designee shall have
5 the discretion whether to grant the request for surrender or take any other action it deems
6 appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent
7 will no longer be subject to the terms and conditions of probation. This surrender constitutes a
8 record of discipline and shall become a part of the respondent's license history with the board.

9 Upon acceptance of the surrender, respondent shall relinquish his pocket and wall license to
10 the board within ten (10) days of notification by the board that the surrender is accepted.
11 Respondent may not reapply for any license from the board for three (3) years from the effective
12 date of the surrender. Respondent shall meet all requirements applicable to the license sought as
13 of the date the application for that license is submitted to the board, including any outstanding
14 costs.

15 **13. Notification of a Change in Name, Residence Address, Mailing Address or**
16 **Employment**

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

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

24 **14. Tolling of Probation**

25 Except during periods of suspension, respondent shall, at all times while on probation, be
26 employed as a pharmacist in California for a minimum of forty (40) hours per calendar month.
27 Any month during which this minimum is not met shall toll the period of probation, i.e., the
28 period of probation shall be extended by one month for each month during which this minimum is

1 not met. During any such period of tolling of probation, respondent must nonetheless comply
2 with all terms and conditions of probation.

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

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

11 "Cessation of practice" means any calendar month during which respondent is not
12 practicing as a pharmacist for at least forty (40) hours, as defined by Business and Professions
13 Code section 4000 et seq. "Resumption of practice" means any calendar month during which
14 respondent is practicing as a pharmacist for at least forty (40) hours as a pharmacist as defined by
15 Business and Professions Code section 4000 et seq.

16 Respondent is required to practice as a pharmacist in a licensed pharmacy setting that
17 dispenses medication for a minimum of one year prior to the completion of probation. If
18 respondent fails to comply with this requirement, such failure shall be considered a violation of
19 probation.

20 15. Violation of Probation

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

26 If respondent violates probation in any respect, the board, after giving respondent notice
27 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
28 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a

1 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If
2 a petition to revoke probation or an accusation is filed against respondent during probation, the
3 board shall have continuing jurisdiction and the period of probation shall be automatically
4 extended until the petition to revoke probation or accusation is heard and decided.

5 **16. Completion of Probation**

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

8 **17. Community Services Program**

9 Within sixty (60) days of the effective date of this decision, respondent shall submit to the
10 board or its designee, for prior approval, a community service program in which respondent shall
11 provide free health-care related services on a regular basis to a community or charitable facility or
12 agency for at least 100 hours per year while on probation. During the first year, while on
13 suspension, respondent may perform any type of community service program. Within thirty (30)
14 days of board approval thereof, respondent shall submit documentation to the board
15 demonstrating commencement of the community service program. A record of this notification
16 must be provided to the board upon request. Respondent shall report on progress with the
17 community service program in the quarterly reports. Failure to timely submit, commence, or
18 comply with the program shall be considered a violation of probation.

19 **18. Remedial Education**

20 Within thirty (30) days of the effective date of this decision, respondent shall submit to the
21 board or its designee, for prior approval, an appropriate program of remedial education related to
22 [the grounds for discipline]. The program of remedial education shall consist of at least 10 hours,
23 which shall be completed within the first three years of probation and within the renewal periods
24 at respondent's own expense. All remedial education shall be in addition to, and shall not be
25 credited toward, continuing education (CE) courses used for license renewal purposes.

26 Failure to timely submit or complete the approved remedial education shall be considered a
27 violation of probation. The period of probation will be automatically extended until such
28 remedial education is successfully completed and written proof, in a form acceptable to the board,

1 is provided to the board or its designee.

2 Following the completion of each course, the board or its designee may require the
3 respondent, at his own expense, to take an approved examination to test the respondent's
4 knowledge of the course. If the respondent does not achieve a passing score on the examination,
5 this failure shall be considered a violation of probation. Any such examination failure shall
6 require respondent to take another course approved by the board in the same subject area.

