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

In the Matter of the Accusation Against: **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** Respondents.	Case No. 5139 **STIPULATED SURRENDER OF LICENSE AND DISCIPLINARY ORDER AS TO RESPONDENT NICHOLS HILL PRESCRIPTION PHARMACY ONLY**

DECISION AND ORDER

The attached Stipulated Surrender of License 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 2, 2015.

It is so ORDERED September 2, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____
Amy Gutierrez, Pharm.D.
Board President

KAMALA D. HARRIS
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General
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Attorneys for Complainant

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

In the Matter of the Accusation and Petition to Revoke Probation Against: **NICHOLS HILL PRESCRIPTION PHARMACY** **2844 Summit Street** **Oakland, California 94609** **Pharmacy License No. PHY 46970** **and** **BYUNG SIK YUH** **1140 Vancouver Avenue** **Burlingame, CA 94010** **Pharmacist License No. RPH 36896** Respondents.	Case No. 5139 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

In the interest of a prompt and speedy settlement of this matter, consistent with the public interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will be submitted to the Board for approval and adoption as the final disposition of the Accusation and Petition to Revoke Probation filed against both of the above-named Respondents.

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PARTIES

1. Virginia Herold ("Complainant") is the Executive Officer of the Board of Pharmacy. She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Joshua A. Room, Supervising Deputy Attorney General.

2. Respondents Byung S. Yuh dba Nichols Hill Prescription Pharmacy ("Respondent Nichols Hill") and Byung Sik Yuh ("Respondent Yuh"; collectively, "Respondents") are represented in this proceeding by attorney Paul Wolf, whose address is: Wolf, Pennella & Stevens, LLP, 717 Washington Street, Second Floor, Oakland, CA 94607.

3. On or about February 22, 2005, the Board issued Pharmacy License No. PHY 46970 to Respondent Nichols Hill. The Pharmacy License was in full force and effect at all times relevant to the charges brought in Accusation and Petition to Revoke Probation No. 5139 and will expire on February 1, 2016, unless renewed.

4. On or about February 22, 1982, the Board issued Pharmacist License No. RPH 36896 to Byung Sik Yuh (Respondent Yuh). The Pharmacist License was in full force and effect at all times relevant to the charges brought in Accusation and Petition to Revoke Probation No. 5139 and will expire on October 31, 2015, unless renewed. Since on or about July 10, 2011, Respondent Yuh has served and/or was reflected in Board records as the Pharmacist in Charge for Respondent Nichols Hill.

5. In a disciplinary action titled "In the Matter of the Accusation Against Nichols Hill Prescription Pharmacy and Byung Sik Yuh," Case No. 3737, the Board of Pharmacy issued a Decision and Order, effective January 7, 2011, in which Respondent Nichols Hill's Pharmacy License and Respondent Yuh's Pharmacist License were each revoked, with both revocations stayed and each License placed on probation for five (5) years with certain terms and conditions. A copy of that Decision and Order is included in exhibit A attached hereto.

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JURISDICTION

6. Accusation and Petition to Revoke Probation No. 5139 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondents. The Accusation and Petition to Revoke Probation and all other statutorily required documents were properly served on Respondents on June 30, 2014. Respondents timely filed Notice(s) of Defense. A copy of Accusation and Petition to Revoke Probation No. 5139 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

7. Respondents have carefully read, fully discussed with counsel, and understand the charges and allegations in Accusation and Petition to Revoke Probation No. 5139. Respondents have also carefully read, fully discussed with counsel, and understand the effects of this Stipulated Settlement and Disciplinary Order.

8. Respondents are fully aware of their legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation and Petition to Revoke Probation; the right to be represented by counsel at their own expense; the right to confront and cross-examine the witnesses against them; the right to present evidence and to testify on their own behalfs; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

9. Respondents voluntarily, knowingly, and intelligently waive and gives up each and every right set forth above.

CULPABILITY

10. Respondents admit the truth of each and every charge and allegation in Accusation and Petition to Revoke Probation No. 5139. Respondent Nichols Hill hereby surrenders its Pharmacy Permit No. PHY 46970 for the Board's formal acceptance, and understands that the Board may issue an order accepting this surrender without further process. Respondent Yuh agrees that his Pharmacist License No. RPH 36896 is subject to discipline and agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order(s) below.

