

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

In the Matter of the Accusation Against:

Case No. 3737

**NICHOLS HILL
PRESCRIPTION PHARMACY**
2844 Summit Street
Oakland, CA 94609

Pharmacy License No. PHY 46970

and

BYUNG SIK YUH
1140 Vancouver Avenue
Burlingame, CA 94010

Pharmacist License No. RPH 36896

Respondent.

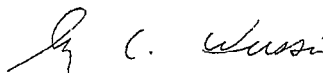
DECISION AND ORDER

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 January 7, 2011.

It is so ORDERED on December 8, 2010.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

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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. 3737

11 **NICHOLS HILL**
12 **PRESCRIPTION PHARMACY**
2844 Summit Street
13 **Oakland, California 94609**

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

14 **Pharmacy License No. PHY 46970**

15 **and**

16 **BYUNG SIK YUH**
1140 Vancouver Avenue
17 **Burlingame, CA 94010**

18 **Pharmacist License No. RPH 36896**

19 Respondents.

20 In the interest of a prompt and speedy settlement of this matter, consistent with the public
21 interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs,
22 the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will
23 be submitted to the Board for approval and adoption as the final disposition of the Accusation that
24 has been filed against Respondents Nichols Hill Prescription Pharmacy and Byung Sik Yuh.

25 PARTIES

26 1. Virginia Herold (Complainant), Executive Officer of the Board of Pharmacy, brought
27 this action solely in her official capacity and is represented in this matter by Edmund G. Brown
28 Jr., Attorney General of the State of California, by Joshua A. Room, Deputy Attorney General.

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

3
4 **ORDER**

5 IT IS HEREBY ORDERED that Citation Nos. CI 2006 33905 and CI 2009 40806, issued
6 on or about July 21, 2009 to Respondent Nicholls Hill and Respondent Yuh, respectively, as well
7 as the abatements and fines ordered by those Citations, are withdrawn and/or dismissed.

8
9 **DISCIPLINARY ORDER**

10 IT IS HEREBY ORDERED that Pharmacy License No. PHY 46970, issued to Byung Sik
11 Yuh dba Nichols Hill Prescription Pharmacy, is revoked, and that Pharmacist License No. RPH
12 36896, issued to Byung Sik Yuh, is revoked. However, each revocation is stayed and each
13 Respondent is placed on probation for five (5) years on the following terms and conditions.

14 **TERMS APPLICABLE TO BOTH RESPONDENTS**

15 **1. Payment of Civil Penalties**

16 Respondents shall pay civil penalties to the Board in the amount and on such terms as are
17 specified below. Respondents understand and agree that such civil penalties are administrative
18 fines pursuant to 11 U.S.C. § 523(a)(7), and as such are not dischargeable in bankruptcy. They
19 further understand and agree that the filing of bankruptcy by either or both Respondents shall not
20 relieve either Respondent of the obligation to pay the balance of the civil penalties to the Board.

21 Respondents shall be jointly and severally liable for payment to the Board of \$150,000.00
22 (one hundred fifty thousand dollars) in civil penalties. Respondents shall pay \$50,000.00 (fifty
23 thousand dollars) on or before the effective date of this decision, and shall thereafter make ten
24 (10) quarterly payments of \$10,000.00 (ten thousand dollars) every ninety (90) days until the
25 amount is paid in full. Respondents may pay the full remaining balance due at any time, and may
26 make extra payments. Aside from such expedited payment(s), there shall be no deviation from
27 this schedule absent prior written approval by the Board or its designee. Failure to pay these civil
28 penalties by the deadlines as directed shall be considered a violation of probation.

1 Further, absent prior written approval by the Board or its designee, neither Respondent may
2 successfully complete probation until this amount is paid in full. Each Respondent is responsible
3 for payment of the full amount and neither may claim to owe only a portion or a share.