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

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

15 **20. Tolling of Suspension**

16 During the period of suspension, respondent shall not leave California for any period
17 exceeding ten (10) days, regardless of purpose (including vacation). Any such absence in excess
18 of the (10) days during suspension shall be considered a violation of probation. Moreover, any
19 absence from California during the period of suspension exceeding ten (10) days shall toll the
20 suspension, i.e., the suspension shall be extended by one day for each day over ten (10) days
21 respondent is absent from California. During any such period of tolling of suspension,
22 respondent must nonetheless comply with all terms and conditions of probation.

23 Respondent must notify the board in writing within ten (10) days of departure, and must
24 further notify the board in writing within ten (10) days of return. The failure to provide such
25 notification(s) shall constitute a violation of probation. Upon such departure and return,
26 respondent shall not resume the practice of pharmacy until notified by the board that the period of
27 suspension has been satisfactorily completed.

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21. **Ethics Course**

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

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

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Herbert Weinberg, Esq. 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: _____

Signature page attached

MARVIN YUK-KWAN FONG

Respondent

I have read and fully discussed with Respondent Marvin Yuk-Kwan Fong the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: _____

Signature Page attached

HERBERT WEINBERG, Esq.

Attorney for Respondent

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21. Ethics Course

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

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Herbert Weinberg, Esq. 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: 6/15/2012 
MARVIN YUK-KWAN FONG
Respondent

I have read and fully discussed with Respondent Marvin Yuk-Kwan Fong the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 6/19/2012 
HERBERT WEINBERG, Esq.
Attorney for Respondent

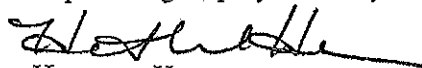
ENDORSEMENT

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: *June 20, 2012*

Respectfully submitted,

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



HEATHER HUA
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 3479

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY SALUTE
Supervising Deputy Attorney General
3 HEATHER HUA
Deputy Attorney General
4 State Bar No. 223418
300 So. Spring Street, Suite 1702
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6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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

10 In the Matter of the Accusation Against:

Case No. 3479

11 **MARVIN YUK-KWAN FONG**
12 2107 W. Commonwealth Avenue, #D 375
Alhambra, CA 91803
13 Pharmacist License No. RPH 46421

A C C U S A T I O N

14 Respondent.
15

16 Complainant alleges:

17 **PARTIES**

18 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
19 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

20 2. On or about August 13, 1993, the Board of Pharmacy issued Pharmacist License
21 Number RPH 46421 to Marvin Yuk-Kwan Fong (Respondent). The Pharmacist License was in
22 full force and effect at all times relevant to the charges brought herein and will expire on
23 November 30, 2012, unless renewed.

24 **JURISDICTION**

25 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
26 Consumer Affairs, under the authority of the following laws. All section references are to the
27 Business and Professions Code unless otherwise indicated.
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1 STATUTORY PROVISIONS

2 4. Section 118, subdivision (b), provides that the suspension, expiration, surrender, or
3 cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary
4 action during the period within which the license may be renewed, restored, reissued or
5 reinstated.

6 5. Section 4005 states:

7 "(a) The board may adopt rules and regulations, not inconsistent with the laws of this
8 state, as may be necessary for the protection of the public. Included therein shall be the right to
9 adopt rules and regulations as follows: for the proper and more effective enforcement and
10 administration of this chapter; pertaining to the practice of pharmacy; relating to the sanitation of
11 persons and establishment licensed under this chapter; pertaining to establishments wherein any
12 drug or device is compounded, prepared, furnished, or dispensed; providing for standards of
13 minimum equipment for establishments licensed under this chapter; pertaining to the sale of drugs
14 by or through any mechanical device; and relating to pharmacy practice experience necessary for
15 the licensure as a pharmacist.

16 "(b) Notwithstanding any provision of this chapter to the contrary, the board may adopt
17 regulations permitting the dispensing of drugs or devices in emergency situations, and permitting
18 dispensing of drugs or devices pursuant to a prescription of a person licensed to prescribe in a
19 state other than California where the person, if licensed in California in the same licensure
20 classification would, under California law, be permitted to prescribe drugs or devices and where
21 the pharmacist has first interviewed the patient to determine the authenticity of the prescription.