RESERVATION

11. Admissions made by Respondents herein are only for the purposes of this proceeding, or any other proceedings in which the Board of Pharmacy or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

12. This stipulation shall be subject to approval by the Board of Pharmacy. Respondents understand 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 Respondents or their counsel. By their signatures, Respondents understand and agree that they may not withdraw their 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.

13. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

14. 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.

15. In consideration of the foregoing, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order(s):

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DISCIPLINARY ORDER(S)

AS TO RESPONDENT NICHOLS HILL

IT IS HEREBY ORDERED that Pharmacy License No. PHY 46970, issued to Byung S. Yuh dba Nichols Hill Prescription Pharmacy (Respondent Nichols Hill) is surrendered and accepted by the Board of Pharmacy. Acceptance and effectiveness of the surrender shall be stayed until one hundred eighty (180) days after the effective date of the Decision and Order, by which time the pharmacy shall be sold or its ownership transferred, or it shall be closed.

1. If the pharmacy is not sold or its ownership transferred prior to that date, Respondent Nichols Hill shall, no later than one hundred seventy (170) days after the effective date of the Decision and Order, arrange for: destruction of; or transfer to, sale of, or storage in a facility licensed by the Board of, all controlled substances and dangerous drugs and devices, and all records of acquisition or disposition of same. Respondent Nichols Hill shall further provide written proof of such disposition and submit a completed Discontinuance of Business form according to Board guidelines. If the pharmacy is not sold or its ownership transferred prior to that date, Respondent Nichols Hill shall also, by no later than one hundred seventy (170) days after the effective date of the Decision and Order, arrange for the continuation of care for ongoing patients of the pharmacy by, at minimum, providing a written notice to ongoing patients that specifies the anticipated closing date of the pharmacy and that identifies one or more area pharmacies capable of taking up the patients' care, and by cooperating as may be necessary in the transfer of records or prescriptions for ongoing patients. Within five days of its provision to the pharmacy's ongoing patients, Respondent shall provide a copy of the written notice to the Board. For the purposes of this provision, "ongoing patients" means those patients for whom the pharmacy has on file a prescription with one or more refills outstanding, or for whom the pharmacy has filled a prescription within the preceding sixty (60) days.

2. The surrender of Respondent Nichols Hill's Pharmacy License and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent Nichols Hill. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board of Pharmacy.

3. Respondent Nichols Hill shall lose all rights and privileges as a Pharmacy in California as of its date of sale or transfer or the date of effectiveness of its surrender. Any new owner of the premises and/or business may do business under the fictitious name of Nichols Hill Prescription Pharmacy in accordance with applicable regulations of the Board.

4. Respondent shall cause to be delivered to the Board any pocket license(s) and wall certificate(s) issued by the Board on or before its date of sale or transfer or the date of effectiveness of its surrender.

5. Respondent Nichols Hill may not apply, reapply, or petition for any license from the Board for three (3) years from its date of sale or transfer or the date of effectiveness of its surrender.

6. If Respondent Nichols Hill ever applies for licensure or petitions for reinstatement in the State of California, the Board shall treat it as a new application for licensure. Respondent must comply with all the laws, regulations and procedures for licensure in effect at the time the application or petition is filed, and all of the charges and allegations contained in Accusation and Petition to Revoke Probation No. 5139 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the application or petition.

7. If Respondent Nichols Hill should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in California, all of the charges and allegations contained in Accusation and Petition to Revoke Probation, No. 5139 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

AS TO RESPONDENT YUH

IT IS FURTHER HEREBY ORDERED that Pharmacist License No. RPH 36896, issued to Byung Sik Yuh (Respondent Yuh), is revoked. The revocation is stayed and Respondent Yuh is placed on probation for an additional two (2) years on the same terms and conditions imposed by the Decision and Order in Case No. 3737, i.e., probation is extended two (2) additional years from the effective date of the Decision and Order in this case, with the following modifications:

- Term and Condition 1 (Payment of Civil Penalties) is deemed satisfied;
- Term and Condition 2 (Community Services Program) is deemed satisfied;
- In Term and Condition 20, delete the existing language and substitute the following;