4 **2. Community Services Program - Testimonial**

5 Respondents have authored a letter describing their incentives to participate and their level
6 of participation in filling and/or dispensing internet prescriptions, and detailing the consequences
7 of this participation for them, their families, the public health, and the profession, what they have
8 learned from this experience, and what they would advise others who are approached to fill or
9 dispense internet prescriptions. The letter is attached hereto as exhibit B, is incorporated herein
10 by reference, and is part of Respondents' public record of discipline with the Board. The Board
11 may print, reprint, quote, or make other use of this letter in Board communications and/or on its
12 website. Further, upon provision of reasonable notice, Respondent Yuh shall appear for and take
13 part in a videotaping of him reading the letter, at a time and place arranged by the Board or its
14 designee, which video shall be similarly subject to use by the Board in its communications and/or
15 on its website. Failure by Respondent Yuh, upon reasonable notice, to timely appear for and
16 participate in such videotaping shall be considered a violation of probation.

17 **3. Obey All Laws**

18 Each Respondent shall obey all state and federal laws and regulations.

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

- 21 • an arrest or issuance of a criminal complaint for violation of any provision of the
22 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
substances laws
- 23 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
24 criminal complaint, information or indictment
- 25 • a conviction of any crime
- 26 • discipline, citation, or other administrative action filed by any state or federal agency
27 which involves either of Respondents' licenses or which is related to the practice of
pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging
for any drug, device or controlled substance.

28 Failure to timely report such occurrence(s) shall be considered a violation of probation.

1 **4. Report to the Board**

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

10 **5. Interview with the Board**

11 Upon receipt of reasonable prior notice, each Respondent¹ shall appear in person for
12 interviews with the Board or its designee, at such intervals and locations as are determined by the
13 Board or its designee. Failure to appear for any scheduled interview without prior notification to
14 Board staff, or failure to appear for two (2) or more scheduled interviews with the Board or its
15 designee during the period of probation, shall be considered a violation of probation.

16 **6. Cooperate with Board Staff**

17 Each Respondent shall cooperate with the Board's inspection program and with the Board's
18 monitoring and investigation of Respondents' compliance with the terms and conditions of their
19 probation(s). Failure to cooperate shall be considered a violation of probation.

20 **7. Reimbursement of Board Costs**

21 Reimbursement of costs per Business and Professions Code section 125.3 is waived.

22 **8. Probation Monitoring Costs**

23 Each Respondent shall pay any costs associated with probation monitoring as determined
24 by the Board each and every year of probation. Such costs shall be payable to the Board on a
25 schedule as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as
26 directed shall be considered a violation of probation.

27 _____
28 ¹ Appearances by Respondent Nicholls Hill shall be made by an owner or officer.

1 **9. Status of License**

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

5 If either Respondent's license expires or is cancelled by operation of law or otherwise at
6 any time during the period of probation, including any extensions thereof due to tolling or
7 otherwise, upon renewal or reapplication that Respondent's license shall be subject to all terms
8 and conditions of this probation not previously satisfied.

9 **10. License Surrender While on Probation/Suspension**

10 Following the effective date of this decision, should either Respondent cease practice due to
11 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, that
12 Respondent may tender its or his license to the Board for surrender. The Board or its designee
13 shall have the discretion whether to grant the request for surrender or take any other appropriate
14 and reasonable action. Upon formal acceptance of the surrender of the license, Respondent will
15 no longer be subject to the terms and conditions of probation. This surrender constitutes a record
16 of discipline and shall become a part of the Respondent's license history with the board.

17 Upon acceptance of the surrender, Respondent shall relinquish its or his pocket and wall
18 license(s) to the Board within ten (10) days of notification by the Board the surrender is accepted.
19 Respondent may not reapply for any license from the Board for three (3) years from the effective
20 date of the surrender. Respondent shall meet all requirements applicable to the license sought as
21 of the date application for that license is submitted to the Board, including any outstanding costs.

22 **11. Violation of Probation**

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

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1 If either Respondent violates probation in any respect, the Board, after giving Respondent
2 notice and an opportunity to be heard, may revoke probation as to that Respondent and carry out
3 the disciplinary order that was stayed. If a petition to revoke probation or an accusation is filed
4 during probation, the Board shall have continuing jurisdiction and the period of probation shall be
5 automatically extended until the petition to revoke probation or accusation is heard and decided.