22 6. Section 4300 states, in pertinent part, that "[e]very license issued may be suspended
23 or revoked."

24 7. Section 4301 of the Code states:

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

28

1 validate the prescription.”

2 **COST RECOVERY**

3 11. Section 125.3 provides that the Board may request the administrative law judge to
4 direct a licentiate found to have committed a violation or violations of the licensing act to pay a
5 sum not to exceed the reasonable costs of the investigation and enforcement of the case.

6 **SUMMARY OF FACTS**

7 12. The following facts are common to all charges of the Accusation:

8 a. The United States Attorney’s Office reported L.A. Good Neighbor Pharmacy
9 (L.A. Good) had violated several provisions of the Controlled Substance Acts. Subsequently,
10 L.A. Good surrendered their Drug Enforcement Administration (DEA) registration and the
11 pharmacy closed.

12 b. On or about June 21, 2006, Assistant United States Attorney Shana Mintz sent
13 the Board of Pharmacy a letter regarding the DEA’s findings at L.A. Good. In summary, the
14 letter indicated that an April 6, 2006 inspection by the DEA found that the pharmacy had failed to
15 maintain records of sales of “above threshold amounts” of Pseudoephedrine, failed to maintain
16 complete/proper controlled substance records and failed to accurately complete their DEA 222
17 ordering forms. The DEA also found L.A. Good’s purchase pattern of Pseudoephedrine was
18 much greater (84%) than other pharmacies in the same zip code (90022).

19 c. On or about March 3, 2009, Respondent Fong as Pharmacist-in-Charge of L.A.
20 Good Pharmacy entered into a Settlement Agreement with the DEA and U.S. Department of
21 Justice for \$150,000 regarding the findings of the DEA investigation.

22 d. Further investigation revealed several uncertain erroneous prescriptions that
23 were filled by L.A. Good Pharmacy during late 2005 to early 2006.

24 e. After reviewing documents obtained by the Drug Enforcement Agency,
25 Pharmacy Board investigator D. White discovered numerous pharmacy law violations. These
26 included oral prescriptions that were not reduced to writing and failed to contain all the required
27 prescription information such as drug strength, quantity, directions for use before the prescription
28 can be filled. A pharmacist cannot fill any prescription which contains any errors, omissions, or

1 irregularity without contacting the prescriber to validate the prescription. Board investigator
 2 White found medications at L.A. Good Pharmacy to be dispensed without any written validation
 3 from the prescriber. Below is a sampling of 175 uncertain oral prescriptions filled by L.A. Good
 4 Pharmacy that did not meet the requirements of a prescription:

RX #	DATE	DRUG	STRENGTH	QUANTITY	DIRECTIONS
502797	11-29-05	Ibuprofen	Yes	None	None
502796	11-29-05	Carisoprodol	NA	None	None
C502795	11-29-05	Promethazine VC w/Cod	NA	None	None
C502794	11-29-05	Hydrocodone W/ APAP ES	Yes	None	None
C502793	11-29-05	APAP w/ Codeine #3	Yes	Yes	None
502792	11-29-05	Doxycycline	None	None	None
C503044	12-2-05	Diazepam	Yes	None	None
503045	12-2-05	Carisoprodol	NA	None	None
503046	12-2-05	Ibuprofen	None	None	None
C503047	12-2-05	Flurazepam	None	None	None
C503048	12-2-05	Promethazine VC w/ Cod	NA	None	None
C503049	12-2-05	Hydrocodone W/APAP ES	Yes	None	None
502974	12-2-05	Amitriptyline	None	None	None
502976	12-2-05	Nifedipine ER	None	None	None
C502975	12-2-05	Flurazepam	None	None	None
502977	12-2-05	Cephalexin	None	None	None
C502978	12-2-05	Diazepam	None	None	None
C502979	12-2-05	Hydrocodone w/ APAP ES	Yes	None	None
502962	12-2-05	Quinine	None	None	None
C502963	12-2-05	APAP w/ Codeine #3	Yes	None	None
502964	12-2-05	Ibuprofen	None	None	None
502965	12-2-05	Furosemide	None	None	None
502966	12-2-05	Nexium	None	None	None
C503022	12-2-05	Promethazine VC w/Cod	NA	None	None
503020	12-2-05	Doxycycline	None	None	None
503024	12-2-05	Carisoprodol	NA	None	None
503023	12-2-05	Alprazolam	None	None	None
503021	12-2-05	Triazolam	None	None	None
503205	12-5-05	Clonidine	None	None	None
C503204	12-5-05	Clonazepam	None	None	None
C503203	12-5-05	Hydrocodone w/ APAP ES	Yes	None	None
503202	12-5-05	Carisoprodol	NA	None	None
?	12-5-05	Phenytoin	None	None	None