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

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

- Add Term and Condition 21 to read as follows:

21. **Divestment and No New Ownership of Licensed Premises**

As soon as practicable following the effective date of the Decision and Order, Respondent Yuh shall not own, have any legal or beneficial interest in, nor serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the Board. Respondent Yuh shall immediately take steps to sell or transfer any existing legal or beneficial interest in any entity licensed by the Board, including but not necessarily limited to his interest(s) in Respondent Nichols Hill, Parnassus Heights Pharmacy (License No. PHY 46641), and Medimart Pharmacy Partners LP (License No. PHY 46626); shall immediately take steps to resign from or otherwise dissociate from any position as manager, administrator, member, officer, director, trustee, associate, or partner of any entity licensed by the Board, including but not necessarily limited to those listed above; and shall immediately provide written proof to the Board of any such completed sale(s), transfer(s), resignation(s), or dissociation(s). Respondent Yuh shall not acquire any new legal or beneficial interest in, nor accept any new position as manager, administrator, member, officer, director, trustee, associate, or partner of, any entity licensed by the Board. Respondent Yuh shall endeavor in good faith to complete any such sale(s) or transfer(s), and any such resignation(s) or dissociation(s), within one hundred eighty (180) days of the effective date.

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If Respondent Yuh has not completed all sale(s) or transfer(s), and all resignation(s) or dissociation(s), within one hundred eighty (180) days, and is able to demonstrate reasonable diligence in attempting to do so, Respondent Yuh may apply in writing to the Board or its designee for an extension of time within which to complete the necessary transaction(s). The Board or its designee may exercise absolute discretion to grant or deny Respondent Yuh up to one hundred eighty (180) additional days within which to complete the necessary transaction(s).

Regardless of any extension granted by the Board or its designee, after one hundred eighty (180) days following the effective date of the Decision and Order, Respondent Yuh shall be subject to the following limitations. Respondent Yuh shall not:

- enter any secure portion of the licensed premises of any pharmacy licensed by the Board, except any pharmacy by which he is then employed as a pharmacist;
- enter any portion of the licensed premises of any wholesaler, veterinary food-animal drug retailer, nor any other distributor of drugs which is licensed by the board, nor any manufacturer, nor any other entity where dangerous drugs and devices or controlled substances are maintained; nor
- participate in oversight, direction, or management of any facility licensed by the Board, nor serve as a consultant to any such facility.

Failure to timely divest any legal or beneficial interest(s) or timely complete any resignation(s) or dissociation(s), failure to timely provide documentation thereof, failure to apply reasonable diligence to these tasks, and/or failure to comply with the prohibition(s) on entry into licensed premises, shall be considered a violation of probation.

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ACCEPTANCE

I am authorized to sign for Respondent Nichols Hill. I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Paul Wolf. I understand the stipulation and the effect it will have on the Pharmacy 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: 7-13-15

Byung S. Yuh, for
NICHOLS HILL PRESCRIPTION PHARMACY
Respondent

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Paul Wolf. 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: 7-13-15

BYUNG SIK YUH
Respondent

I have read and fully discussed with Respondents Nichols Hill and Yuh the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 7/13/15

PAUL WOLF
Attorney for Respondents

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy.

Dated: 8/6/2015

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General

JOSHUA A. ROOM
Supervising Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation and Petition to Revoke Probation No. 5139

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Attorneys for Complainant

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

In the Matter of the Accusation and Petition to Revoke Probation Against: **NICHOLS HILL PRESCRIPTION PHARMACY** **2844 Summit Street** **Oakland, California 94609** **Pharmacy License No. PHY 46970** **and** **BYUNG SIK YUH** **1140 Vancouver Avenue** **Burlingame, CA 94010** **Pharmacist License No. RPH 36896** Respondents.	Case No. 5139 **ACCUSATION AND PETITION TO REVOKE PROBATION**

Complainant alleges:

PARTIES

1. Virginia Herold (Complainant) brings this Accusation and Petition to Revoke Probation solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).

2. On or about February 22, 2005, the Board issued Pharmacy License No. PHY 46970 to Byung S. Yuh dba Nichols Hill Prescription Pharmacy (Respondent Nichols Hill). The

Pharmacy License was in full force and effect at all times relevant to the charges brought herein and will expire on February 1, 2015, unless renewed.