6 **12. Completion of Probation**

7 Upon written notice by the Board or its designee indicating successful completion of
8 probation, the successfully-completing Respondent's license will be fully restored.

9 **TERMS APPLICABLE TO RESPONDENT NICHOLLS HILL**

10 **13. Notice to Employees**

11 Respondent Nicholls Hill shall, on or before the effective date of this decision, ensure that
12 all employees are made aware of the terms and conditions of probation, either by posting a notice
13 of the terms and conditions, circulating such notice, or both. If the notice is posted, it shall be
14 posted in a prominent place and shall remain posted throughout the probation period. Respondent
15 shall ensure that any employees hired or used after the effective date of this decision are made
16 aware of the terms and conditions of probation by posting a notice, circulating a notice, or both.
17 Respondent shall submit written notification to the Board, within fifteen (15) days of the effective
18 date of this decision, that this term has been satisfied. Failure to timely post or provide notice, or
19 to timely submit notification to the Board, shall be considered a violation of probation.

20 "Employees" as used in this provision includes all full-time, part-time, volunteer, temporary
21 and relief employees or independent contractors employed or hired at any time during probation.

22 **14. Owners and Officers: Knowledge of the Law**

23 Respondent Nicholls Hill shall provide, within thirty (30) days after the effective date of
24 this decision, signed and dated statements from its owners, including any owner or holder of ten
25 percent (10%) or more of the interest in Respondent or Respondent's stock, and any officer,
26 stating under penalty of perjury that said individuals have read and are familiar with state and
27 federal laws and regulations governing the practice of pharmacy. The failure to timely provide
28 said statements under penalty of perjury shall be considered a violation of probation.

1 **15. Posted Notice of Probation**

2 Respondent Nicholls Hill shall prominently post a probation notice provided by the Board
3 in a place conspicuous and readable to the public. The probation notice shall remain posted
4 during the entire period of probation.

5 Respondents shall not, directly or indirectly, engage in any conduct or make any statement
6 which is intended to mislead or is likely to have the effect of misleading any patient, customer,
7 member of the public, or other person(s) as to the nature of and reason for the probation of the
8 licensed entity. Failure to timely post such notice shall be considered a violation of probation.

9 **TERMS APPLICABLE TO RESPONDENT YUH**

10 **16. Continuing Education**

11 Respondent Yuh shall provide evidence of efforts to maintain skill and knowledge as a
12 pharmacist as directed by the Board or its designee.

13 **17. Notice to Employers**

14 During the period of probation, Respondent Yuh shall notify all present and prospective
15 employers of the decision in case number 3737 and the terms, conditions and restrictions imposed
16 on Respondent Yuh by the decision, as follows:

17 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
18 Respondent Yuh undertaking any new employment, Respondent Yuh shall cause his direct
19 supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during
20 Respondent's tenure of employment) and owner to report to the Board in writing acknowledging
21 that the listed individual(s) has/have read the decision in case number 3737, and terms and
22 conditions imposed thereby. It shall be Respondent Yuh's responsibility to ensure that his
23 employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

24 If Respondent Yuh works for or is employed by or through a pharmacy employment
25 service, Respondent Yuh must notify his direct supervisor, pharmacist-in-charge, and owner at
26 every entity licensed by the Board of the terms and conditions of the decision in case number
27 3737 in advance of Respondent Yuh commencing work at each licensed entity. A record of this
28 notification must be provided to the Board upon request.

1 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
2 (15) days of Respondent Yuh undertaking any new employment by or through a pharmacy
3 employment service, Respondent Yuh shall cause his direct supervisor with the pharmacy
4 employment service to report to the Board in writing acknowledging he/she has read the decision
5 in case number 3737 and the terms and conditions imposed thereby. It shall be Respondent Yuh's
6 responsibility to ensure his employer(s) and/or supervisor(s) submit timely acknowledgment(s).