1	503201	12-5-05	Nexium	None	None	None
	503534	12-12-05	Metoprolol	None	None	None
	503535	12-12-05	Furosemide	None	None	None
2	C503536	12-12-05	Alprazolam	None	None	None
	503537	12-12-05	Freestyle Test Strip	NA	NA	NA
3						
4	503538	12-12-05	Freestyle Lancet	NA	NA	NA
	503548	12-12-05	Insulin Syringes	NA	NA	NA
	503547	12-12-05	Humulin	None	None	None
5	C503546	12-12-05	Clonazepam	None	None	None
	503544	12-12-05	Levothroid	None	None	None
6	C503545	12-12-05	APAP w/ Cod #3	Yes	None	None
	503562	12-12-05	Ferrous S04	Yes	Yes	Yes
7	503557	12-12-05	Glipizide	None	None	None
	C503558	12-12-05	Temazepam	None	None	None
8	503559	12-12-05	?	None	None	None
	503560	12-12-05	Furosemide	None	None	None
9	503561	12-12-05	Nexium	None	None	None
10	503702	12-13-05	Principen	None	None	None
	C503701	12-13-05	Triazolam	None	None	None
11	C503700	12-13-05	Hydrocodone w/ APAP ES	Yes	None	None
	503699	12-13-05	Carisoprodol	NA	None	None
12	C503698	12-13-05	Alprazolam	None	None	None
13	C503703	12-13-05	Promethazine VC w/ Cod	Yes	None	None
	C503713	12-13-05	Hydrocodone w/APAP	Yes	None	None
14						
15	503712	12-13-05	Furosemide	None	None	None
	C503714	12-13-05	Promethazine VC w/ Cod	Yes	None	None
16						
	503716	12-13-05	Nexium ?	none	None	None
17	?	12-13-05	Buspar	None	None	None
	?	12-13-05	Doxycycline	None	None	None
18	C503773	12-14-05	Diazepam	None	None	None
	503774	12-14-05	Doxycycline	None	None	None
19	503775	12-14-05	Glipizide	None	None	None
	503776	12-14-05	Captopril	Yes	None	None
20	503777	12-14-05	Norvasc	None	None	None
	504240	12-21-05	Metformin	None	None	None
21	504244	12-21-05	Captopril	None	None	None
	504243	12-21-05	Pepcid ?	None	None	None
22	504242	12-21-05	Glipizide	None	None	None
	504241	12-21-05	Amitriptyline	None	None	None
23	C504561	12-27-05	Diazepam	None	None	None
24	504556	12-27-05	Carisoprodol	NA	None	None
	C504557	12-27-05	Hydrocodone w/ APAP ES	Yes	None	None
25						
	504558	12-27-05	?	None	None	None
26	504559	12-27-05	?	None	None	None
	504560	12-27-05	Albuterol Inhaler	Yes	None	None
27	C504762	12-30-05	Hydrocodone w/ APAP ES	Yes	None	None
	504763	12-30-05	Carisoprodol	NA	None	None
28						