3. On or about February 22, 1982, the Board issued Pharmacist License No. RPH 36896 to Byung Sik Yuh (Respondent Yuh). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2015, unless renewed. Since on or about July 10, 2011, Respondent Yuh has served and/or was reflected in Board records as the Pharmacist in Charge for Respondent Nichols Hill.

4. In a disciplinary action titled "In the Matter of the Accusation Against Nichols Hill Prescription Pharmacy and Byung Sik Yuh," Case No. 3737, the Board of Pharmacy issued a Decision and Order, effective January 7, 2011, in which Respondent Nichols Hill's Pharmacy License and Respondent Yuh's Pharmacist License were each revoked, with both revocations stayed and each License placed on probation for five (5) years with certain terms and conditions. A copy of that Decision and Order is attached as Exhibit A and is incorporated by reference.

JURISDICTION

5. This Accusation and Petition to Revoke Probation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless indicated.

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

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

8. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or suspension of a Board-issued license, the placement of a license on a retired status, or the voluntary surrender of a license by a 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.

STATUTORY AND REGULATORY PROVISIONS

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

(j) The violation of any of the statutes of this state, of 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 by any other state or federal regulatory agency.

10. Section 4081 of the Code provides, in pertinent part, that every pharmacy shall keep a current inventory of all dangerous drugs and dangerous devices, and that the owner, officer, and partner of a pharmacy shall be jointly responsible with the pharmacist in charge for maintaining the inventory of dangerous drugs and dangerous devices.

11. Section 4113, subdivision (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."

12. Section 4332 of the Code makes it a misdemeanor for any person to fail, neglect, or refuse to maintain the records required by Section 4081, to fail to timely produce same when called upon by an authorized officer or a member of the board, or to produce false records.

13. California Code of Regulations, title 16, section 1714, subdivision (b) provides that each pharmacy licensed by the board shall maintain its facilities, space, fixtures, and equipment so that drugs are safely and properly prepared, maintained, secured and distributed.

14. California Code of Regulations, title 16, section 1715.6 requires that each pharmacy report to the board within thirty (30) days of discovery of any loss of controlled substances, including their amounts and strengths.

15. California Code of Regulations, title 16, section 1718, defines "current inventory" as used in sections 4081 and 4332 to include complete accountability for all dangerous drugs

handled by every licensee enumerated in sections 4081 and 4332. It further requires that the controlled substances inventories required by the Title 21, Code of Federal Regulations, section 1304, shall be available for inspection upon request for at least 3 years.

16. Title 21, Code of Federal Regulations, section 1301.76, subdivision (b) requires that any registrant of the DEA notify the Field Division Office of the DEA in his area, in writing, of the theft or significant loss of any controlled substances within one business day of discovery of such loss or theft, and also complete and submit a DEA Form 106 regarding the loss or theft.

17. 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 of the licensing act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

CONTROLLED SUBSTANCES / DANGEROUS DRUGS

18. Section 4021 of the Code states:

"'Controlled substance' means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."

19. Section 4022 of the Code states, in pertinent part:

"'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self use, except veterinary drugs that are labeled as such, and includes the following:

"(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without prescription,' 'Rx only,' or words of similar import.

"(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006."

20. **Norco, Vicodin, Vicodin ES, Lortab,** and **Lorcet** are among the brand names for compounds of varying dosages of acetaminophen (aka APAP) and **hydrocodone**, a Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4) and dangerous drug as designated by Business and Professions Code section 4022. The varying compounds are also known generically as **Hydrocodone with APAP**. These are all narcotic drugs.

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FACTUAL BACKGROUND

21. According to a Board investigative audit of acquisition and disposition records, between in or about July 2011 and in or about September 2013, Respondent Nichols Hill experienced significant shortages of dangerous drugs, including shortages over this period of 7,092 tablets of **Hydrocodone with APAP 7.5/750** (generic **Vicodin ES**) and 42,513 tablets of **Hydrocodone with APAP 10/325** (generic **Norco**), both narcotic controlled substances.