7 Failure to timely notify present or prospective employer(s) or to cause /those employer(s) to
8 submit timely acknowledgments to the Board shall be considered a violation of probation.

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

12 **18. Notification of a Change in Employment, Name, Address(es), or Phone(s)**

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

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

20 **19. Tolling of Probation**

21 Except during periods of suspension, Respondent Yuh shall, at all times while on probation,
22 be employed as a pharmacist in California for a minimum of forty (40) hours per calendar month.
23 Any month during which this minimum is not met shall toll the period of probation, i.e., the
24 period of probation shall be extended by one month for each month during which this minimum is
25 not met. During any such period of tolling of probation, Respondent Yuh must nonetheless
26 comply with all terms and conditions of probation.

27 Should Respondent Yuh, regardless of residency, for any reason (including vacation) cease
28 practicing as a pharmacist for a minimum of forty (40) hours per calendar month in California,

1 Respondent Yuh must notify the Board in writing within ten (10) days of the cessation of
2 practice, and must further notify the Board in writing within ten (10) days of the resumption of
3 practice. Any failure to provide such notification(s) shall be considered a violation of probation.

4 It is a violation of probation for Respondent Yuh's probation to remain tolled pursuant to
5 the provisions of this condition for a total period, counting consecutive and non-consecutive
6 months, exceeding thirty-six (36) months.

7 "Cessation of practice" means any calendar month during which Respondent is
8 not practicing as a pharmacist for at least forty (40) hours, as defined by Business and
9 Professions Code section 4000 et seq. "Resumption of practice" means any calendar
month during which Respondent practices as a pharmacist for at least forty (40) hours
as a pharmacist as defined by Business and Professions Code section 4000 et seq.

10 **20. Limitations on Supervision, Being Pharmacist-in-Charge, and Consultancy**

11 During the period of probation, Respondent Yuh shall not supervise any intern pharmacist,
12 be the designated representative-in-charge of any entity licensed by the Board, nor serve as a
13 consultant to any entity licensed by the Board. Assumption of any such unauthorized supervision
14 responsibilities shall be considered a violation of probation.

15 Respondent may be a pharmacist-in-charge. However, if Respondent Yuh is a pharmacist-
16 in-charge during the period of probation, Respondent shall retain an independent consultant at his
17 own expense who shall be responsible for reviewing pharmacy operations on a quarterly basis for
18 compliance with state and federal laws and regulations governing the practice of pharmacy and
19 for compliance with the obligations of a pharmacist-in-charge. The consultant shall be a
20 pharmacist licensed by and not on probation with the Board and whose name shall be submitted
21 to the Board or its designee, for prior approval, within thirty (30) days of the effective date of this
22 decision. Respondent shall not be a pharmacist-in-charge at more than one pharmacy or at any
23 pharmacy of which he is not an owner (10% or more). Failure to timely retain, seek approval of,
24 or ensure timely reporting by the consultant shall be considered a violation of probation.

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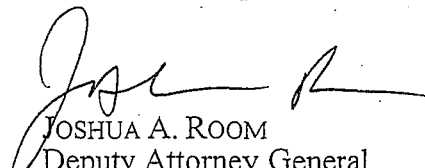
ENDORSEMENT

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: 10/6/2010

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General


JOSHUA A. ROOM
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 3737

1 EDMUND G. BROWN JR.
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JOSHUA A. ROOM
Deputy Attorney General
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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.

20
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 (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
17 SECOND CAUSE FOR DISCIPLINE

18 (Mislabeling of Container/Deviation from Prescription)

19 26. Respondents are each and severally subject to discipline under section(s) 4301(j), (o),
20 4113(b) and/or 4076(a)(3) of the Code, and/or California Code of Regulations, title 16, section
21 1716,, in that on or about March 8, 2007, Respondents mislabeled a container and/or deviated
22 from a written prescription, and/or attempted, assisted or abetted, and/or conspired to do so, by
23 dispensing a prescription written for Ana T. in a container labeled for Ann T.