1	505056	1-4-06	Lipitor	None	None	None
	505057	1-4-06	Captopril	Yes	None	None
2	C505058	1-4-06	APAP w/ Cod #3	Yes	None	None
	C505059	1-4-06	Promethazine VC w/ Cod ?	Yes	None	None
3	C505060	1-4-06	Alprazolam	None	None	None
	505061	1-4-06	Famotidine	None	None	None
4	C505184	1-6-06	APAP w/Cod #4	Yes	None	None
	C505189	1-6-06	Alprazolam	None	None	None
5	C505191	1-6-06	Promethazine VC w/ Cod	Yes	None	None
6	C505192	1-6-06	Triazolam	None	None	None
	505193	1-6-06	Principen	None	None	None
7	505210	1-6-06	Flurazepam	None	None	None
8	C505211	1-6-06	Promethazine VC w/ Cod	Yes	None	None
	C505212	1-6-06	Tobradex	Yes	None	None
9	505213	1-6-06	Principen	None	None	None
10	505215	1-6-06	Clotrimazole	Yes	None	None
	505216	1-6-06	Benazepril	None	None	None
11	505241	1-6-06	Insulin	None	None	None
	505242	1-6-06	Prempro	Yes	None	None
12	505243	1-6-06	Nexium	None	None	None
	C505245	1-6-06	Promethazine VC w/ Cod	Yes	None	None
13	C505244	1-6-06	APAP w/ Cod #3	Yes	None	None
14	505246	1-6-06	Syringes	None	None	None
	505239	1-6-06	Levothyroid	None	Yes	None
15	505253	1-6-06	Advair	None	None	None
	505255	1-6-06	APAP w/ Cod #3	None	None	None
16	505256	1-6-06	Syringes ?	None	None	None
	505257	1-6-06	Promethazine VC w/ Cod	Yes	None	None
17	505254	1-6-06	Benazepril	None	None	None
18	505258	1-6-06	Gemfibrozil	None	None	None
19	505438	1-9-06	Hydrocodone w/ APAP ES	Yes	None	None
20	505529	1-10-06	Ibuprofen	None	None	None
	505530	1-10-06	Benazepril	None	None	None
21	505532	1-10-06	Ferrous S04	None	None	None
	C505533	1-10-06	Alprazolam	None	None	None
22	505534	1-10-06	Singular	None	None	None
	505535	1-10-06	Doxycycline	None	None	None
23	505540	1-10-06	Bactracin/Polymix	Yes	None	None
	C505542	1-10-06	APAP w/Cod #4	Yes	None	None
24	C505543	1-10-06	Hydrocodone w/APAP ES	Yes	None	None
25	C505541	1-10-06	Promethazine VC w/ Cod	Yes	None	None
26	C505605	1-11-06	Hydrocodone w/APAP ES	Yes	None	None
27	505606	1-11-06	Carisoprodol	Yes	None	None
	C505607	1-11-06	Clonazepam	None	None	None
28	505608	1-11-06	Amitriptyline	None	None	None