22. Respondents became aware of discrepancies and shortages in the controlled substance inventory between in or about September 2012 and in or about January 2013, initially as the result of an audit of pharmacy Medi-Cal billings performed by the California Department of Health Care Services (DHCS) which identified shortages from January 9, 2012 through September 30, 2012 of 7,310 tablets of **Hydrocodone with APAP 7.5/750** (generic **Vicodin ES**) and 25,459 tablets of **Hydrocodone with APAP 10/325** (generic **Norco**). These discrepancies/shortages were reported to Respondents by DHCS no later than in or about December 2012 or January 2013, at which time Respondent Yuh conducted his own review of records and confirmed the shortages/losses.

23. In or about February 2013, Respondents terminated an employee suspected of theft as a means of addressing what was believed to be the cause of the shortages/losses.

24. Respondents did not timely report the losses to either the Board or the DEA.

CAUSES FOR DISCIPLINE, AS TO BOTH RESPONDENTS

FIRST CAUSE FOR DISCIPLINE

(Failure to Maintain Accurate and Secure Drug Inventory)

25. Respondents are each and severally subject to discipline under section 4301(j) and/or (o) and/or section 4113(c) of the Code, in combination with section(s) 4081 and/or 4332 of the Code, and/or California Code of Regulations, title 16, section 1718, in that, as described in paragraphs 21-24 above, Respondents violated statutes regulating controlled substances or dangerous drugs, and/or directly or indirectly violated, attempted to violate, and/or assisted in or abetted violation of, laws or regulations governing the practice of pharmacy, by failing to keep or maintain an accurate and secure inventory of all dangerous drugs.

SECOND CAUSE FOR DISCIPLINE

(Failure to Maintain Pharmacy Security)

26. Respondents are each and severally subject to discipline under section 4301(j) and/or (o), and/or section 4113(c), of the Code, in combination with California Code of Regulations, title 16, section 1714, subdivision (b), in that, as described in paragraphs 21-24 above, Respondents violated statutes regulating controlled substances or dangerous drugs, and/or directly or indirectly violated, attempted to violate, and/or assisted in or abetted violation of, laws or regulations governing the practice of pharmacy, by failing to maintain pharmacy facilities, space, fixtures, and equipment so that drugs were safely and properly prepared, maintained, secured and distributed.

THIRD CAUSE FOR DISCIPLINE

(Failure to Provide Notifications of Controlled Substance Losses)

27. Respondents are each and severally subject to discipline under section 4301(j) and/or (o), and/or section 4113(c), of the Code, in combination with California Code of Regulations, title 16, section 1715.6 and/or Title 21, Code of Federal Regulations, section 1301.76, subdivision (b), in that, as described in paragraphs 21-24 above, Respondents violated statutes regulating controlled substances or dangerous drugs, and/or directly or indirectly violated, attempted to violate, and/or assisted in or abetted violation of, laws or regulations governing the practice of pharmacy, by failing to timely report losses of controlled substances to the Board and/or the DEA.

JURISDICTION FOR PETITION TO REVOKE PROBATION

28. This Petition to Revoke Probation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs under Probation Term and Condition Number 11 of the Decision and Order in "In the Matter of the Accusation Against Nichols Hill Prescription Pharmacy and Byung Sik Yuh," Case No. 3737.

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CAUSE FOR REVOCATION OF PROBATION, AS TO BOTH RESPONDENTS

CAUSE TO REVOKE PROBATION

(Failure to Obey All Laws)

29. At all times after the effective date (January 7, 2011) of the Decision and Order imposing probation on Respondents' Licenses, Term and Condition 3 of that Order required that Respondents, inter alia, obey all state and federal laws and regulations. As detailed above in paragraphs 21-27, Respondents failed to do so. Respondents' failure to obey all laws subject Respondents' Licenses, each and severally, to revocation.