24
25 THIRD CAUSE FOR DISCIPLINE

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

27 27. Respondents are each and severally subject to discipline under section(s) 4301(j), (o),
28 and/or 4113(b) of the Code, and/or California Code of Regulations, title 16, section 1761, in that

1 on or about February 2, 2007, April 4, 2007, or April 19, 2007, Respondents dispensed, attempted
2 to dispense, assisted or abetted the dispensing of, and/or conspired to dispense, prescription(s)
3 containing one or more significant errors, omissions, irregularities, uncertainties, ambiguities or
4 alterations, without contacting the prescriber to validate the prescription, and/or having objective
5 reason(s) to know that the prescription(s) was/were not issued for a legitimate medical purpose.

6
7
8 PRAYER

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

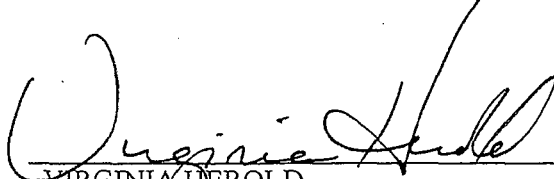
11 1. Revoking or suspending Pharmacy License Number PHY 46970, issued to Byung Sik
12 Yuh dba Nichols Hill Prescription Pharmacy (Respondent Nichols Hill);

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

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

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

19
20
21 DATED: 8/19/10


22 VIRGINIA HEROLD
23 Executive Officer
24 Board of Pharmacy
25 Department of Consumer Affairs
26 State of California
27 Complainant

28 SF2010200855
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Exhibit B

Letter by Respondents

BYUNG SIK YUH
NICHOLS HILL PHARMACY
2844 Summit Street
Oakland, CA 94609

October 5, 2010

Re: Pharmacy License Nos. RPH 36896 and PHY 46970

To My Colleagues Licensed by the
California Board of Pharmacy:

I am ashamed to have to write this letter and admit my stupidity, actually my extreme short sightedness caused by greed induced by promises of quick easy money. And so little money. My shame is increased not only by the relatively small amount of money I was promised and paid but also because I have been a pharmacist licensed in and by this state for almost thirty (30) years and throughout those many years I had an unblemished professional record and prided myself in the belief that I had never violated any laws or regulations related to my profession or the distribution of controlled substances.

Then in late 2006 I was contacted over the telephone by a representative of a company proposing that I fill prescriptions that would be sent to my pharmacy over the internet and very unfortunately I agreed to do so. I was promised, over the telephone, by a faceless, smooth talker: a net profit of \$5.00 for each prescription I filled (they also promised to pay all shipping charges). When I was first contacted by that persistent, persuasive and reassuring representative of "an internet prescription company," he helped lead me to the conclusion that this would be an easy way to make a little extra money with a minimum of effort. That promise of easy, extra money partially blinded me to aspects of the arrangement that were illegal as well as professional misconduct.

I knew immediately that I would have to confirm that each of the prescribing parties was a physician licensed in the state in which the prescription was written and, if I could not confirm the doctor was licensed and had a valid DEA number, I could not and would not fill a prescription from that doctor. I soon realized that the prescriptions were from doctors all over the country; but in each case I was able to verify that the prescribing doctor was licensed with valid state and DEA numbers. Under those circumstances, based upon the fact that all of the prescribers were physicians, I thought at the time that it was

alright to fill the prescriptions and all that was required of me was spending the time to fill the prescription and ship it. I also realized the drugs I was shipping were primarily controlled substances but I was receiving all of the appropriate prescription forms in order to comply with the law. I was also quickly and reliably paid \$5.00 plus costs for each prescription dispensed.

Obviously, I did not give the proposal enough thought before I agreed and once I started receiving and filling prescriptions, I should have paid more attention to and thought more about all the information on the prescriptions. I was repeatedly receiving prescriptions from the same half dozen or do doctors who were prescribing mostly very strong (and controlled) painkillers to patients in areas, even states far away from the doctors's office and address. In hindsight, I should have noticed that geographical distance, questioned whether those doctors were really even seeing or communicating with these "patients" much less properly examining them before dispensing any drugs much less those types of drugs. I never directly confirmed that there were good faith prior examinations of the patients by the prescribing doctors before I dispensed the drugs.