1	C505610	1-11-06	Diazepam	None	None	None
	505611	1-11-06	Doxycycline	None	None	None
2	C505612	1-11-06	Promethazine VC w/ Cod	Yes	None	None
3	C505613	1-11-06	Uniretic	Yes	None	None
	509326	3-10-06	Lancet	NA	NA	NA
4	C509325	3-10-06	Diazepam	None	None	None
	509324	3-10-06	Syringes	None	None	None
5	509323	3-10-06	Test Strips	NA	None	None
	C509320	3-10-06	APAP w/ Cod #3	Yes	None	None
6	509319	3-10-06	Humulin 70/30	Yes	None	None
	509318	3-10-06	Humulin R	Yes	None	None
7	C509330	3-10-06	Ambien	None	None	None
	509322	3-10-06	?	None	None	None
8	509393	3-13-06	Nexium	None	None	None
	509394	3-13-06	Doxycycline	None	None	None
9	509402	3-13-06	Metoclopramide	None	None	None
	509405	3-13-06	Tobradex	Yes	None	None
10	509406	3-13-06	Aspirin EC	None	None	None
	509407	3-13-06	Nitro quick	None	None	None
11	C510348	3-27-06	Clonazepam	None	None	None
	C510347	3-27-06	Promethazine w/ VC Cod	Yes	None	None
12	510345	3-27-06	Gabapentin	None	None	None
13	C510344	3-27-06	Diazepam	None	None	None
	510343	3-27-06	APAP 500mg	Yes	None	None
14	510441	3-28-06	APAP 325mg	Yes	None	None
	C510442	3-28-06	Promethazine VC w/ Cod	Yes	None	None
15	510438	3-28-06	Clotrimazole	NA	None	None
16	510439	3-28-06	Mylanta ?	NA	None	None
	510440	3-28-06	Tetracycline	None	None	none
17	510437	3-28-06	Baclofen	None	None	None
	510435	3-28-06	Ibuprofen	None	None	None
18	510434	3-28-06	Doxycycline	None	None	None
19	C510433	3-28-06	Promethazine VC w/ Cod	Yes	None	None
20	C510436	3-28-06	APAP w/ Cod #3	Yes	None	None
	C5107??	4-3-06	Hydrocodone w/ APAP ES	Yes	None	None
21	5106??	4-3-06	Gabapentin	None	None	None
22	C50944?	4-3-06	Diazepam	None	None	None
	510685	4-3-06	Promethazine w/ DM	Yes	None	None
23	510697	4-3-06	APAP	None	None	None
24	510686	4-3-06	Calcium	None	None	None
	510659	4-3-06	Ferrous S04	Yes	None	None
25	510658	4-3-06	Glipizide	None	None	None
	510657	4-3-06	Nexium	None	None	None
26	510656	4-3-06	?	None	None	None
	C510655	4-3-06	ASA w/ Cod #4	Yes	None	None
27	C510660	4-3-06	Temazepam	None	None	None
	C510646	4-3-06	Diazepam	None	None	None
28	C510644	4-3-06	ASA w/ Cod #4	Yes	None	None

1	C510645	4-3-06	Promethazine w/ Cod	Yes	None	None
2	C510652	4-3-06	ASA w/ Cod #4	Yes	None	None
3						

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Failure to Completely Reduce an Oral Prescription to Writing)**

6 13. Respondent Fong is subject to disciplinary action under Code section 4070 as it
7 relates to Code section 4040, subsection (b). Pharmacy law requires an oral prescription to be
8 reduced to writing and contain all the information including drug name, strength, quantity, and
9 directions for use, as required by a prescription. Respondent Fong as Pharmacist-in-Charge of
10 LA Good Neighbor Pharmacy located at 4562 East Cesar Chavez Avenue in Los Angeles failed
11 to comply. The circumstances are as follows:

12 14. Specifically, from November 2005 through April 2006, L.A. Good Neighbor
13 Pharmacy filled at least 175 oral prescriptions that were not completely reduced to writing and
14 did not contain all the information including drug strength, quantity, and directions for use, as
15 required by a prescription. This is a violation of pharmacy law. Paragraphs 12(a) - (e) are
16 incorporated herein by reference.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Dispensing Uncertain, Erroneous Prescriptions)**

19 15. Respondent Fong is subject to disciplinary action under California Code of
20 Regulations, title 16, section 1761, subsection (a), for filling a prescription that contains
21 uncertainty, errors or omissions. The circumstances are as follows:

22 16. Specifically, from November 2005 through April 2006, Respondent Fong was
23 pharmacist-in-charge of L.A. Good Neighbor Pharmacy located at 4562 East Cesar Chavez
24 Avenue in Los Angeles. L.A. Good Neighbor Pharmacy filled at least 175 oral prescriptions that
25 contained significant omissions, and uncertainties. Pharmacy law requires the pharmacist not fill
26 a prescription that contains any uncertainty, errors or omissions. Respondent Fong failed to
27 comply. Paragraphs 12(a) - (e) are incorporated herein by reference.

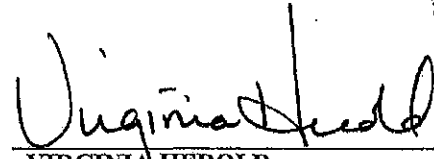
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PRAYER

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 Pharmacist License Number RPH 46421, issued to Respondent Marvin Yuk-Kwan Fong;
2. Ordering Respondent Marvin Yuk-Kwan Fong 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;
3. Taking such other and further action as deemed necessary and proper.

DATED: 9/1/11


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

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