OTHER MATTERS – EXTENSION OF PROBATION

30. At all times after the effective date (January 7, 2011) of the Decision and Order imposing probation on Respondents' Licenses, Term and Condition 11 of that Order required:

> **11. Violation of Probation.**
> If either Respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over that Respondent, and probation shall automatically be extended, until all terms and conditions have been satisfied or the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.
> If either Respondent violates probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation as to that Respondent and carry out the disciplinary order that was stayed. If a petition to revoke probation or an accusation is filed during probation, the Board shall have continuing jurisdiction and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

31. Pursuant to the operation of Term and Condition 11 of the probation order applicable to Respondents' Licenses, probation is automatically extended by the filing hereof, and/or by Respondents' failure to comply with the terms and conditions of probation, until such time as this Accusation and Petition to Revoke Probation is heard and decided, or until the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this Accusation and Petition to Revoke Probation, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking the probation that was granted by the Board of Pharmacy in Case No. 3737 and imposing the disciplinary order that was stayed, thereby revoking Pharmacy License No. PHY 46970, issued to Byung S. Yuh dba Nichols Hill Prescription Pharmacy (Respondent Nichols Hill), and/or Pharmacist License No. RPH 36896, issued to Byung Sik Yuh (Respondent Yuh);

2. Revoking or suspending Pharmacy License No. PHY 46970, issued to Respondent Nichols Hill;

3. Revoking or suspending Pharmacist License No. RPH 36896, issued to Respondent Yuh;

4. Ordering Respondents jointly and severally 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; and

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

DATED: 6/5/14

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

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Exhibit A

Decision and Order

Board of Pharmacy Case No. 3737

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

EDMUND G. BROWN JR.
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General
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BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: NICHOLS HILL PRESCRIPTION PHARMACY 2844 Summit Street Oakland, California 94609 Pharmacy License No. PHY 46970 and BYUNG SIK YUH 1140 Vancouver Avenue Burlingame, CA 94010 Pharmacist License No. RPH 36896 Respondents.	Case No. 3737 STIPULATED SETTLEMENT AND DISCIPLINARY ORDER

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

PARTIES

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

2. Both Respondents are represented in this proceeding by attorney Paul Delano Wolf, whose address is The Evers Building, 717 Washington Street, 2nd Floor, Oakland, CA 94607.

3. On or about February 22, 2005, the Board of Pharmacy issued Pharmacy License No. PHY 46970 to Byung Sik Yuh dba Nichols Hill Prescription Pharmacy (Respondent Nichols Hill). The Pharmacy License was in full force and effect at all times relevant to the charges brought in Accusation No. 3737 and will expire on February 1, 2011, unless renewed.

4. On or about February 22, 1982, the Board of Pharmacy issued Pharmacist License No. RPH 36896 to Byung Sik Yuh (Respondent Yuh). The Pharmacist License was in full force and effect at all times relevant to the charges brought in Accusation No. 3737 and will expire on October 31, 2011, unless renewed. Between on or about February 22, 2005 and on or about January 5, 2010, Respondent Yuh was the Pharmacist in Charge for Respondent Nichols Hill.

JURISDICTION

5. Accusation No. 3737 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondents. The Accusation and all other statutorily required documents were properly served on Respondents. Respondents timely filed Notice(s) of Defense contesting the Accusation. A copy of Accusation No. 3737 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondents have carefully read, fully discussed with counsel, and understand the charges in Accusation No. 3737. Respondents have also carefully read, fully discussed with counsel, and understand the effects of this Stipulated Settlement and Disciplinary Order.

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

8. Respondents voluntarily, knowingly, and intelligently waive and give up each and every right set forth above.

CULPABILITY

9. Respondents admit the truth of each and every charge and allegation in Accusation No. 3737. Respondents agree that their Licenses are subject to discipline and agree to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

RESERVATION

10. Admissions made by Respondents herein are only for the purposes of this proceeding, or any other proceedings in which the Board of Pharmacy or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

11. This stipulation shall be subject to approval by the Board of Pharmacy. Respondents understand and agree 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 Respondents or their counsel. By signing the stipulation, Respondents understand and agree that they may not withdraw the 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 stipulation, 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, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order and Disciplinary Order:

ORDER

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

DISCIPLINARY ORDER

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

TERMS APPLICABLE TO BOTH RESPONDENTS

1. **Payment of Civil Penalties**

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

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

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

2. Community Services Program - Testimonial

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

3. Obey All Laws

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

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

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty or nolo contendre in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- discipline, citation, or other administrative action filed by any state or federal agency 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.