Honestly, I did not notice the disparity or think of the possibility that there was not a professional examination and relationship between the prescribing doctor and recipient; but, again in hindsight, the nature of most of the drugs (painkillers) should also have alerted me to the potential impropriety. I was so busy, especially with all these additional prescriptions to fill (another warning signal I missed then but now see in hindsight) that I just kept working as fast as I could, never imagining that I was breaking not one but many very serious federal and state laws. Now I know, I could have been charged with criminal felonies in both state and federal courts!

Thankfully a representative of one of the companies I buy my drugs from who had known me a long time and correctly did not believe I would knowingly distribute any prescription much less controlled substances illegally or improperly, warned me about dealing with such internet companies. I filled prescriptions over the internet for about four months. As soon as I was warned that what we had been doing might be illegal, I immediately stopped that practice, but by then we had already filled over 5,000 prescriptions all around the country, almost 500 in California and 90 percent of those prescriptions were for painkillers. As soon as I agreed to fill internet prescriptions for one of those companies, more contacted me with the same

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proposal and in those four months we dispensed prescriptions for five (5) of those internet companies. (Another warning I now see too late).

I was eventually contacted by both the federal Drug Enforcement Administration (DEA) and the State Board of Pharmacy. Both instituted investigations and those investigations have resulted in me incurring significant fines both to the State Board and to the DEA and my license and that of my store being placed on probation with a number of conditions attached to the probation. Those penalties are many times the money I made filling those internet prescriptions. My family has been hurt by my conduct both financially and emotionally and I would do anything to be able to go back and undo the decisions I made without adequate thought and consideration.

Believe it or not, my fines could have been much, much higher. Both the State of California and the Federal Government could have fined both me and my pharmacy \$25,000 for every prescription dispensed by us in this fashion. In fact, the Board of Pharmacy sent both me and my pharmacy (since we have different licenses) formal written penalty demands for \$11,700,000 each! Imagine my fear and that of my wife and others when we saw those documents!

The practice of filling prescriptions over the internet for patients previously unknown to my practice is dangerous to the patients and to the profession. I have come to learn that in many cases the patients contacted physicians only through a website and that they never had any personal contact with the physician. A few form questions were answered on the website by the patient which resulted in the generation of the prescription by the physician which was relayed to me over the internet and filled by me and mailed to the patients in various states. I also never had any personal contact with the patient or the physician. Obviously the physicians should not be issuing prescriptions to persons unknown to them and I should not have been filling those prescriptions.

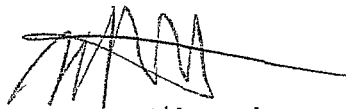
In hindsight I now can see the purpose of the law. Many potential drug abusers who are unable to obtain controlled substances through a legitimate physician relationship turn to the internet to continue the abusive practices. Filling of prescriptions in these circumstances makes the pharmacist at least an enabler if not more culpable than that. By filling internet prescriptions we are exposing people to unknown risks from drugs about which they have never realistically consulted a physician. Drug interactions are possible resulting in untold

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potential complications, including death. Further, my attorneys advise me that if injury occurs to a person to whom I supplied drugs over the internet that I could well be liable for their damages, and that is a liability I am not certain my insurance would cover.

We are in the electronic age and more and more matters are being handled by e-mail and by internet communications. These forms of communication are fraught with danger for abuse and as pharmacists we all will have to be on guard to prevent misuse. The old adage to be careful if it seems too good to be true, is correct. Somebody, not me, was making a significant amount of money with this process and I was only an incidental part of it; however, without a pharmacist, the scheme cannot work. We must all be careful to screen prescriptions and the prescribers and err on the side of caution, not greed. The public relies more and more on us and we must step up and protect them as much as we can.

Sincerely,

A handwritten signature in black ink, appearing to read 'Byung Sik Yuh', with a long horizontal line extending to the right.

Byung Sik Yuh
Nichols Hill Pharmacy