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

4. Report to the Board

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

5. Interview with the Board

Upon receipt of reasonable prior notice, each Respondent[1] shall appear in person for interviews with the Board or its designee, at such intervals and locations as are determined by the Board or its designee. Failure to appear for any scheduled interview without prior notification to Board staff, or failure to appear for two (2) or more scheduled interviews with the Board or its designee during the period of probation, shall be considered a violation of probation.

6. Cooperate with Board Staff

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

7. Reimbursement of Board Costs

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

8. Probation Monitoring Costs

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

[1] Appearances by Respondent Nicholls Hill shall be made by an owner or officer.

9. Status of License

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

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

10. License Surrender While on Probation/Suspension

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

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

11. Violation of Probation

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

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

12. Completion of Probation

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

TERMS APPLICABLE TO RESPONDENT NICHOLLS HILL

13. Notice to Employees

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

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

14. Owners and Officers: Knowledge of the Law

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

15. Posted Notice of Probation

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

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

TERMS APPLICABLE TO RESPONDENT YUH

16. Continuing Education

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

17. Notice to Employers

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

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

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

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

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

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

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

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

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

19. **Tolling of Probation**

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

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

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

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

> "Cessation of practice" means any calendar month during which Respondent is not practicing as a pharmacist for at least forty (40) hours, as defined by Business and 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.

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

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

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

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Paul Delano Wolf. I understand the stipulation and the effect it has on my Pharmacy License. I enter into this settlement voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 8-19-10

Byung Sik Yuh, Owner, NICHOLS HILL PRESCRIPTION PHARMACY
Respondent

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

DATED: 8-19-10

BYUNG SIK YUH
Respondent

I have read and fully discussed with Respondent Nichols Hill Prescription Pharmacy and Respondent Byung Sik Yuh the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 8/18/10

PAUL DELANO WOLF
Law Offices of Paul Delano Wolf
Attorneys for Respondents

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

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

In the Matter of the Accusation Against: **NICHOLS HILL PRESCRIPTION PHARMACY** **2844 Summit Street** **Oakland, California 94609** **Pharmacy License No. PHY 46970** **and** **BYUNG SIK YUH** **1140 Vancouver Avenue** **Burlingame, CA 94010** **Pharmacist License No. RPH 36896** Respondents.	Case No. 3737 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about February 22, 2005, the Board issued Pharmacy License No. PHY 46970 to Byung Sik Yuh dba Nichols Hill Prescription Pharmacy (Respondent Nichols Hill). The Pharmacy License was in full force and effect at all times relevant to the charges brought herein and will expire on February 1, 2011, unless renewed.

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

JURISDICTION

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

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

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

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

STATUTORY AND REGULATORY PROVISIONS

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

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(j) The violation of any of the statutes of this state, of 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 by any other state or federal regulatory agency.

9. Section 4067 of the Code provides, in pertinent part, that no person or entity shall dispense or furnish, or cause to be dispensed or furnished, dangerous drugs or dangerous devices, as defined in Section 4022 of the Code, on the Internet for delivery to any person in this state without a prescription issued pursuant to a good faith prior examination of a human or animal for whom the prescription is meant if the person or entity either knew or reasonably should have known that the prescription was not issued pursuant to a good faith prior examination of a human or animal, or if the person or entity did not act in accordance with Section 1761 of Title 16 of the California Code of Regulations. A "good faith prior examination" includes the requirements for a physician and surgeon in Section 2242 of the Code and the requirements for a veterinarian in Section 2032.1 of Title 16 of the California Code of Regulations.

10. Section 4076, subdivision (a)(3) of the Code requires, in pertinent part, that a pharmacist shall not dispense a prescription except in a container that meets the requirements of state and federal law and is correctly labeled with the name of the patient or patients.

11. Section 4113, subdivision (b) 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."

12. Health and Safety Code section 11165 provides, in pertinent part, for establishment and maintenance of a Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of prescribing and dispensing of Schedule II, III, and IV controlled substances, and requires, in pertinent part, that for each prescription for a Schedule II, III, or IV controlled substance, the dispensing pharmacy or clinic transmit a report with certain information on the patient, prescriber, controlled substance, and prescription, to the Department of Justice.

13. California Code of Regulations, title 16, section 1716, states in pertinent part:

"Pharmacists shall not deviate from the requirements of a prescription except upon the prior consent of the prescriber or to select the drug product in accordance with Section 4073. . . ."

14. California Code of Regulations, title 16, section 1761, 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."

15. 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 of the licensing act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

CONTROLLED SUBSTANCES / DANGEROUS DRUGS

16. Section 4021 of the Code provides that a "controlled substance" means any substance listed in Schedules I through V contained in Health and Safety Code section 11053 et seq.

17. Section 4022 of the Code states, in pertinent part:

"'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self use, except veterinary drugs that are labeled as such, and includes the following:

"(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without prescription,' 'Rx only,' or words of similar import. . . .

"(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006."

18. Tylenol #3, Tylenol #4, and APAP with Codeine are commonly used designations for compounds of varying dosages of acetaminophen (APAP) and codeine, a Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(2) and dangerous drug as designated by Business and Professions Code section 4022. These are narcotic drugs.

19. **Norco**, **Vicodin**, **Vicodin ES**, **Lortab**, and **Lorcet** are among the brand names for compounds of varying dosages of acetaminophen (APAP) and **hydrocodone**, a Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4) and dangerous drug as designated by Business and Professions Code section 4022. The varying compounds are also known generically as **Hydrocodone with APAP**. These are narcotic drugs.

20. **Xanax** is a brand name for **alprazolam**, a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(1) and dangerous drug as designated by Business and Professions Code section 4022. It is a depressant drug.

21. **Valium** is a brand name for **diazepam**, a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(9) and dangerous drug as designated by Business and Professions Code section 4022. It is a depressant drug.

22. **Ativan** is a brand name for **lorazepam**, a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(16) and dangerous drug as designated by Business and Professions Code section 4022. It is a depressant drug.

23. **Ambien** is a brand name for **zolpidem tartrate**, a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(32) and dangerous drug as designated by Business and Professions Code section 4022. It is a depressant drug.

24. **Soma** is a brand name for **carisoprodol**, a dangerous drug as designated by Business and Professions Code section 4022. It is a muscle relaxant drug.

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CAUSES FOR DISCIPLINE, AS TO BOTH RESPONDENTS

FIRST CAUSE FOR DISCIPLINE

(Improper Dispensing Pursuant to Internet Prescriptions)

25. Respondents are each and severally subject to discipline under section(s) 4301(j), (o), 4113(b), and/or 4067 of the Code, in that between on or about December 19, 2006 and May 30, 2007, Respondents dispensed, furnished, caused to be dispensed or furnished, attempted to dispense or furnish, assisted or abetted the dispensing or furnishing of, and/or conspired to dispense or furnish, controlled substances and dangerous drugs to California residents pursuant to prescriptions issued via the Internet for which Respondents knew or should have known there was no good faith prior examination of a human or animal, and/or for which Respondents did not act in accordance with California Code of Regulations, title 16, section 1761, including:

a. Four hundred and sixty-eight (468) prescriptions for controlled substances, including **APAP with Codeine** drugs (brand or generic), **Hydrocodone with APAP** drugs (brand or generic), **Xanax/alprazolam**, **Valium/diazepam**, and **Ativan/lorazepam**;

b. Fourteen (14) prescriptions for dangerous drugs, including **Soma/carisoprodol**.

SECOND CAUSE FOR DISCIPLINE

(Mislabeling of Container/Deviation from Prescription)

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

THIRD CAUSE FOR DISCIPLINE

(Dispensing of Erroneous or Uncertain Prescription(s))

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

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

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 License Number PHY 46970, issued to Byung Sik Yuh dba Nichols Hill Prescription Pharmacy (Respondent Nichols Hill);

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

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

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

DATED: 8/19/10

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

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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

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!

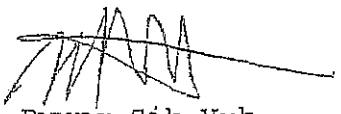
The practice of filling prescriptions over the internet for patients previously unknown to my practice is dangerous to the patients and to the profession. I have come to learn that in many cases the patients contacted physicians only through a website and that they never had any personal contact with 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

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,



Byung Sik Yuh
Nichols Hill Pharmacy